

selves. If this is withheld, an altogether different procedure is rendered necessary. The case becomes one of a person asserting a right hostilely to another who opposes it. Recourse must be had to the Civil Courts, and the ordinary rules which govern the contest of right in those Courts, come into play. Accordingly, section 84 prescribes that the petition to the District Court shall take the form of a plaint, and I apprehend that the proceedings which follow on the filing of it must be those of an ordinary suit, in which such of the persons executing the documents as refuse to consent to its registration, together with the Registrar, when necessary, should be defendants. The question to be tried will be, whether or not the petitioner has a right as against the persons executing the document to have the document registered. That right will, of course, depend upon the circumstances of each case, and cannot well be made the subject of a general definition.

As against the Registrar, this petition must be dismissed with costs; he undertaking to obey any order for registration, which may be eventually passed by the Court.

As against Armala Dasi, the issue remains to be tried whether or not the petitioner has a right to have the kabala in question registered. And I now adjourn the case, in order to give the parties time to procure and bring before the Court such evidence bearing on this issue as they may be advised.

Attorneys for the petitioners : Messrs. *Carruthers & Co.*

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 IN THE MATTER  
 OF BRAJANATH  
 PYNÉ  
 AND  
 ARMALA DASI.

Before Mr. Justice Phear.

KELLY v. KELLY AND SAUNDERS.

. *Admission of Petition for Divorce—Jurisdiction.*

The High Court has jurisdiction to admit a petition for divorce, where the parties are resident, and the adultery is committed, in the district of the 24 Pergunnas.

Principle on which the Court will assess damages discussed.

THIS was a suit for dissolution of marriage under the Indian Divorce Act IV. of 1869.

Mr. *Cowell* moved on behalf of the husband, the petitioner, for the admission of a petition for divorce, on the ground of the

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adultery of the respondent. All the parties were resident in the district of the 24-Pergunnas, and the adultery had been committed within that district.

Mr. *Cowell* contended that, under the Charter of the High Court and the Indian Divorce Act, the High Court had concurrent jurisdiction with the District Court, and that the limits of its Divorce Jurisdiction under the Act included Bengal, Behar, Orissa, British Burmah, and any Non-Regulation Province, or any place in the dominions of Princes, and States of India in alliance with Her Majesty, in which the Court could exercise Original Criminal Jurisdiction over European British subjects resident therein. If the husband and wife had last resided together anywhere within those limits, they were amenable under the Act to the Divorce Jurisdiction of this Court.

PHEAR, J., after taking time to consider, admitted the petition.

On the 15th day of June 1869, the case came on for hearing.

Mr. *Marindin* and Mr. *Cowell* for petitioner.

Mr. *Graham* and Mr. *Hyde* for respondent.

Mr. *Piffard* and Mr. *Jackson* for co-respondent.

The judgment was now given by

PHEAR, J., who after pronouncing, upon the evidence adduced, a decree *nisi* for divorce, made the following observations:—

In this case I reserved the question of damages for further consideration. There is, strictly speaking, no standard by which damages in suits of this kind can be accurately measured, no mode by which the amount can be arrived at by any sort of calculation. In English cases of suits for *crim con*, it seems to be laid down, that the sum proper to be awarded is a matter of opinion for the Jury, dependent on the circumstances under which the wrong is done to the husband. The result of

my consideration is that, substituting the Court as we must here for the Jury, the Court in forming the estimate ought to consider on the one side the deprivation suffered by the husband of his wife's society and affection, the loss to him of his wife's services and assistance in domestic affairs, and the social injury which he is likely to incur from the insult and dishonor which the co-respondent has inflicted upon him. On the other side, the Court ought to weigh well the behaviour of the husband towards his wife and the adulterer, with a view to judging whether or not he has contributed to the mischief of which he complains, and also whether he is a person who is likely to fall in the estimation of society by reason of that which has happened. The ability of the adulterer to pay damages is not generally to be taken into account. In the present case, as I have already thrown out, I do not think that the husband has lost much in the society and affection of his wife through the misconduct of the co-respondent. Her affections were obviously estranged from him long before she became acquainted with Mr. Saunders. And the terms on which Captain and Mrs. Kelly were then living were such that the husband could hardly have received much comfort from the wife's society; but I think he has sustained material loss by reason of being deprived of her assistance in the house. His establishment appears to be just upon such a scale as probably gives to the personal services of a wife a maximum of value and importance. And it is clear, I think, that the result of this suit will be to oblige him to put some person in the position of matron or house-wife in his small family. And I further think that the dishonor, which has been done him, is such as requires to be vindicated (as in a suit for libel or slander) by a verdict for substantial damages. It does not appear to me that his behaviour towards his wife has been of a kind to contribute to the consequences which have happened, and therefore I feel, after the best consideration which I have been able to give to the case, that I ought to direct the co-respondent to pay a substantial sum by way of damages. I don't wish to disguise the difficulty which I am under in the absence of any precedent in this country to guide me in arriving at an estimate of the sum which would be reasonable in this case. As I have already said, the petitioner

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is not entitled to, or rather there is no ground for giving him compensation for, the loss of his wife's society; and that I think in matters of this kind ought to be treated as the principal element to be taken into account. And I also desire to avoid assessing the damages at a sum so great as might lead to their being thought vindictive. On the whole, it appears to me reasonable to order the co-respondent to pay the sum of rupees 1,000, as damages. He must also be decreed to pay the costs of the suit, which will be not only the petitioner's own costs, but the costs which the petitioner has incurred on behalf of the respondent. I was asked to settle the damages simultaneously with assessing them. Certainly the practice in England, as far as I can gather from the reported cases, has been to do this not earlier than the final decree. In one case it was made later, but the Judge Ordinary then observed that it ought to have been done at the time the decree was made absolute.

Application may be made for settlement and for access to the children when the decree is made absolute.

Attorneys for the petitioners: Messrs. *Robertson & Co.*

Attorney for the respondent: Baboo *D. C. Dutt.*

Attorney for the co-respondent: Mr. *Leslie.*

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Before Mr. Justice Phear.

RAICHARAN PAL v PYARI MANI DASÍ AND ANOTHER.

*Hindu Law—Widow—Reversioner—Suit by Assignee.*

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June 10.

During the existence of a Hindu widow's interest in an estate, the assignee of a reversionary heir to her husband has no interest therein, as such assignee, which will enable him to bring a suit to have a mortgage and decree affecting the estate set aside. This is so even though the assignee is the next reversionary heir to the husband after the assignor.

THIS suit was brought by the plaintiff as assignee of one Iswar Chandra Pal's right and title to certain property as the next reversionary heir after the determination of the first defendant's estate of a Hindu widow therein. The last full owner was Khettramohan Pal, who was alleged to have died intestate, and the plaintiff claimed after the death of the defendant