

1874

NANDAN
MISSEK
V.
CHATTERJEE.

Mr. Trotman has asked us to hold that, because the document itself was executed before the date when Act XVIII of 1869 came into operation, therefore s. 28 of the Act does not apply. But it seems to us that this contention is not just, and that the Judge was bound to comply with the Act, and had no authority to admit an unstamped document in evidence, excepting under the conditions prescribed in Act XVIII of 1869. The document itself was in these words (The learned Judge read the document and continued):—In effect it seems to us that this document is nothing more than a promise to pay money at a specified period. It may concisely be put into this form,—for value received I undertake to pay you Rs. 1,500 on or before the 15th Falgun next, and interest thereon from the 1st Chaitra if not paid before. And if we consider it in this form, we think there can be no doubt that it is simply a promise to pay money at a future time.

Mr. Trotman somewhat ingeniously argued that we might treat the contract exhibited by this *chittha* as being one in which there was a condition of defeasance if the money was paid before the 15th Falgun, and so treat it as if it were a bond. But we cannot take this view. It appears to us that the *chittha* is in substance a promissory note within the words of s. 28, Act XVIII of 1869, and therefore the Judge had not power to allow it to be stamped. In this view we dismiss the appeal with costs.

Before Mr. Justice Markby and Mr. Justice Mitter.

1874

Aug. 3.

ASGAR ALI HOWDERY (DEFENDANT) v. MAHABHAT ALI (PLAINTIFF).*

Fraudulent Representation—Contract of Marriage, Breach of—Damages—Marriage Presents, Suit to Recover Value of.

A entered into a contract with B for the marriage of his daughter C. The marriage was duly performed, but C was never sent to the house of B, and B thereupon instituted a suit to compel C to live with him; but the suit was dismissed on the ground that the marriage was invalid, it being found that C was of age at the time of the marriage, and that her consent was not given. In a suit brought by B against A to recover as damages the value of certain presents he alleged he had made to C's family in consideration of the marriage, *Held*, that the plaintiff was not entitled to recover, unless he could show fraudulent representations on the part of the defendant in consequence of which he was induced to contract the marriage and incur the expenses sought to be recovered. The case was remanded for the trial of the issue of fraud.

THE present suit was instituted by the plaintiff for the recovery as damages of the value of certain presents which he had made to the defendant's family

* Special Appeal, No. 1852 of 1873, against a decree of the Additional Subordinate Judge of Zilla Chittagong, dated the 29th May 1873, affirming a decree of the Munsif of the Sudder Station of that district, dated the 25th March 1873.

in consideration of his giving his daughter in marriage to the plaintiff. The plaintiff alleged that the defendant entered into a contract with the plaintiff for the marriage of his daughter whom he alleged to be a minor; that the said marriage was duly solemnised; that subsequently, on the defendant's refusing to send his daughter to plaintiff's house, the plaintiff instituted a suit for the purpose of compelling the father to send the girl to his house; that the said suit of the plaintiff was dismissed, it being found that the girl was not a minor when the marriage took place; and that as her consent was not given, the marriage was not valid; and that the plaintiff had given in accordance with custom certain presents to the defendant's family, in consideration of the marriage, the value of which presents he now sued to recover. The plaintiff alleged that he was induced to contract the marriage by the fraudulent representations of the defendant that the girl was under age, and that therefore he, the defendant, was competent to contract her in marriage. The defendant denied receiving the presents, as well as making the alleged fraudulent representations. The lower Courts found that the presents were given, and also that the marriage was duly performed, excepting as regarded the consent of the girl who was found to be a minor at the time. The lower Courts consequently gave a decree in favor of plaintiff. The defendant appealed to the High Court.

1874

 ASGAR ALI
 CHOWDHRY
 v.
 MAHABHAT
 ALI.

Baboo Taraknath Sen, for the appellant, contended, that the plaintiff was not entitled to recover any damages, the gifts being purely voluntary. Such gifts were not required by any law or custom, and having been made out of mere good-will to the family, they were not recoverable.

Baboo Gopal Lal Mitter, for the respondent, contended, that the presents being made in consideration of the marriage which was contracted on the faith of the defendant's false representation that the girl was a minor, the plaintiff was entitled to recover such gifts, or their value.

Baboo Taraknath Sen in reply.

The following judgments were delivered :—

MARKBY, J. (after stating the facts as above, continued):—The only substantial issue raised in the first Court was whether the proper marriage ceremonies had been performed. The Munsif, upon finding that these ceremonies had been performed, held that the plaintiff was entitled to recover, and proceeded to enquire which of the presents had been made as alleged by the plaintiff. The only presents which were found to have been made were ornaments, clothes, and sweetmeats to the value of Rs. 180, or thereabouts, and Rs. 60 in cash; and for this sum the Munsif gave the plaintiff a decree with costs. The lower Appellate Court affirmed this decision and dismissed the appeal.

It seems to have been considered in the Courts below unnecessary to

1874

ASGAR ALI
CHOWDHRY
v.
MAHABHAT
ALI.

enquire into the question of fraud ; and, no doubt, the suit for breach of contract to give the daughter in marriage might lie against the father without fraud, but nothing could be claimed in such a suit for presents made to any member of the family. This expense was not incurred by the plaintiff in consequence of the breach of contract, but was voluntarily incurred by the plaintiff in consequence of his entering into negotiations for the marriage. Even if any portion of the above presents were made to the father himself, they must be treated as purely voluntary. The law would not recognize any liability or undertaking on the part of the husband to pay anything to the father in consideration of his giving his daughter in marriage ; and the husband being under no legal obligation to give anything to the father of the girl, or the girl herself, or to any member of her family, the value of any presents which he might choose to make could not be recovered against the father as damages simply for his breach of contract. All that the plaintiff could be entitled to recover for a simple breach of contract was compensation for the loss of the girl as his wife. Upon this head he has claimed nothing whatever.

But upon the allegations in the plaint the claim is unquestionably capable of being treated as founded upon fraud, and the rule as to damages in suits founded upon fraud, is wider than the rule as to damages in suits founded upon simple breach of contract without fraud. If fraud were established, I think the plaintiff might then show that he entered upon the negotiations for the marriage in consequence of the defendant's representation that his daughter was under age, and that he had power to dispose of her in marriage, and that it was a natural and probable consequence of those negotiations that he should in conformity with the general custom of the country to that effect, make presents to the girl herself and to the various members of the family. It would by no means follow, ever then, that the plaintiff should recover the whole value of such presents. But the fact that he had made such presents might, I think, be given in evidence to assist the Court in estimating what damage is justly and immediately referable to the falsehood of the statement made by the defendant. This would not in all cases equal the amount of presents actually given ; it would be necessary to consider all the circumstances of the case, amongst others, the rank in life and the situation of parties, and what, having regard to the social customs of the class to which the parties belong, it would be considered reasonable and proper for an intending husband to give.

The suit is one of a novel character, and we are by no means disposed to encourage the prosecution of such claims as these in Courts of Justice, but we are not prepared to say that the plaintiff is not entitled to have the question of fraud tried.

The case, therefore, will be remanded to the Munsif to try the issue whether the defendant Asgar Ali made a fraudulent representation to the plaintiff that his daughter was under age, and if he finds that issue in favor

of the plaintiff, he will then assess the damages to which the plaintiff is entitled on the evidence already given. Upon the issue of fraud the parties will be at liberty to give fresh evidence. If the issue of fraud is found against the plaintiff, the suit must be dismissed, as in that case there is in our opinion no proof of any damage for which a suit would lie.

MITTER, J.—I entirely concur in this order of remand. It is clear from the judgment of the Courts below that none of the items of losses proved in this case are damages flowing from the breach of the contract of marriage. The plaintiff is not therefore entitled to recover them simply upon the ground that there has been a breach of contract on the part of the defendant. But these losses are of such a nature as may be shown to have been the probable result of a fraudulent misrepresentation by the defendant of his daughter's age, which induced the plaintiff to enter into negotiations for marriage. This charge of fraud is distinctly made in the plaint, but no issue seems to have been raised upon it in the Courts below.

Under the circumstances of this case, the plaintiff is entitled to have that issue tried, and if it be found in his favor, he is entitled to be reimbursed the reasonable expenses which he incurred for making presents to the bride's family, according to the social custom of the community to which both parties belong. How much of these expenses is reasonable, and how far they are the probable result of the defendant's fraudulent representation, are questions of fact which will have to be determined by the Court below upon the evidence in the case.

Before Mr. Justice Phear and Mr. Justice Morris.

FATTEH SINGH (ONE OF THE DEFENDANTS) v. LACHMI KOOER, alias
BHAGABATTI KOOER, WIFE OF PUSA SINGH (PLAINTIFF).*

1873
Dec. 12.

Act VIII of 1859, s. 2.—Dismissal of suit—Multifariousness.

The dismissal of a suit for multifariousness is not a hearing and determination of the suit within the meaning of s. 2, Act VIII of 1859.

Mr. Manamohan Ghose (Baboo Doorga Mohun Doss and Budh Sen Singh with him) for the appellants.

Baboo Chunder Madhub Ghose and Taraknath Sen for the respondent,

THE facts are succinctly stated in the judgment of the Court, which was delivered by

PREAR, J.—In this case some little difficulty occurred during the argument of the appeal in ascertaining what was the true nature of the plaintiff's suit ;

* Special Appeal, No. 226 of 1873, against a decree of the Officiating Judge of Zilla Patna, dated the 13th September 1872, affirming a decree of the Sudder Mussif of that district, dated the 24th January 1872.

1874
ASGAR ALI
CROWDHEY
v.
MAHABHAT
ALI.