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Inasmuch, however, as it appears to me that the cause of action in this case did not arise in the district within the meaning of Rule 11 of the Summary Procedure Rules 1916, I, by virtue of the powers vested in me, direct that the District Commissioner do not proceed further in this case.

I allow costs against plaintiff.

[CIVIL JURISDICTION.]

[ACTION NO. 71, 1922.]

1922. *Sept.* 7.

MOTI *v.* BUGWAN SINGH.

Marriage according to Indian Custom "Actual Marriage"—meaning of in section 48 (1) of the Marriage Ordinance 1918. Gifts or their value recoverable on failure to fulfil promise of marriage.

K. J. MUIR MACKENZIE, Acting C.J. In this case I have to decide a matter very similar to the last case before me, that of *Sukram v. Sampatia.*

But here I find a difference in the facts established by the evidence.

By my decision in *Sukram v. Sampatia* I held that the plaintiff must prove that bethrothal was not followed by "actual marriage," and I held that "actual marriage" for the purpose of section 48 (1) of the Marriage Ordinance 1918 did not necessarily mean "legal marriage," but a marriage consummated and of a binding nature according to the denomination of the parties. I also held in that case that the plaintiff had failed to prove that there had not been such a marriage duly consummated, and gave judgment for the defendant accordingly.

In the present case, after carefully considering all the evidence, I find the following facts.

The plaintiff, though not the father of the boy Gindah, brought him up and acted *in loco parentis* in this matter.

He arranged for the bethrothal of the boy Gindah to Ramdei, the defendant's daughter, in 1916, and it was certainly understood between the parties that such bethrothal should be followed by a marriage. Ramdei was then a child of 7 to 8 years old and Gindah a boy of about 12. The marriage ceremony was duly performed according to Hindoo practice.

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And certain gifts of jewellery, clothing, food and money were made to the bride and her family either before or at the ceremony.

After the ceremony the girl went to the house of Gindah's father for a night or two, taking with her the jewellery that had been given to her. She returned to her father for a short time and then went back to Gindah's people for about three months.

After that she left and went back to her people and took with her certain jewellery. Why she left and how she left I cannot say, the story told in evidence is incredible on either side; but I do believe the main fact and I do believe the plaintiff's story when he says that he, within three months, tried to get her back and made search for the jewellery; but was told on coming before the Magistrate that he should let the girl go, on the mother promising to return her.

Further, I believe the evidence which was given by Gindah, that at that time there had been no consummation of the marriage, and it was never in dispute that there had never been any consummation ceremony, so that I hold that up to that time there had not been an " actual marriage " within the meaning of the section.

After that the plaintiff waited for two years before taking any active step to have the marriage completed. Then the parties went before the Inspector of Immigrants, who told the parties to wait for another $2\frac{1}{2}$ years when the girl would be 13 and of age to be registered as married. At the end of that period the parties all went before the Court again, when the District Commissioner seems to have come to the conclusion that the girl was still 9 months under 13, and told the parties to go away and come back again at the expiration of that time.

I do not know whether the defendant went willingly to consent to the registration of the marriage on these two occasions or not, but that he was there is not disputed, and I do not believe his story when he says that the business on which they went was something other than registration, nor can I believe him, in face of the action taken by Gindah and his people, when he says he was asked by them to take his girl away in the first place.

Indeed, I formed the conclusion that he was an utterly untrustworthy and objectionable person.

Now, it is after this last visit to the Court that the plaintiff discovers that the girl is with another man and this action is brought in consequence.

She seems to have gone to her brother-in-law, and Gendah brought proceedings for harbouring. These of course could not succeed, but probably, as the result of them, the true situation was discovered, and the fact that she was living with Jawahir disclosed. I believe that this was the case because I find no reason to doubt the evidence of Bunai Singh when he says he saw her daily.

I cannot help thinking it is probable that this took place with the defendant's knowledge, and not without some *quid pro quo* passing to him, though I have no evidence before me to prove it, but it is immaterial to the decision of the case.

From the foregoing I therefore come to the conclusion that there was a betrothal, that gifts were made by plaintiff to the bride and her people, and that there was an agreement that actual marriage should follow, that actual marriage has not followed and that every endeavour has been made by the bridegroom and his people to bring about actual marriage without success.

I have then now to consider the gifts or their value, to which the plaintiff who made them is entitled.

I decided at the close of the plaintiff's case that the defendant had to answer the case raised with regard to all gifts made in consideration of the forthcoming marriage, and broadly indicated what as then advised I considered to be the gifts there was a case to say were covered by the section. By this I did not intend to definitely hold that certain gifts or their value were recoverable; but only that I wished to hear the defendant's case and arguments with regard to them.

I will take the items seriatim from the statement of claim. The first is " Cash, £24." I find as a fact this was given. I do not believe the defendant when he says he never had it. Had the evidence of the payment rested on that of the plaintiff alone I should have hesitated to say that the case had been proved; but it was indorsed by Gindah who rightly or wrongly I considered the most reliable witness in the case, for he seldom tried to put his case too high and was ready to admit details, such as the giving of the calf and receiving a dhoti from the defendant which he would probably consider told against his case.

In addition Pancham gave his evidence, and though it was suggested he was Harli's brother, he denied the fact and I do not think I ought to pay much attention to it.

The next five items have been relinquished by the plaintiff —cash to priest, dancers, dhoti bearers and barber, and sundry

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small donations, not, I infer, because they come outside the spirit of the section, but because they are outside its letter.

I am therefore not concerned to decide with regard to them.

The next item is " Food, £7 18s. 6d." With regard to this item I have felt considerable doubt. I think, apart from the fact that the evidence has not established the payment of all this money, that it has established that (1) it was expended on the feast at the father's house, (2) it would not have been expended but for the fact that a marriage ceremony was taking place, and (3) it is in a sense part of the marriage ceremony, in that it is as customary for the bridegroom's people to give a feast, as for the bride's to do likewise; but I cannot find either (1) that it is an essential part of the ceremony, or that the expenditure constitutes a gift to the bride or her parents or guardians.

I think I must disallow it, for if not, where is the matter to stop. Is an Indian to be allowed to entertain his friends sumptuously and lavishly and to recover afterwards if events turn out as in this case, or is the Court to decide on a reasonable expenditure and allow that only, or does the section restrict the right of recovery to those gifts of which the bride or her parents or guardians have had the benefit. I think I should be placing too wide a construction on the section if I said that the words " shall have made to any female immigrant or her parents or guardians " included the husband's feast. I hope that in the course of my decision at the end of the plaintiff's case I did not make it appear that I definitely held the husband's feast to be an item I intended to allow. I am afraid my words delivered without opportunity for consideration may have implied as much. All I wished to do was to give my view of the general intention of the section and to say I considered there was a case for the defendant to answer.

I have also in the next item decided to admit only those items which in my opinion were either directly given to the bride or her people or were given directly as part of the wedding ceremony at the bride's home, and of which she or her people obtained the benefit.

The item claimed is £3 16s., and is made up of a variety of small items. I disallow items from that claim amounting to 17s. 10d., leaving £2 18s. 2d.

The next item, or series of items are for " Jewellery, £2 10s. and £16 6s." On the whole I am inclined only partially to believe the plaintiff's story with regard to these items. It is unlikely, or so far as I can gather at least unusual, for a Hindu

marriage to take place without gifts of jewellery being given. The girl's departure is wrapped in mystery, but if, as I have held, she departed when she was only eight years old, it is unlikely that she had charge of her own jewellery when she was with her husband's people, and further than this she was found with only the pair of kharua, the hasli and eight churis in her possession.

I believe that these were given her by the plaintiff and that they are the ornaments which she habitually wore, which would account for her having taken them away with her. The incident of the search warrant makes me doubtful, but after all they did find only the items I have mentioned. As to the other items they may or may not have been given, but I cannot hold that plaintiff has proved that they have been taken away.

I have no evidence before me as to the value of the kharua, hasli and churis. I propose to order their return, or half the item £16 6s. as their value, unless either party wishes to dispute this valuation, in which case I shall be prepared to hear evidence and make an award.

The last item is two cows valued at £4. I intend to disallow this item. The evidence tends to show that a gift of cows from father to daughter is customary, and further I have the fact that the father in this case was owner of a number of head of cattle.

Furthermore, we come back to this mysterious departure. I do not believe in the story of the border raid and the carrying off of the woman and presumably the cattle with her, and if this did not take place, how, even supposing the cattle were given, did they get away from the plaintiff's home. I suppose the suggestion is that that they never left the defendant's, but surely this is unlikely if they were ever given to the girl.

On the whole I think the evidence is too doubtful to justify my holding that the plaintiff has proved his case with regard to them.

Judgment will accordingly be entered for £24, £2 18s. 2d. and the return of the pair of kharua, 1 hasli, 8 churis, or £8 3s.

The case is not without importance in its way, and has raised one or two points of difficulty. The plaintiff has only succeeded on, roughly speaking, half the value of his claim it is true; but on the other hand I am quite satisfied that the evil conduct of the defendant has given rise to exactly the

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class of case the section is designed to suppress. And further the parties were advised to take their case before the Supreme Court by the District Commissioner.

(After hearing arguments.)

I make order for costs.

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[CIVIL JURISDICTION.]

[ACTION No. 89, 1922.]

FREDERICK BENJAMIN SPAETH *v.* ARTHUR HERBERT HALLEN.

Lease and sub-lease—buildings—growing crops—stock and implements—covenant by lessor to purchase by valuation on termination of a lease—further covenant if parties unable to agree on a valuation to refer to arbitration—lessee transferred the lease in breach of lessee's covenants subject to similar covenants contained in original lease—buildings erected by sub-lessee.

Held, on termination of lease the defendant (the original lessor) became liable to the plaintiff (the original lessee) to take at a valuation all things within the terms of the covenants of the original lease—the Court then proceeded to a valuation disposing of Arbitration.

K. J. MUIR MACKENZIE, Acting C.J. In this case the plaintiff claims £5,562 10s. as being the value of the buildings, growing crops, stock and implements on the estate known as Na Tawarau the property of the defendant, taken over by him on the 1st July, 1922, on the expiration of a lease from defendant to plaintiff and in accordance with the covenants contained in that lease.

It seems that in the year 1906 the whole estate of Na Tawarau and Raviravi, comprising over 8,000 acres, was let to one Armstrong, who had sub-let a portion to Spaeth.

In 1909 the Colonial Sugar Refining Company were developing the country and Mr. Spaeth formed the idea of developing the estate of Na Tawarau into a sugar plantation. His lease from Armstrong expired in 1912, so that for the purpose mentioned he desired a longer lease which would give time to make the necessary improvements followed by an option to renew at the end of the term; or, if the parties did not renew, to be entitled to call upon the lessor to pay for the buildings, stock, implements and growing crops on the estate when his term finished.