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MANOHAR v. LUCCHINELLI.

I am of opinion, therefore, that appellant was properly called on for his defence. He went into the witness box and swore that he had never presented the cheque to the tailor and gave evidence setting up an alibi, which was supported by two witnesses. It cannot, therefore, be said that his first denial (document C) was the result of nervousness or surprise on finding himself in the awe-inspiring presence of the Chief Inspector of Constabulary, he repeated the denial nearly three weeks later after ample time for reflection.

Appellant's counsel argued the case, as he was practically bound to do, from the standpoint that his client made the false pretence, i.e., that he presented the worthless cheque as a good one; but he contended that there was no evidence that he knew it was not a good cheque, in which case he would not be guilty of any offence. This is the crux of the whole case: was the man's denial of the transaction merely food for suspicion (no one I think would deny that it was that) or was it conduct from which the Court could conclude that he acted with a guilty mind and fraudulent intent. It seems to me incredible that if he had come by the so-called cheque in good faith he would not at the earliest opportunity or, failing that, at his trial, have explained his possession of it. I find therefore, that there was evidence to support the conviction. As to the sentence I do not think it is excessive.

The appeal is dismissed with costs.

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April 20.

[APPELLATE JURISDICTION.]

[ACTION NO. 41, 1922.]

LESLIE DAVIDSON *v.* JOE A. RASHID.

Writ of Prohibition—nature of.

Held, cannot issue from Supreme Court to its own Commissioner.

Sir CHARLES DAVSON, C.J. It is of the essence of a writ of prohibition that it is issued by a superior to an inferior Court.

The Court of a District Commissioner sitting under the Summary Procedure Rules is not an inferior Court, but is part of the Supreme Court with a jurisdiction limited as to place and value. A writ of prohibition cannot therefore properly issue from the Supreme Court to an officer sitting as its own Commissioner (Ord. 7 of 1875, sec. 34).

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LESLIE DAVIDSON v. JOE A. RASHID.

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.