Suit No. 49 *of* 1863.

MUHAMMAD IBRA'HIM bin MUHAMMAD SAYAD PARKA'R ....*Plaintiff.*

GULA'M AHMED bin MUHAMMAD SAYAD ROGHE, and MUHAMMAD SAYAD bin MUHAMMAD IBRA'HIM ROGHE......................................*Defendants.*

1864. June 28.

Muhammadan Law—Persuading Wife to remain absent from her Husband—Mussalmán Female's Right to choose Husband—Sect of Sháfi—Marriage without Consent of Father.

A suit for damages is maintainable by a Mussalmán against persons who without lawful excuse have persuaded and procured his wife to remain absent from him and live separately.

A Mussalmán lawfully married to a girl who has attained puberty can maintain a suit for damages against the father of the girl, and against an alleged husband of the girl, for wrongfully persuading her to remain absent from the plaintiff's society, and for detaining her away from him.

According to the doctrine of the Mussalmán teacher A'bu Hanifá, a Mussalmán female after arriving at the age of puberty without having been married by her father or guardian becomes legally emancipated from all guardianship, and can select a husband without reference to the wishes of the father or guardian, but according to the doctrine of Sháfi a virgin, whether before or after puberty, cannot give herself in marriage without the consent of her father.

After attaining puberty a Muhammadan female of any one of the four sects can elect to belong to whichever of the other three sects she pleases, and the legality of her subsequent acts will be governed by the tenets of the Imám whose follower she may have become. A girl whose parents and family are followers of t[illegible]l of Sháfi, and who has arrived at puberty and has not been m[illegible]or betrothed by her father or guardian, can change her sect from that of Sháfi to that of Hanifá, so as to render valid a marriage subsequently entered into by her without the consent of her father.

THE plaintiff in this suit claimed to recover from the defendants the sum of Rs. 1,50,000, as damages sustained by the plaintiff by reason of the defendants having wrongfully and unjustly persuaded and procured Khadijá, the wife of the plaintiff, to continue absent from the society of, and cohabitation with, the plaintiff from the month of July 1859 to the filing of the suit. The plaint stated that on the 1st of December 1858 the plaintiff was lawfully married to Khadijá Bibí, daughter of the defendant Gulám Ahmed, and then residing with her grandmother, one Fatteh Bibí; that the defendant Gulám Ahmed, in December 1858, induced the plaintiff and the said Fatteh Bibí to allow Khadijá to visit him at

1864.
MUHAMMAD IBRA'HIM et al. v. GULA'M AHMED et al.

his house, where she had since been detained; that the defendants falsely pretended that a marriage had been solemnised between the said Khadijá and the defendant Muhammad Sayad; that Khadijá had been declared entitled to a sum of Rs. 1,01,000 in her own right, under the Will of one Muhammad Alí Roghe; and that the defendants were dissuading and preventing the said Khadijá from returning to the house of the plaintiff, and he was thereby deprived of her society and cohabitation, and aid in his domestic affairs, and the profits and advantages to be derived from the said sum of Rs. 1,01,000, which he otherwise might and would have had.

The suit came on for settlement of issues on the 28th of November 1862 before Arnould, J., when the following issues were settled:—1*st*, whether the plaintiff, on or about the 1st of December 1858, was lawfully married to Khadijá Bibí according to Muhammadan laws and customs, as in the plaint mentioned; 2*nd*, whether the defendant Gulám Ahmed induced the plaintiff and Fatteh Bibí to allow Khadijá Bibi to visit him at his house, as in the plaint mentioned; 3*rd*, whether any marriage had been *solemnised* between Khadijá Bibi and the defendant Muhammad Sayad Roghe; 4*th*, whether the defendants dissuaded and prevented Khadijá from returning to the house of the plaintiff; 5*th*, whether the suit is barred by the Limitation Act; and 6*th*, whether the plaintiff had sustained damages to the amount claimed in the plaint, or to some other amount.

The suit came on for hear[illegible] d final disposal before SAUSSE, C.J., and COUCH, J., on the [illegible]th of November 1863, and on many subsequent days.

Anstey and *Dunbar* for the plaintiff.

Bayley, *Marriott*, and *Green* for the defendants.

The points of law and fact raised in the suit sufficiently appear by the judgment, but the following statements may be useful as explaining the relationship of the persons concerned in the suit.

One Muhammad Alí Roghe, commonly called "the Nákodá," died in Bombay in the year 1850, possessed of great wealth. He left a widow, Fatteh Bibí, and a son Muhammad Amín Roghe, and having had by his wife, Fatteh Bibí, two daughters, Khadijá the elder, and Fátmá, both of whom predeceased

him. The brother of Muhammad Alí Roghe, namely, Muhammad Sayad Roghe, had three sons, namely, Muhammad Husen Roghe, Muhammad Ibráhim Roghe, and the first defendant, Gulám Ahmed Roghe. Muhammad Ibráhim Roghe left a son, the second defendant, Muhammad Sayad Roghe. The defendant Gulám Ahmed Roghe had married successively the two daughters of Muhammad Alí Roghe, namely, Khadijá the elder and Fátmá, and by the latter had two children, namely, Gulám Husen and Khadijá the younger. Khadijá the elder died about 1830, and Fátmá about 1850. The son of the Nákodá, namely, Muhammad Amín Roghe, died intestate about 1857. Fatteh Bibí was appointed trustee and executrix of the Will of her husband, Muhammad Alí Roghe, and she proved the same in the late Supreme Court, and also obtained a grant of letters of administration of the estate of her son Muhammad Amín Roghe.

The judgment of the Court was delivered on the 28th of June 1864 by COUCH, J., and was as follows:—

In this suit the plaintiff claims damages against the two defendants for having persuaded and procured Khadijá Bibí, his wife, to continue absent from his society and cohabitation from the month of July 1859 down to the period of filing this suit: and, as one measure of damages, he states that Khadijá was, by an order of this Court dated 4th July 1862, declared entitled absolutely to a sum of one lákh and one thousand rupees under the Will of her grandfather Muhammad Alí Roghe, in a cause in which Amíná Bibí and others were plaintiffs and Fatteh Bibí and others were defendants, and that he has been deprived of the advantage of his wife's enjoyment of this property.

The principal question at issue is the validity of the marriage of the plaintiff with Khadijá Bibí.

The defendant Gulám Ahmed is the nephew of the late Muhammad Alí Roghe Nákodá, and successively married two daughters of his uncle, the second upon the death of the first. By his second wife he had two children, Gulám Husen and Khadijá. Their mother, Fátmá, died shortly before the Nákodá in 1850, and the latter bequeathed about two lákhs to Gulám, and one lákh to Khadijá upon her attaining the age of twenty-one years. The testator provided that in case of

1864.
Muhammad Ibra'him v. Gula'm Ahmed et al.

the death of either without issue no part of the bequest should go to the defendant Gulám Ahmed, but to the testator's son, Amín Roghe.

After the Nákodá's death, Gulám Ahmed continued to reside in the late Nákodá's house with the other members of the family until the end of 1852, when he married into a stranger family, and appears to have thereby given some offence to Fatteh Bibí, the widow of the late Nákodá. After his marriage he went to reside in a separate house, leaving his son and daughter with their grandmother, who, as such, was the guardian, according to Muhammadan law, of Khadijá, until she should reach the age of puberty. The defendant did not appear to take much interest in these two children, but went to see them occasionally. They were entirely supported by their grandmother. In 1857, upon the death of Muhammad Amín Roghe, the defendant Gulám Ahmed, very much by her desire, conveyed through a member of his own family, who continued to visit there, ceased to visit at the house of Fatteh Bibí. All intercourse, however, did not cease, for upon the death of Gulám Ahmed's mother, in 1857, Fatteh Bibí, together with the defendant's children, attended the funeral rites in his house in the ordinary way and upon his invitation. On the 26th of July 1858 Khadijá arrived at the age of puberty, and on the 25th of August following she addressed the Kázi of Bombay, as the "Law Court" of her community, to inform him that, owing to the aversion which her father entertained towards her, &c., she had renounced the Sháfi doctrine or sect, to which her father belonged, and that she had adopted the doctrine or tenets of the Hanifá school, and was then engaged in receiving instruction in it from her female governess. It appeared that the Roghe family, as well as that of Fatteh Bibi, were of the Sháfi sect, but that several female members had been married according to the Hanifá school. The Kázi of Bombay, also, was of the Sháfi sect.

Hanifá and Sháfi are the most celebrated of the four schools into which orthodox Muhammadans are divided. They are considered by each other to be equally orthodox in a spiritual sense, the differences between them relating only to their expositions of temporal law as deduced from the Korán and other sources to which orthodox Muhammadans refer for

their religious tenets. The respective followers or disciples of Hanifá and Sháfi, under the denomination of Hanifites and Sháfites, profess to be governed in their temporal affairs by the opinion of those founders of their sect or school, and the acts of these followers are accordingly treated as lawful or the contrary. For the purpose of this case it is only necessary to refer to one point of difference. The Hanifites hold that a girl who arrives at puberty without having been married by her father or guardian is then legally emancipated from all guardianship, and can select a husband without reference to his wishes. The Sháfites, on the other hand, hold that a virgin, whether before or after puberty, cannot give herself in marriage without the consent of her father. The effect of a lawful change from the sect of Sháfi to that of Hanifá would be to emancipate the girl, who had arrived at puberty, from the control of her father, and to enable her to marry without consulting his wishes or obtaining his consent.

On the 27th of October 1858, about eight or nine o'clock in the morning, a public betrothal of Khadijá to the plaintiff took place in Fatteh Bibí's house, and in the presence of the Kázi and about two hundred Muhammadans, members of the family, and others, who had been invited to attend this ceremony. Her father, who had not been previously consulted upon the subject by Fatteh Bibí or his daughter, was apprised of the intended betrothal the day before, and upon the morning of the 27th two messengers from Fatteh Bibí went to invite him specially to attend. He declined to do so, and upon the return of the messengers with that reply the ceremony was commenced and completed. On the 3rd of November, the defendant Gulám Ahmed served a notice upon the Kázi, informing him that Khadijá had been several years before betrothed or given in marriage, by the ceremony commonly called "*nisbat sharayí*," to his nephew Muhammad Sayad Roghe, the second defendant, and warning him against permitting her nuptials or "*niká*" to take place with any one but that nephew. The Kázi replied "that the marriage of Khadijá would be duly and legally celebrated." Similar notices were served by the defendant Gulám Ahmed upon Fatteh Bibí, and upon Gulám Husen, the brother of Khadijá; and that upon Fatteh Bibí demanded possession of the person of Khadijá, and threatened that in default proceedings would be instituted to compel it. To that notice a

1864.
Muhammad Ibra'him v. Gula'm Ahmed et al.

reply was sent by Fatteh Bibí that Khadijá was now of full age, and entitled to reside where she pleased; that she preferred residing with her, but that the defendant should have every facility for an interview with Khadijá if he so desired. On the 11th of November Gulám Ahmed enclosed to Fatteh Bibí a copy of a notice, dated the 9th of October, which he alleged he had received from Muhammad Ibráhim, the father of the second defendant, calling on Gulám to perform the marriage ceremony commonly called "*rustam shádi*" with his son, to whom several years ago she was betrothed with the ceremonious words and form necessary to give the betrothal the effect and validity of marriage. This notice was in reality never served by Muhammad Ibráhim, but just before service of the notice of the 11th of November upon Fatteh Bibí it was drawn up by the Native clerk of Gulám Ahmed's attorney, and was then antedated to the 9th of October.

It appeared in evidence that upon the 1st of November the defendant Gulám Ahmed and his brother Muhammad Husen sent what professed to be a statement to a Sháfi Moulvi at Ratnágirí to obtain his legal opinion. That case was written by the second defendant at the dictation of Gulám Ahmed and his brother Muhammad Husen, who have all sworn to their having been present at the ceremony equivalent to "*niká*" on the 27th of October 1853. It states the case thus: "As the father was the *mujbar* guardian, and as he was in every way a well-wisher of his children, he *betrothed his* daughter to his own real brother's son *from the time of her birth*, by virtue of his guardianship as father." It then states that when the son was ten years of age, and the daughter eight, and when the mother-in-law bore animosity and hatred to him on account of his having betrothed his daughter, he (the father) left to reside in his own house. That the grandmother, who was on bad terms with the father, betrothed the girl, who was then thirteen years old, and had declared her puberty, and that, although the father was never a consenting party to that betrothal, the Kázi had taken part in it, although "'a betrothal upon a betrothal' was not lawful." These parties then inquired if the Kázi, acting on the mere statement of the girl alone that her father bore hatred and enmity towards her, should, by virtue of his own general guardianship, and whilst her father was not a consenting party, give the daughter in marriage to another, whose betrothal took place accord-

ing to the Kázi's advice and recommendation, whether that marriage would be legal. They also ask to have described the sort of enmity and hatred, in all its forms and shapes, which can set aside the guardianship of the father, and finally desire to be informed if, as the girl has reached her puberty, he, the father, can now lawfully give his daughter to the person to whom she was first betrothed. In that statement there is no mention of any other betrothal except that alleged in it to have taken place "at the birth" of Khadijá.

On the 27th of November 1858 Gulám Ahmed gave notice to Fatteh Bibí of his intention to move for a *Habeas Corpus*.

On the 30th of November Khadijá Bibí sent a request in legal form to the Kázi to perform the ceremony of marriage on the night of the 1st of December. This application recited her having reached puberty, her renunciation of the Sháfi doctrines, and her adoption of those of Hanifá, and the appointment of her brother Gulám Husen to act as her agent at the marriage. The ceremony of marriage was performed by the Kázi about nine o'clock P.M., and in presence of a large number of the relatives and friends of the family who had been invited. Shortly after the conclusion of the marriage ceremony, a notice from the defendant Gulám Ahmed was served upon the Kázi in the house, warning him against performing the ceremony, as that defendant had already given Khadijá "in marriage" to his nephew the second defendant. The Kázi replied that the ceremony had been performed. The defendant Gulám Ahmed was not invited, but he was aware of the preparations going forward for the marriage. They were of the usual and public description customary amongst Muhammadans, and there can be no doubt, we think, that the ceremony was accelerated for the purpose of affording an answer to the application for a writ of *Habeas Corpus*, which it was known to the advisers of Fatteh Bibí the defendant Gulám Ahmed was prepared to apply for on the 29th of November. An accident prevented counsel from making the application until the 2nd of December, when, as it was stated, and not denied, that a marriage ceremony had taken place upon the preceding day, an *order nisi* was granted for Fatteh Bibí to produce Khadijá before the Court. In one of the affidavits upon which the defendant relied, he stated that he had "upon the 23rd October 1853 betrothed Khadijá in the *niká*" "to his brother Muhammad Ibráhim,

1864. MUHAMMAD IBRA'HIM v. GULA'M AHMED et al.

for his son the second defendant, then about thirteen years old, and that Ibráhim accepted her in the *niká"* for that son. Cause was shown against this order nisi, but the rule was made absolute on the 19th of December to produce Khadijá upon the 21st. Upon the evening of the 20th mutual friends intervened, and it having been arranged that Khadijá was not to be produced in court, no return was made to the *Habeas Corpus.*

The terms upon which that arrangement was made are, like everything else in this case, disputed. The defendant insisted that he declined to receive his daughter unless a writing was obtained from the Kázi that her marriage on the 1st of December was null and void, and that such a document was promised to him; and on the other hand it has been proved by the mutual friend who intervened that it was agreed by the defendant that if his daughter was brought to his house for two or three days he would be satisfied; and would convene a meeting of four Moulvis to determine whether the marriage on the 1st of December was valid or not, and that he would abide by their decision.

It is admitted that no such document was obtained, nor does it appear to have been even applied for to the Kázi, and it is also admitted that Khadijá was received without any such document, and that she was brought to her father's house accompanied by her grandmother and several female relatives, who remained there with her for two or three days, until some altercation occurred between the defendant and Fatteh Bibí, which led to the latter's instant withdrawal from his house, leaving there Khadijá, who was weeping and praying to be allowed to return with her grandmother, but was forcibly detained by the defendant. These facts strongly corroborate the alleged agreement that Khadijá should remain for a limited period only, for it cannot be credited that Fatteh Bibí would otherwise have gone to remain at the house of the defendant.

Whilst at his house, formal service of the writ of *Habeas Corpus* was made by the defendant's attorney upon Fatteh Bibi, and she went through the formality of having Khadijá's hand placed in that of her father. Notwithstanding Gulám Ahmed's denial, we entertain no doubt that he did enter into

that agreement, and that he subsequently declined to abide by it when pressed to performance. From that period down to the filing of the suit Fatteh Bibí has not seen Khadijá, and was refused access to her by the defendant.

In June 1859 Fatteh Bibí and the plaintiff applied for, and obtained on the usual affidavits, a writ of *Habeas Corpus* directed to the defendant Gulám Ahmed to produce Khadijá in Court. She appeared, and, after having been then fully apprised of her position with respect to the two claimants for her person, she declared her desire to go back to her father's house and to be married to the second defendant, who was also residing in the same house with her and her father. She then voluntarily returned with her father, and from that period down to the filing of the suit she has resided in his house.

In March 1860 he with several others was indicted for having falsely sworn to the fact of a betrothal in the *niká* on the 23rd of October 1853, and after a trial, which lasted for several days, and in which forty-one witnesses were examined, the defendant Gulám Ahmed was acquitted. In June 1860, if not before, Khadijá, without any further ceremony of marriage, commenced, with the consent of her father, to live with the second defendant as his wife, and has so continued down to the filing of this suit on the 7th of November 1862.

After stating the issues settled in the suit, the Court proceeded as follows :—

It is admitted that in point of ceremonial a regular marriage took place on the 1st of December 1858 between the plaintiff and Khadija, but the validity of that marriage depends upon two circumstances—1*st*, whether a previous valid marriage had been solemnised between the second defendant and Khadijá; and 2*ndly*, whether, even if there had not, the marriage of the 1st of December 1858 was void in consequence of Khadijá's father not having consented to it.

In point of order the third issue must be first decided.

The judgment then proceeded to examine in detail the evidence on the third issue, and in the end found that the second defendant was not lawfully married to Khadijá. It proceeded as follows :—

We have next to consider whether the absence of consent on the part of the defendant Gulám Ahmed to the marriage of Khadijá with the plaintiff has the effect contended for, of rendering it null and void. According to the school of Hanifá she was at perfect liberty upon attaining puberty to contract marriage without the consent of her father; but it is contended that according to the school of Sháfi no virgin is at liberty to contract herself lawfully in marriage without such consent, whether she have, or have not, attained the age of puberty: and, as the family of Khadijá was of the Sháfi school, it is further contended that she is bound by that prohibition, and that it has the force of rendering her marriage null and void.

It is satisfactorily proved that Khadijá, in about a month after she attained puberty, forwarded to the Kázi of Bombay a formal document, signed by herself and attested by her brother and two other witnesses, in which, after declaring her attainment of puberty about a month before, she formally renounced the doctrine of Sháfi, and embraced that of Hanifá, giving as a reason that she had observed her father's great aversion and unkindness towards her from her birth, and her consequent desire to renounce his doctrine, which was that of Sháfi.

If that renunciation was valid according to Muhammadan law, she became free to enter into contracts according to the doctrine or school of Hanifá, and consequently to contract herself in marriage without the consent of her father.

It is always embarrassing to a Court to deal with foreign law, in a foreign language with which the Court is not familiar, or, as in the present case, is wholly unacquainted. It has to depend upon the generally conflicting evidence of persons who are employed by either side to support their respective interests; these persons furnish extracts and quotations from commentators whose general scope of thought, with reference to the subject-matter, is practically concealed from the Court, and whose real meaning may be very imperfectly, and sometimes erroneously, conveyed through the medium of some bald or isolated passages in the work, which are translated into English. With the exception of the Hedaya, which was translated by Mr. Hamilton from a Persian rendering of the Arabic original, all the other authorities, both of the school of

Hanifá and that of Sháfi, were proved in the original Arabic, and translated by the officers of the Court.

It is admitted upon both sides that it is the duty of a Kázi to decide upon questions connected with marriage, and it appears from works in the school of Sháfi as well as in that of Hanifá that, "whatever may be the differences between the parties, or however different may be the tenets of the Kázi from those of the parties, yet the Kázi is to decide according to his own tenets, because if he make a decree contrary to his own tenets, and in accordance with those of others, it is null." For that position we have been referred by the Muhammadan law officer at the appellate side of the Court, to a book of the Sháfi school called Fat-Hal-Muín, in the chapter "on the duties of Kázi," and also to a work of the school of Hanifá called Raddal Mohotar, Vol. IV., Cap. "On the duties of Kázi," p. 334. The Moulvi Abdul Latíf, who was examined on behalf of the defendants, is of the Sháfi school, and has filled the office of Kázi or law officer of an Adálat for many years. He coincides in that doctrine, and states that in practice all Kázis decide according to their own tenets, whether Hanifá or Shafi, and without any reference to whether the litigant parties or either of them are followers of Hanifá or of Sháfi.

Now, the Kázi of Bombay, who is a follower of the Sháfi school, was thus bound by duty and by usage to decide to the best of his ability upon the questions brought before him in this matter according to the doctrines of Shafi, From his position, his venerable age of over eighty years, and his lengthened official experience, we feel some guarantee that the renunciation of the Sháfi doctrines, and the adoption of those of Hanifá, by Khadijá, would not have been received by him if there were anything in that act contrary to the Sháfi doctrines, of which he is in Bombay the recognised official exponent. His conduct in receiving it, and subsequently acting upon it, quite independently of his evidence in this case, prove that in his opinion as a Sháfi Kázi that renunciation was lawful and was properly received by him.

The defendants' Sháfi Moulvi states that "there is no objection to any one who arrives at the years of discretion adopting any one of the four sects amongst Muhammadans without inquiry," but he adds that "if he want to change

1864.
MUHAMMAD IBRA'HIM v. GULA'M AHMED et al.

his *sect*, he must inquire, he must learn to read and to write, and he must study for five, ten, or fourteen years." We think this latter proposition quite untenable in principle, and find it is at variance with views presented by some Sháfi commentators of admittedly high authority amongst the followers of that school.

In the Fatáwa-ibn-ay Ziyad, p. 312, we read as follows upon the lawfulness of conversion or change from one sect to another in the Muhammadan community: "Know that there are two important points in this question. The first is, Should the conversion be felt at the time of conversion or afterwards? Secondly, Is it necessary that the change should be accompanied with the belief of the truth of what is to be believed? Now the answer is that it is sufficient if a change take place afterwards, and we will explain this by the following example. If a follower of the Sháfi sect have contracted a marriage according to the sect of A'bu Hanifá, and if the change was not perceived by him at the time of the marriage, but if he became acquainted with it afterwards, then this change is lawful, and the marriage becomes valid."

In the same book, page 313, it is laid down that if a man of the Hanifá sect marry a woman unlawful to him according to his own sect, but lawful according to Sháfi, if he become a Sháfi the marriage is lawful, and it is not necessary to again repeat the marriage ceremony, as the first marriage was valid.

In another work, called the Tafsire A'mandi, which is admitted to be, upon most points, of the highest authority amongst the four Muhammadan sects, it is laid down thus at page 362: "and it is not proper for us to say respecting a person *who on arriving at the age of puberty* prefers the doctrines of another sect, knowing them to be good, that he or she has done so without any reason; for the cause of the preference may be his own will (or desire), or it may be that (those doctrines) may be professed by the people of the town or those who may be living around him, or the king, or may have been professed by his ancestors: and if this is the case, then it (the preference) is according to custom, and custom is followed by the generality."

It follows from these authorities that conversion or change may take place from one sect to the other after puberty at

the will of any person, and that the acts done subsequently will be lawful if done according to the sect to which the change has been made.

It is admitted that the great majority of Muhammadans in India follow the doctrines of Hanifá, and to such an extent that, in the words of the same Moulvi,—"The Hanifá doctrine is the only doctrine recognised in the Courts in India," and "the Hedaya (a Hanifá work) is used in all Mussalmán courts in India." In the work called the Fatáwa-i-Alamgiri, which is a collection of decisions on Muhammadan law compiled by Aurungzebe, and which, although of Hanifá tendencies, may, owing to the extended sway of that monarch, be looked upon as of the most generally received and binding character amongst Muhammadans in India, it is laid down that "if a Sháfi girl, adult and of sound mind, marry, without consent of her father, according to Hanifá, and the father afterwards seek to annul it, the marriage is valid." And so in the Zahiri the converse is said to hold good for a Hanifá girl under similar circumstances.

But this view does not rest alone upon these authorities, for a Sháfi Moulvi examined for the plaintiff states that, "according to the Sháfi school, a female adopting after puberty the doctrine of Hanifá makes her competent to marry according to that doctrine," and he further states that according to the four doctrines (including Sháfi) a woman on arriving at puberty can repudiate a previous betrothal, and that a father possesses the same power over a betrothal contracted by him for his daughter in infancy. The Moulvi who has given the latter evidence was a teacher to the second defendant in Gulám Ahmed's house for several months, down to some time in August 1853, but, although he continued his visits constantly at the house for some months after, he states that he never heard of the alleged betrothal of his pupil in October of that year or at all. He was also the Moulvi consulted by the defendants on the 1st of November 1858 with reference to Gulám Ahmed's power over Khadijá, in consequence of the alleged "betrothal from birth." He had, however, been recently engaged as a teacher in the house of Fatteh Bibí.

There were other authorities from Sháfi commentators proved that do not bear directly upon the power and legality

of renunciations of sect, but which appear in principle to give general sanction to that act by a follower of Sháfi. Thus in the same Sháfi work, Fatáwa-ibn-ay-Ziyád, p. 290, it is laid down thus:—

"All the affairs of the common people, such as sales, marriages, &c., are lawful and binding according to the precepts of the law, should they be done in accordance with the (tenets of the) sect of a distinguished Imám, and no learned man in the law can take objection with regard to them, although the Imáms of the four distinguished sects differ in opinion. For if it be asked whether the ignorant belong to any sect or not, then an answer in the negative will be true." Also in the Tohfa, p. 258, it is laid down that "conversion is lawful according to all the four Imáms."

We think it unnecessary to quote further authorities bearing upon this subject, as those already mentioned are abundantly sufficient, in our opinion, to establish the proposition that after puberty a Muhammadan female of any one sect can elect to belong to whichever of the other three sects she pleases, and that the legality of her subsequent acts will be governed by the tenets of the Imám whose follower she may have become. There is not any ceremonial required to indicate the change of sect; the only outward difference between a follower of Sháfi and a follower of Hanifá consists in the former at the conclusion of prayer in a mosque saying "A'mín," in a loud tone, whilst the latter pronounces it softly, and also that in praying a Sháfi extends his arms, whilst a Hanifite keeps them down.

Having thus arrived at the conclusion that Khadijá Bibí was lawfully empowered, according to Muhammadan law, to change from the Sháfi to the Hanifá sect, after she had attained her puberty, we must hold that after she made that change, by her recorded renunciation of the 25th of August 1858, she was thenceforward at liberty to contract marriage without the previous consent of her father: and that having done so with the plaintiff by her own consent, and through the agency of her brother, the marriage contract of the 1st of December 1858 was valid and binding upon her, and she is now, according to Muhammadan law, the lawful wife of the plaintiff.

This finding decides the first issue in favour of the plaintiff.

Upon the second issue we find that the defendant Gulám Ahmed did induce Fatteh Bibí to allow Khadijá to visit him at his house on the 20th of December 1858.

Upon the fourth issue also our finding is for the plaintiff.

We entertain no doubt that when Fatteh Bibí was leaving Gulám Ahmed's house, in December 1858, Khadijá was desirous of accompanying her, and *that Gulám Ahmed then forcibly prevented her from returning with her grandmother to the latter's house,* where the plaintiff was at the time residing as husband of Khadijá. From the anxiety then exhibited by Khadijá to leave the defendant's house, and her subsequently declining to do so in June 1859, and *stating she wished to remain* and marry the second defendant, who has subsequently lived with her as her husband, there can be no reasonable doubt that she was persuaded by the defendants in the first instance to remain, and to thus absent herself from the plaintiff's residence and company.

We do not think the statute of limitations is a bar to this action.

Taking into account all the circumstances of the case, the age of the parties, and that Khadijá Bibí has not yet become entitled to the enjoyment of the legacy left by her grandfather, we assess the damages at Rupees one thousand, and give the costs of this suit against the defendants.