

1883

JAGJIVAN  
AMIRCHAND  
" "  
HASAN  
ABRAHAM.

"The question referred to the High Court for decision is whether the application was time-barred?"

"Section 7 of Act XV of 1877 provides: 'If a person entitled to institute a suit, or make an application, be at the time from which the period of limitation is to be reckoned a minor, or insane, or an idiot, he may institute the suit, or make the application within the same period after the disability has ceased as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed.' This provision regarding applications is not to be found in the old Acts of 1859 and 1871. Section 11 of Act XIV of 1859, which regulated the period of limitation in the case of minors and lunatics, was held in *Rotty Roman Oopadya v. Chuuder Binode Oopadhya* (1) and *Tarucknath Mookerjee v. Poorno Chuuder Chatterjee* (2) as not applicable to execution of decrees. These decisions cannot now be followed, in face of section 7 of Act XV of 1877 above referred to \* \* \* \* \* I am, therefore, inclined to the opinion that the present application made by Jagjivan Amirchand must be accepted as within time."

There was no appearance in the High Court on behalf of any of the parties.

SARGENT, C. J.—We do not think the application is barred. See *Khodabux v. Budree Narain Singh* (3).

(1) 5 Calc. W. R., 10 Mis. Rul.

(2) 8 Calc. W. R., 137.

(3) I. L. R., 7 Calc., 137.

## APPELLATE CRIMINAL.

1883  
Feb. 7.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Melville.*

*In re ABDUL ALI ISHMAILJI AND HIS WIFE HUSENBI.\**

*Husband and wife—Order for maintenance upon husband—Divorce—Effect upon order—Presidency Magistrates' Act IV of 1877, Sec. 234—Mahomedan law—Talake bain—Talak biddat—Borah Mahomedans.*

An order made under section 234 of Act IV of 1877 by the Presidency Magistrate directing a Borah Mahomedan husband of the Imami sect to pay a sum monthly for the maintenance of his wife belonging to the Hanafi sect, does not deprive the husband of his right to divorce his wife, and after such divorce the Magistrate's order can no longer be enforced.

\* Criminal Application for Revision, No. 253 of 1882.

The *talak biddat* or irregular divorce, which is effected by three repudiations at the same time, appears from the authorities to be sinful, but valid.

*In re Kasam Pirbhai and his wife Hirabai* (1) followed.

1883

*In re*  
 ABDUL ALI  
 ISMAILJI.

THIS was an application under section 147 of the now repealed High Court's Criminal Procedure Act, 1875.

On the 6th of February, 1882, the applicant, Abdul Ali, a Borah Mahomedan of the Imami sect, was married before the Deputy Kazi of Bombay to Husenbi, a virgin of the Hanafi sect, to whom he had been previously betrothed. Soon afterwards a disagreement ensued between the parties, and the husband, it was alleged, divorced his wife. The wife applied to the Chief Presidency Magistrate of the city of Bombay for maintenance, and he on the 19th of May, 1882, made an order that the husband should pay to his wife a monthly sum of Rs. 20. The husband appeared subsequently before the Magistrate and represented that having divorced his wife he was no longer liable to provide for her. The wife denied the divorce, and the Magistrate held that before the divorce could be held valid a period of three months must lapse. On the 20th of September, 1882, the husband appeared before the Kazi of Bombay, and had a fresh divorce paper written out, after repeating in his presence and in the presence of others a divorce in the revocable form. This divorce paper, the husband alleged, was served on Husenbi through his solicitors. The Magistrate, however, on the 11th of October, 1882, held that the service was incomplete. The husband applied to the High Court, and prayed that the order of the Chief Presidency Magistrate of the 19th May might be set aside.

*Budrudin Tyabji* with *C. Tyabji* and *Dayabhai* for the applicant.—The order for maintenance does not take away the inherent right of a Mahomedan, whether Shia or Suni, to divorce his wife. The applicant actually did divorce his wife in the *biddat* or irregular form. When the repudiations amount to three, as they did in this case, a complete separation is effected, and it is immaterial whether the repudiations were at the same or different sittings—Baillie's Mahomedan Law, 205-207; *In re Kasam Pirbhai and his wife Hirabai* (2); *Abdur Rohoman v.*

(1) 8 Bom. H. C. Rep., 95 Cr. Ca. (2) 8 Bom. H. C. Rep., 95 Cr. Ca.

1883

*In re*  
 ABDUL ALI  
 ISHMAILJI.

*Sakhina*(1) ; *Nepoor Aurat v. Jurai*(2) ; 1 Hedaya 209. The authorities show that the right to divorce remains, and the divorce having taken place, the Magistrate's order ceases to have operation.

*Hakim* with *D. Sealy* for *Husenbi*.—The wife is a Suni, and the *talak biddat*, or irregular form of divorce, does not prevail among Sunis. There was, therefore, no valid divorce in this case.

*Per Curiam*.—The '*talak biddat*' or irregular divorce, which is effected by three repudiations at the same time, appears from the authorities to be sinful, but valid ; and it was recognized as valid by this Court *In re Kasam Pirbhai and his wife Hirabai*(3). The Magistrate should, therefore, no longer enforce his order for payment of maintenance made on the 19th May, 1882.

(1) I. L. R., 5 Calc. 558.

(2) 19 Calc. W. R., 73 Cr. Rul.

(3) 8 Bom. H. C. Rep., 95 Cr. Ca.

## APPELLATE CIVIL.

*Before Mr. Justice Melvill and Mr. Justice Nanabhai Haridas.*

1882  
 March 23.

UKHA (ORIGINAL DEFENDANT), APPELLANT, v. DAGA AND ANOTHER  
 (ORIGINAL PLAINTIFFS), RESPONDENTS.\*

*Civil Procedure Code Act VIII of 1859, Sec. 7—Act X of 1877, Sec. 43—  
 Relinquishment of claim.*

If a person intentionally omit to sue for any portion of his claim, the provisions of section 43 of Act X of 1877 as well as the provisions of section 7 of Act VIII of 1859 bar the institution of a second suit for the portion so omitted. So that where a family property consisted of lands as well as debts, and the plaintiff at first sued for a partition of debts only and then compromised and withdrew the suit without the permission of the Court, it was held that his second suit to demand a partition of the whole property was not maintainable.

THIS was a second appeal from the decision of H. F. Aston, Assistant Judge (F. P.) of the district of Thana at Nasik, confirming the decree of the Subordinate Judge of Malegaon.

Two brothers, Hari and Giri, were joint owners of certain moveable and immoveable property, including outstanding debts

\* Second Appeal, No. 335 of 1881.