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DÁS
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GANESH
TA'MBEKAR.

As to the plaintiff's title by grant, it was urged that the District Judge ought to have held that the *Subhá* of Ahmedabad had authority, in *Samvat* 1808 (A.D. 1852) to make a grant of the revenues of the Peishwá. The schedule to (Bombay) Act VII of 1863 was referred to, in order to show who had authority under the Emperors of Delhi, but it leaves the question still in doubt whether the *Subhá* of Ahmedábád was a person so authorized. However, the District Judge does not decide against the plaintiff's claim solely on the ground that the alleged grant was by an unauthorized person, but that a *sanad* or grant by a duly constituted authority cannot be inferred from so vague a reference to it as is to be found in exhibit 29, the report of the *majumdárs* in A. D. 1827. Sitting in second appeal, we do not think we should be entitled to interfere with this finding.

We must, therefore, confirm the decree, but, under the circumstances, without costs.

Decree confirmed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

BA'I VIJLI, (ORIGINAL DEFENDANT), APPELLANT, v. NANSÁ' NÁ'GAR,
(ORIGINAL PLAINTIFF), RESPONDENT.*

Husband and wife—Agreement contrary to public policy—Divorce—Promise of marriage.

In consideration of advances of money made by N. to V., a married woman, (both being of the Kunbi caste), in order to enable her to obtain a divorce from her husband, V. promised to marry N. as soon as she should obtain a divorce. N. subsequently sued V. to recover the advances.

Held, that the agreement, having for its object the divorce of the defendant from her husband and her marriage with the plaintiff, was *contra bonos mores*, and, therefore, void.

THIS was a second appeal from the decision of F. Beaman, Assistant Judge of Ahmedábád, amending the decree of Ráv Sáheb Lallubháí Pránvallabhdás Párekhi, Subordinate Judge (Second Class) at Ahmedábád.

* Second Appeal, No. 50 of 1884.

The plaintiff sued the defendant to recover from her Rs. 311-8-0 consisting of various items advanced by the plaintiff, including Rs. 15 and Rs. 151, which he claimed under the terms of the following agreement dated 2nd July, 1881 :—

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“I, Bái Vijli, hereby pass to you (the plaintiff) this agreement, that my husband Mansukh Sakalchand has driven me out of his house after having caused me serious injury. He follows his own will, and does not keep me in his house, and does not live on good terms with me. I, therefore, am willing to take a divorce from him. I accordingly agree with you and consent to live with you as your wife as soon as I have obtained a deed of divorce from my husband. I have now taken from you Rs. 15 for my present expenses, &c., and I admit the same. Should my husband perchance give me a divorce, and I should not become your wife, but marry some one else, I will pay you Rs. 151 as damages.”

The plaintiff also sought to recover Rs. 60, being the price of a gold necklace alleged to have been given to the defendant.

The defendant denied that she had passed the above agreement, and further contended that it was contrary to public policy and void. She denied that she had ever received anything from the plaintiff, or had promised to marry him.

The Subordinate Judge found that the defendant had received only two sums from the plaintiff, *viz.*, Rs. 15 and Rs. 19, and that the plaintiff was entitled to recover the same out of the defendant's *stridhan*. The Subordinate Judge held the agreement proved, but considered it void.

The Assistant Judge amended the decree of the Subordinate Judge by awarding the further sum of Rs. 151 under the agreement, which he held was neither immoral nor in restraint of marriage.

The defendant appealed to the High Court.

It was stated at the hearing of the appeal that the parties belonged to the Kunbi caste, in which divorce is easily obtained.

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Ghanashám Nilkanth Nádkarni for the appellant.—The agreement is void as being made under coverture, and contrary to public policy. The wife cannot be made personally liable—*Nathubháí Bháílál v. Jawher Ráji*⁽¹⁾; *Govindji Khimji v. Lakhmidás Nathubhoy*⁽²⁾; and *Narotam v. Nánsá*⁽³⁾. All the alleged advances made by the plaintiff are really one transaction made with the object of furthering the divorce of the defendant, and none of them is recoverable at law.

Máneksháh Jehángirsháh Táleyárbhán for the respondent.

SARGENT, C.J.—The Assistant Judge has dealt with the promise by the defendant to marry the plaintiff, in the event of her obtaining a divorce from her husband, or to pay him Rs. 151, quite independently of the surrounding circumstances under which the advances were made to her. It is plain, upon the evidence, that the promise was the consideration for the advances, by the plaintiff, of the Rs. 230, to enable the defendant to obtain her divorce, and of the Rs. 15, given her to enable her to pay the fine in the prosecution by her husband; in other words, that it was part of a transaction between plaintiff and defendant, having for its object the divorce of the defendant from her husband, and her marriage with the plaintiff. Although the marriage tie may be regarded very lightly by the members of this caste, and husbands may divorce their wives apparently as easily as Mahomedans, we see no sufficient reason for holding that a promise of marriage given under such circumstances is otherwise than "*contra bonos mores*," and, therefore, void. The same remarks apply to the Rs. 19 and Rs. 15 adjudged by both Courts to the plaintiff. We must reverse the decree of the Court below, and reject the plaintiff's claim. Parties to pay their own costs throughout.

Decree reversed.

(1) J. L. R., 1 Bom., 121.

(2) I. L. R., 4 Bom., 318.

(3) I. L. R., 6 Bom., 473.