

## JUDGMENT.

The following judgment of the Court (BIRDWOOD and JARDINE, JJ.) was delivered by

BIRDWOOD, J.—A man who illegally imports liquor may keep it in his possession for some time after he imports it. The importation and possession in such a case would be distinct offences. But in the present case the importation seems to have involved the possession of which the accused was convicted. We, therefore, reverse the sentence of Rs. 20 passed under s. 47 of the Act.

*Sentence reversed.*

14 B. 584.

## ORIGINAL CIVIL.

*Before Mr. Justice Farran.*

RUSTOMJI FRAMJI (*Plaintiff*) v. BANOObAI (*Defendant*).\*

[26th July, 1889.]

*Practice—Civil Procedure Code (Act XIV of 1882), s. 640—Commission to examine witnesses—Grounds for granting commission.*

A plaintiff applied, under s. 640 of the Civil Procedure Code (Act XIV of 1882), for a commission to issue for the examination of three female witnesses (Perozbai, Bachoobai and Awabai) at the residence of one of them (Perozbai). The grounds upon which he based his application were the following:—(1) that Perozbai had lost her husband ten months previously and was in mourning; that, according to Parsi usage, a widow observed mourning for two or three years, and during that time did not leave her house; (2) that Bachoobai was fifty-eight years of age and sickly [589] and physically unable to attend the Court; (3) that Awabai was about to go up-country, and could not stay in Bombay until the hearing.

*Held*, the circumstances alleged were not such as to justify the issue of a commission.

SUMMONS in Chambers. The plaintiff took out a summons calling on the defendant to show cause "why a commission should not issue for the examination, cross-examination and re-examination of Perozbai, widow of Maneckji Hormasji, Bachoobai, wife of Cooverji Nasservanji, and Awabai, wife of Rustomji Nasservanji, at the residence of the said Perozbai, widow of Maneckji Hormasji, &c., &c."

The plaintiff filed an affidavit in which he stated that he intended to examine the said Perozbai, Bachoobai and Awabai as his witnesses. He then set forth the grounds upon which he applied for the commission.

"3. The said Perozbai lost her husband about ten months ago and is at present in mourning. According to the usage and customs of the Parsi community, a widow observes mourning for from two to three years, and does not go out of the house until the period of mourning has expired. The said Perozbai cannot attend the Court for the purpose of giving evidence in the suit.

"4. The said Bachoobai is an old lady about fifty-eight years of age and is almost always sickly, and, therefore, physically unable to attend the Court.

\* Suit No. 713 of 1889.

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"5. The said Awabai intends shortly to proceed up-country, and cannot stay in Bombay until the hearing of the suit, which can only come on after the above named witnesses have been examined on commission. Moreover, it would be convenient and economical to have all the aforesaid witnesses examined under and on the same commission."

*Lang*, for the defendant showed cause.

*Inverarity, contra.*

## JUDGMENT.

FARRAN, J.—I think this summons must be discharged. The summons was issued under s. 640 of the Civil Procedure Code (Act XIV of 1882). That is the only section which deals with the subject of the exemption of women from personal appearance in Court. It exempts women "who, according to the customs and manners of the country, ought not to be compelled to appear in public." I do not think that those words can be held to apply to the case now before me. The custom alleged in the case of Perozbai does not appear to be such a custom as is contemplated by the section. Of course, a Judge independently of the section would always have regard to such circumstances [586] as are put forward here as an excuse for the non-attendance of Perozbai; but I can hardly consider that the fact of the death of her husband, ten months ago, is of itself a sufficient excuse for her not now appearing in Court. It is said that it is the custom of Parsi widows not to leave the house during the period of mourning, which lasts for two or three years. It appears that the time is uncertain, and may vary with the individual. Where is the line to be drawn? One woman may be reluctant to appear in public for two years after the loss of her husband; another may desire to seclude herself for five years; while a third may wish to live in retirement for the rest of her life; while some Parsi women do not seclude themselves at all. I do not think that a custom of such a varying and uncertain character as that is the custom referred to in the section.

As to Bachoobai, there is no affidavit of her inability to attend, nor any medical certificate; and I am unable, therefore, to see any reason for exempting her.

As to Awabai, it does not appear to be definitely settled when she is going away, and no doubt some arrangement can be made for her appearance. If necessary, an order can be made for her examination *de bene esse* before the Prothonotary.

*Summons discharged.*

Attorneys for plaintiff:—Messrs. *Macfarlane, Edgelow and Hemming*,

Attorneys for defendant:—Messrs. *Nanu and Hormasji*.