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KALIDAS J.
JHAVERI,
In re.

been suspended or taken away from him, and therefore, he should have been all the more careful not to do anything in the course of the proceedings which might give the Court further cause for dealing with his Sanad. However, we think now, that this expression of opinion on our part should be a lesson to Mr. Jhaveri in the future, and ought to be notice to other practitioners in the mofussil of what we consider is the proper course to follow in such cases, and, therefore, we content ourselves in this case with severely reprimanding Mr. Jhaveri. As I said at the commencement, I am very glad that he has had the courage to confess that he was the respondent who committed this breach of privilege. He has thereby saved the other respondents the trouble of coming to Bombay, as they would have had to do, if he had not written to the Registrar, for it was necessary that what we thought about this matter should be said in open Court.

Order accordingly.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

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October 20.

BALUBHAI HIRALAL, MINOR, BY HIS NEXT FRIEND JAGUBHAI HARBHAI AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS *v.* NANABHAI BHAGUBHAI AND ANOTHER (ORIGINAL DEFENDANTS) RESPONDENTS.*

Hindu law—Breach of contract of marriage—Out of pocket expenses incurred during betrothal, liability to pay.

Plaintiffs who were father and son sued to recover a certain amount as damages for a breach of contract of betrothal. Defendants contended that the retraction was necessitated on account of ill-health of the bridegroom. Both the plaintiffs having died during the pendency of the proceedings, their representatives in interest sought to recover from the defendants the out of pocket expenses which the plaintiffs had incurred while the betrothal was in

* First Appeal No. 169 of 1917.

existence. The Subordinate Judge held that there being a sufficient reason for retracting the engagement the out of pocket expenses could not be recovered from the defendants. On appeal to the High Court,

Held, that though the defendants could not be fined if there was a good cause for retraction, yet they were liable to pay expenses incurred by the bridegroom or his father during the betrothal.

FIRST appeal against the decision of D. A. Idgunji, First Class Subordinate Judge at Surat, in Suit no. 169 of 1914.

Suit for damages.

Haribhai Dayabhai (plaintiff No. 1) was the father of Vithaldas (plaintiff No. 2). In 1901, Bai Mangalagowri, the sister of defendant No. 1, was betrothed to Vithaldas. Vithaldas was then nine years old and Bai Mangalagowri was four years old. The betrothal was duly registered in the books of the community at Surat and according to the custom of the community a memo. giving details as to *palla* ornaments, &c., was drawn up and signed by defendant No. 1. The plaintiffs alleged that on several occasions there was a demand made for the celebration of the marriage but defendant No. 1 took no heed of it and that finally the defendant No. 1 raised objections to the physical condition of Vithaldas (plaintiff No. 2) and got Bai Mangalagowri married to defendant No. 2 in 1914. The plaintiffs, therefore, brought a suit to recover Rs. 20,000 as damages and Rs. 1,089 as out of pocket expenses incurred while the betrothal was in existence.

The defendants contended that the plaintiffs' claim was not enforceable in a Court of law, being contrary to public policy and morality; that plaintiff No. 2 declined in health since the betrothal; that the marriage was put off with the hope that the health of plaintiff No. 2 would improve but as it did not, it was found necessary to break off the betrothal; that Bai Mangalagowri

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herself refused to marry plaintiff No. 2; and that the plaintiffs were, under those circumstances, not entitled to claim any damages or out of pocket expenses.

The Subordinate Judge dismissed the plaintiffs' claim for damages as well as for out of pocket expenses. The reasons given for dismissing the latter claim were: "As there was sufficient reason for retracting the engagement, the out of pocket expenses cannot be recovered from the defendant No. 1 under verse 28 of section XI of chapter II of the Mitakshara."

The plaintiffs appealed to the High Court.

G. N. Thakor, for the appellants.

Jayakar with *H. V. Divetia*, for respondent No. 1.

M. B. Dave, for respondent No. 2.

MACLEOD, C. J. :—The original plaintiffs who were father and son brought this suit to recover the sum of Rs. 21,000 odd as damages for breach of a contract of betrothal. In 1901, the first defendant, the brother of the proposed bride, betrothed his sister to the second plaintiff. The second plaintiff was then nine years old and the proposed bride was four years old. In the ordinary course the marriage would have taken place in eight or nine years, that is to say, about 1910 or 1911. But postponements were made of the marriage ceremony by the defendant, in the belief that these postponements were required by the health of the bridegroom. In December 1913 the betrothal was broken off. In April 1914, the bride Mangalagowri married the second defendant. During the pendency of the suit the first plaintiff died, and during the pendency of the appeal the second plaintiff died. The suit was dismissed by the learned Subordinate Judge with costs. He held that the first defendant was justified in retracting the engagement,

and that therefore, he could not be liable in damages, nor was he liable for out of pocket expenses. It is quite clear that owing to the death of both the original plaintiffs there can be no claim now for damages. The only question is whether the representatives of the original plaintiff as members of the family are entitled to recover the out of pocket expenses which the plaintiffs said they incurred while the betrothal was in existence. The learned Judge at page 8, line 63, says "As there was sufficient reason for retracting the engagement, the out of pocket expenses cannot be recovered from the defendant No. 1 under verse 28 of section XI of chapter II of the Mitakshara". But it appears to us that the learned Judge has misread that particular verse. Verses 26, 27 and 28 deal with the question of betrothal and what are the consequences of a breach. Verse 26 says: "For detaining a damsel, after affiancing her, the offender should be fined, and should also make good the expenditure together with interest". And verse 27 "If there be good cause, he shall not be fined, since retraction is authorized in such a case. The damsel, though betrothed, may be withheld, if a preferable suitor present himself". And verse 28 "whatever has been expended, on account of the espousals, by the [intended] bridegroom, [or by his father, or guardian] for the gratification of his own or of the damsel's relations, must be repaid in full, with interest, by the affiancer to the bridegroom." It is quite clear, therefore, that though the offender shall not be fined if there is good cause for the retraction, yet in any event by verse 28 he must pay the expenses incurred by the bridegroom or his father during the betrothal.

Now in this case the plaintiffs have claimed Rs. 1,089 as out of pocket expenses in connection with the betrothal. They endeavoured to prove payments of various items making up that sum, but the learned Judge

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was by no means satisfied that such payments had been made. He says :—

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“ The sum of Rs. 1,089 is made up of a series of small items ranging over a number of years. The items were spent on food and small presents of cloth and cash. They include a sum of Rs. 4-6-6, the railway fare of Haribhai who went to Bombay from Surat on 7th February 1913 to talk to the defendant No. 1. Mangalagowri swears that she did not visit the plaintiff's house on several occasions charged for. She was then in mourning. The accounts produced on behalf of the plaintiffs were not at all regularly kept in the ordinary course of business. There is no evidence to show that any ornaments or any durable clothes of value, clothes that have not been worn out long before suit, have been presented to the girl. The account seems to have been made up from memory.”

Therefore the plaintiffs, who had to prove their claim, fell very far short of what was required of them, and it is impossible for us in First Appeal to take an account, as, in the first place, we have not got the proper materials which the plaintiffs should have produced in the lower Court. But as Rs. 25 were at least admitted in the written statement as having been paid for clothes, and as it is certainly probable that some small sums were paid from time to time during all these years of the betrothal, I asked the respondents' counsel whether they were not prepared to make an offer in order to prevent further trouble. Mr. Jayakar offered to pay Rs. 250 and I think the appellants' pleader was certainly right in accepting that offer, because if the case had gone on, it was probable they would not have gained more than Rs. 25 admitted in the written statement. Therefore there will be a decree for the plaintiffs for Rs. 250 and proportionate costs throughout. As regards the plaintiffs' claim to two items of Rs. 10,000 the appeal abates. The respondents will get their costs on these two items in the ordinary way as when an appeal abates, and has not been decided on the merits.

Decree modified.

J. G. R.