
(1881) 02 CAL CK 0013

Calcutta High Court

Case No: None

Zabunnessa Khatun

APPELLANT

Vs

Abdool Futteh Moulvie

RESPONDENT

Date of Decision: Feb. 7, 1881

Citation: (1881) ILR (Cal) 631

Hon'ble Judges: Richard Garth, C.J; Pontifex, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

The only material question which we are called upon to decide in this appeal, is as to the maintenance. The plaintiff's right to the dower is hardly disputed.

2. Mr. Piffard certainly contended, in the first place, that the defendant was placed at a great disadvantage at the trial in consequence of being obliged to conduct his own case; and urged that the Court should allow him a new trial upon payment of costs. But there is clearly no ground for this contention. The defendant has never applied for a new trial in the Court below, and any disadvantage under which he has laboured is due to his own default.

3. With regard to the question of maintenance, Mr. Piffard does not object to the amount of the monthly allowance; but he contends that the decree is erroneous in two respects: first, that no order ought to have been made for past maintenance; and second, that it should have been made payable, not during the plaintiff's natural life, but only during the continuance of the marriage.

4. As the defendant conducted his own case at the trial, it would appear that the attention of the learned Judge was never called to either of these points; but upon reference to the authorities, we think that Mr. Piffard's contention is well founded.

5. As to the first point, the law is stated thus in Baillie's Digest, p. 443:- "When a woman sues her husband for maintenance for a time antecedent to any order of the

Judge or mutual agreement of the parties, the Judge is not to decree maintenance for the past." And the same rule is laid down in much the same terms in the Hedaya, Vol. I, p. 398, and quoted in the Tagore Law Lectures for 1873, p. 453. We think, therefore, that as in this case no decree or agreement for maintenance was made before this suit, the maintenance should have been made payable only from the date of the decree.

6. We think it also quite clear that maintenance can only be payable during the continuance of the marriage.

7. The decree will, therefore, be modified accordingly, and as the appellant has partially succeeded, we think that the parties should pay their own costs of this appeal.