

1900.
October 19.

CASSIM v. BIBI, et al.

D. C., Chilaw, 2,126.

Mohammedans—Action for damages for adultery of wife—Dismissal of case on plaintiff's own application, on ground of amicable settlement—Fresh case for damages for continuance of adultery—Former suit a bar to present action.

A Mohammedan husband is entitled to bring an action for damages against another Mohammedan who has committed adultery with his wife, inasmuch as the ground of action in such cases is the injury inflicted on the husband's reputation by the conduct of the adulterer and the disgrace and shame to which he is put in the eyes of his neighbours.

Where plaintiff brought such an action and moved for and obtained a dismissal of it on the ground that he had settled the matter amicably with the defendant, and then raised another action because adultery had still continued,—

Held, that the dismissal of the former action was a bar to the present action, and that no fresh action accrued to the plaintiff.

ACTION for the recovery of Rs. 200, being damages said to have been sustained by the applicant by reason of the adultery of the second respondent with the first respondent, the wife of the applicant.

The issues framed were—

- (1) Is the action maintainable for the recovery of damages so long as the marriage between the plaintiff and the first defendant exists?
- (2) If there was adultery, does the Mohammedan law allow damages either as against the defendant or the co-defendant?

The District Judge dismissed the action as against the first defendant, on the ground that there was no claim made against her, and as against the second defendant he held that an action for damages was maintainable, and ordered the case to be set down for hearing on the facts.

The defendant appealed.

Bawa, for appellant.

No appearance for respondent.

19th October, 1900. BONSER, C.J.—

This is an action of an unusual character. It is an action by a Mohammedan husband against another Mohammedan, who, he alleges, has committed adultery with his wife, and he claims

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damages in respect of the injury thereby inflicted on him. The District Judge has held that he was entitled to maintain an action in respect of this injury, although it was strenuously contended that, as between Mohammedans, no such action lay. The defendant has appealed. Mr. Bawa, who appeared for him, argued before us that, inasmuch as the Mohammedan Code of 1806, which governs the relations between Mohammedan husbands and wives, was silent as to this question, it was not competent to the Court to apply the rules of the Common Law to this case. He argued that the relationship between a Mohammedan and his wife was not a marriage, and that, therefore, no actionable damage resulted to the Mohammedan husband in case of adultery. He relied upon a decision of this Court in which I took part—*Tillekaratne v. Samsadeen* (4 N. L. R. 65),—where this court held that we ought not to impose on a Mohammedan married woman the disability to deal with her own property which the Roman-Dutch Law imposed on a Christian wife.

It does not seem to me that the present case is at all analogous to that case. The ground of the action in the present case is the injury inflicted on the husband's reputation by the conduct of the adulterer, the disgrace and shame to which he is put in the eyes of his neighbours, relations and friends. So far as I can judge of the views and feelings of Mohammedans in this matter, a Mohammedan husband resents quite as much as a Christian husband an insult of this kind. In fact, I imagine that the disgrace would be likely to be felt more acutely by a Mohammedan husband, and I am, therefore, unable to see on what principle the Court should deny a man insulted in this way the ordinary right to recover damages for that insult.

But another objection was raised by counsel, which was argued in the Court below, in which I think there is more substance than the one to which I have just referred, and that is this: it appears that adulterous relations have been going on since 1897. This action was instituted in April, 1900. Some time in August, 1897, the plaintiff commenced an action against the defendant, alleging that in July, 1896, adultery had been committed and claiming damages. In December of that year he applied to have the case struck off the roll, as he had no funds to carry it on. In September, 1899, he applied to have the case put on the roll again, and a few days afterwards moved the Court to have the case dismissed, on the ground that he had settled matters with the defendant. The case was accordingly dismissed on the 13th September, 1899. On the 24th April, 1900, he instituted the present action, alleging that, after the dismissal of the action,

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adultery had still continued. It seems to me that the dismissal of the former action is a bar to the present action; that, by the continuance of adulterous intercourse, no fresh action accrued to the plaintiff: the insult was completed; and I think the District Judge ought not to have allowed the plaintiff to re-institute his action.

