

As to the question of damages, the plaintiff has said that the lease would be useful to him as security for an overdraft at his bankers. He has not given any instance in which he has applied to the Bank for pecuniary assistance and has been refused because he could not deposit his lease as security. A nominal sum only therefore can be awarded, and I fix that sum at £10.

There must be judgment that the plaintiff do recover the lease from the defendant together with £10 damages for its detention.

The defendant must pay the plaintiff's costs of suit.

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GRAFFITHS  
v.  
THOMAS.

[APPELLATE JURISDICTION.]

[ACTION No. 29, 1915.]

1915.  
Nov. 10.

INDAR SINGH AND JUDHAN *v.* KALIA AND SAMUNDARI.

*Res judicata*—inherent jurisdiction of Court to prevent abuse of its procedure—Action under Ordinance No. 1 of 1892 (the Emigration Ordinance 1892) a bar to an action for breach of promise in the circumstances.

Sir CHARLES DAVSON, C.J. This is an application by defendants to stay further proceedings in this action, on the ground that the matter is *res judicata* and that the action is frivolous and vexatious and an abuse of the process of the Court, and it is clear that this Court has an inherent right to prevent such abuse of its procedure. (*Reichel v. Magrath*, 14 Appeal Cases, p. 665).

The indorsement on the writ alleges that "Judhan agreed to carry out the marriage of Samundari," the daughter of himself and the other defendant, Kalia, on her attaining the age of 14, and, in paragraph 3, that defendants have refused and neglected to carry out the agreement; but there is no direct averment of any undertaking or promise by either of the female defendants. Plaintiff claims £100 damages.

The statement of claim avers that plaintiff gave to defendants jewellery, clothing, and cash to the value of £45 "in consideration of the marriage and registration of marriage." The ground of application is, substantially, that on the 18th March this year plaintiff issued a writ (No. 27 of 1915) against the first defendant in which he claimed—

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the sum of £45 being the amount of the value of certain gifts of money jewellery and clothing made by the plaintiff to the defendants on or about the 21st April 1911 in consideration of the promise of marriage of one Tuisi (or Samundari) the daughter of the defendant with the plaintiff and such promise of marriage has not been followed by actual marriage and the registration thereof.

and that this action was dismissed by the Commissioner who tried it. (There was a previous abortive action relating to the same subject matter to which I need not further refer).

The action 27 of 1915 was brought under section 21 of the Indian Marriage Ordinance 1892, and Mr. Scott for the applicant contends that this is also an action under that section; and that, although two new defendants have been added, it is substantially the same action; if this is so the matter is clearly *res judicata*.

Mr. Manilal, however, says that this is not an action under Ordinance No. 1 of 1892, but an action for breach of promise of marriage under the common law, and contends that the special legislation of the Indian Marriage Ordinance does not deprive an individual of his remedy under the common law.

To this Mr. Scott replies that even if either of these remedies was originally open to plaintiff he cannot now, having elected to proceed under the local Ordinance, pursue his remedy under the Common Law.

It may be, though it is not necessary for me to decide the point, that a man, having sued the parents of a girl for the return of jewellery, &c., under Ordinance No. 1 of 1892, may subsequently bring an ordinary breach of promise action against the girl; but even if this be technically the case how would it work in practice? I suppose that in nearly all the cases arising under section 21 above mentioned the girl would be of tender years, entirely under the influence and control of her elders; it is inconceivable that any Court would award damages against such a defendant as if she were a responsible young woman who had trifled with the affections of her wooer. In the present case, for instance, if plaintiff had any hope of getting substantial damages against Samundari he must be of an exceedingly sanguine disposition.

But let me see whether this can be called an ordinary breach of promise action. Such an action, so far as I am aware, must be brought against the person who has promised to marry the plaintiff, or in certain cases against his or her executor, and Mr. Manilal could quote no precedent for joining other defendants. The action, therefore, against Judhan

and Kalia is illconceived. The girl Samundari, being an infant, cannot be sued except through a guardian *ad litem*, and, further, as I have already pointed out, there is no allegation of any promise by her, so that the statement of claim discloses no cause of action against her.

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The conclusion I have come to is that this so-called action for breach of promise is merely an attempt, by changing the form of the proceeding (*Reichel v. Magrath*) and adding to the *dramatis personæ Metropolitan v. Bank Pooley*, 10 Appeal Cases, 1885, p. 220) to set up again the same case which has already been decided, and that the action is frivolous and vexatious and an abuse of the process of the Court.

I stay all further proceedings and order plaintiff to pay to defendants their costs of action and of this application.

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[CIVIL JURISDICTION.]

[ACTION No. 31, 1915.]

1916.  
*April 14.*

MORRIS, HEDSTROM LIMITED *v* RECEIVER-GENERAL.

Importation duty free of metal drums as inside and outside packages.

*Held*, the drums being of no commercial value in Fiji are exempt from duty.

Sir CHARLES DAVSON, C.J. The question here is whether certain iron drums in which naphthalite was imported into this Colony are liable to ad valorem duty, or whether they are duty free under the Customs Tariff, as amended by Ordinance No. 21 of 1913, which exempts—

Packages inside and outside of wood, tin, glass, paper, or other material, in which are contained only articles liable to a specific rate of duty or articles exempt from duty or both, and in which such articles are ordinarily and actually contained.

Plaintiffs paid duty under protest, appealed without success to the Customs Commissioners, and now bring this action, under section 136 of the Customs Regulation Ordinance 1881, to recover the duty paid relying on the enactment above quoted and averring that the drums are packages in which naphthalite is ordinarily contained. The statement of defence denies that naphthalite is ordinarily contained in such drums and states that the drums are of commercial value. This latter statement is, I think, as a matter of pleading, irrelevant, as the exemption clause makes no reference to commercial value,