

1932

*Present : Jayewardene A.J.*JAMALDEEN *v.* HAJIRA UMMA.179—*C. R. Gampola, 10,119.*

*Muslim Law—Wife divorced by husband—Action by husband to recover thali—  
Jurisdiction of Court of Requests.*

Under the Muslim Law a husband who has divorced his wife is not entitled to recover the *thali* given by him to her at marriage.

In such a case the Court of Requests has jurisdiction to determine whether there has been a valid divorce between the parties.

**A** PPEAL from a judgment of the Commissioner of Requests, Gampola.

*E. Navaratnam*, for defendant-appellant.

*H. E. Garvin*, for plaintiff-respondent.

June 30, 1932. JAYEWARDENE A.J.—

The plaintiff alleged that in May, 1929, on the occasion of his marriage to the defendant, he gave the defendant, his wife, a gold sovereign necklace known as "thali", that in March, 1931, he divorced his wife, and that she has become liable to return the *thali* or to pay its value. The defendant denied the divorce, and pleaded also that the plaintiff was in wrongful possession of a portion of the *thali* containing precious stones of the value of Rs. 75. She denied her liability to return it. The learned Commissioner of Requests entered judgment for the plaintiff as prayed for and the defendant has appealed.

The Commissioner held that there had been a legal divorce, and the first point raised was that the Court of Requests had no jurisdiction to determine this question, and that the District Court alone had jurisdiction in all matrimonial matters under sections 64 and 77 of the Courts Ordinance, No. 1 of 1889. In this case the plaintiff does not seek to obtain a divorce. He alleges that a divorce had already been obtained. It is open to the Court of Requests to determine whether a valid divorce subsists between the parties. It was held in *C. R. Batticaloa*, 9,352—*S. C. M. 21.10.1869* (*Vanderstraaten's Reports*, p. 25), that there is no provision in the Administration of Justice Ordinance which prevents the Court of Requests entertaining such a case. The Administration of Justice Ordinance, No. 11 of 1868, like the Courts Ordinance conferred exclusive matrimonial jurisdiction on the District Courts. In *Beebe v. Pitche*,<sup>1</sup> it was held that the Court had to inquire into a matrimonial matter in an action to enforce the provisions of section 86 of the Mohamadan Code of 1806, and that the Court of Requests had no jurisdiction. The present case is different and is governed by the ruling in the case in *Vanderstraaten's Reports*.

As regards the *thali*, there is the allegation in the plaint that the plaintiff gave it to the defendant on the occasion of the marriage. The plaintiff stated in his evidence in cross-examination that the *thali* was a gift from him to his wife at his marriage. In re-examination he tried to modify this by saying that the *thali* remained his property and was not a gift but a marriage symbol. The plaintiff called Rahiman, his brother-in-law, and also Habibu Mohamadu, the High Priest of Nawalapitiya, to support him. The High Priest says that the *thali* is not a gift but a symbol of marriage and if a divorce takes place, the *thali* must be returned to the husband by the wife.

The tying of the *thali* is a Hindu custom which the Mohammedans of Ceylon have adopted from their Tamil-speaking brethren. Abbe Dubois who devoted thirty years of his life to study Hindu customs, adopting their garb, their manners, and even their prejudices, in his book entitled *Hindu*

<sup>1</sup> 26 N. L. R. 277.

*Manners, Customs, and Ceremonies* says at page 224:—"As soon as the *mangalashtha* is finished they fasten on the *thali*, that is, the little gold ornament which all married women wear round their necks; the *thali* is strung on a little cord which is dyed yellow with saffron water, and composed of 108 very fine threads closely twisted together. Other little ornaments of gold are also added; round which are fastened flowers and fine black seeds. Two handfuls of rice are placed in a metal pot, on the rice is placed a coconut dyed yellow, and on the top of the coconut the *thali*, to which they offer a sacrifice of sweet perfumes. The *thali* is then taken round to all the guests, both men and women, who touch it and bless it. Four large metal lamps each with four wicks are brought in and placed on a stand, and these and a great number of other lamps are lighted. There ensues a tremendous din, the women sing, the musicians play, bells are rung, and cymbals are clashed to drown any sounds of bad omen. In the midst of this hub-bub the husband advances towards his young wife, who is seated facing the east, and while reciting *mantrams* he fastens the *thali* round her neck, securing it with three knots".

It may have been merely symbolic as the witnesses say, but it is nevertheless a gift from the husband to the wife and in the process of time the *thali* has become a piece of jewellery of considerable value. The *thali* is as much a symbol as the wedding ring and it is as much a gift.

The plaint states that the plaintiff gave the defendant a gold sovereign necklace known as a *thali*. He values it at Rs. 300. In his evidence he says "the *thali* is a gift from me to my wife at my marriage". It is the gift from the husband to the wife which she treasures the most. It is always worn by her, and is her own personal property. In the case of women subject to the Ordinance No. 15 of 1876, the *thali* would form part of the jewels and personal ornaments belonging to the wife under section 11 of that Ordinance, and belong to her for her separate estate independent of the debts of her husband.

Gifts are as a rule irrevocable in Mohammedan law but there are several causes that prevent revocation. The marriage relation prevents the revocation of a gift. When one of the married parties has made a gift to the other it cannot be revoked, though the marriage should afterwards be dissolved. *Baillie's Digest of Mohammedan Law (Part I.)*, p. 524, and *the Hedaya*, p. 486. Some doctors have considered a husband and wife in respect to their mutual gifts on the same footing as kindred by consanguinity who cannot revoke their gifts; further it was considered abominable for a wife to retract a gift made to a husband and for a husband to retract a gift made to his wife *Baillie (Part II.)*, p. 206. According to Sir Roland Wilson a gift once validly made must be rescinded by a civil court on the application of the donor, unless the right of revocation is barred by certain circumstances, one of which is that the donor is or has been the husband or the wife of the donor. *Wilson's Anglo-Mahomedan Law, 6th Ed.*, p. 341.

---

In *Natchia v. Pitche*<sup>1</sup>, two experts had been called in the lower Court and they were both of opinion that if a man got a necklace as *Kaicooly* and gave it to his wife as *thali*, it became the wife's separate property and she can claim it as her own.

In my opinion the wife is the owner of the *thali* even after divorce, and the plaintiff's action therefore fails. . The judgment is set aside and the plaintiff's action is dismissed with costs in both Courts.

*Appeal allowed.*

