

ALLAHABAD HIGH COURT

Hamid Ali

Vs

Imtiazan

(Pearson,CJ. Turner, J.)

01.11.1878

ORDER

Turner, J.

1. The words used by the appellant to his wife appear to fall within the class of ambiguous expressions. By saying, if you go to your father's house you are my paternal uncle's daughter, the appellant intended to declare that he would regard her in no other relationship, and not receive her back as his wife. This, if spoken with intention (as it doubtless was), constituted a divorce, which became final if it was not revoked within the time allowed by law (see Baillie's Digest of Muhammadan law, p. 228). The appellant alleges it was so revoked. The Court of First Instance found that the appellant did not recall his wife for a year, a finding which appears possibly inaccurate. The whole of the questions on the merits were raised by the very general expressions used in the memorandum of appeal, but the issue as to revocation was not determined. The lower Appellate Court must try the following issue:--Was the divorce revoked within the period allowed by law? On the return of the finding ten days will be allowed for objections. Regarding the custody of the daughter, if it be found that the divorce was not revoked, the daughter must remain with her mother until she has attained the age of puberty.

2. The lower Appellate Court found on this issue that the plaintiff had not revoked the divorce.

3. The High Court (Pearson, J., and Turner, J.) delivered the following Judgment:

Turner, J.

4. No objection having been taken to the finding on the issue remitted we accept it. The appeal fails and is dismissed with costs.

