

SULIMAN v. FODAY

Supreme Court (Macquarrie, Ag. C.J.): June 20th, 1933

- [1] Family Law — dowry — recovery of dowry — Mohammedan law — Mohammedan substituting temporary illicit relationship for valid marriage originally intended debarred by own misconduct from recovering dowry on desertion by other party: In Mohammedan law it is the essence of marriage that the parties should intend to form a permanent union and so a suitor who engages in a temporary illicit relationship does not contract a valid marriage even though that was originally intended; if he is later deserted by the other party, he will be debarred by his own misconduct from recovering any part of a dowry he might have paid (page 348, lines 21—38). 5 10
- [2] Family Law — marriage — intended duration of union — essence of Mohammedan marriage is that parties intend to form permanent union: See [1] above. 15

The plaintiff brought an action against the defendant to recover a sum of money paid by him as part of a dowry in respect of his intended marriage to the defendant's niece.

The plaintiff gave the defendant goods and money by way of dowry for the defendant's niece whom he intended to marry. Before the full amount of the dowry was paid, however, the plaintiff persuaded the defendant's niece to live with him as his wife without going through the formality of marriage. They lived together for about three years after which the defendant's niece returned to the defendant. 20 25

The plaintiff then brought the present proceedings to recover the money he had paid to the defendant on the ground of her desertion.

In reply the defendant contended that the plaintiff was not entitled to recover the dowry since he had not actually married the defendant's niece but had substituted a temporary illicit relationship for the intended marriage. 30

The suit was dismissed.

MACQUARRIE, Ag. C.J.: 35

In this case I do not feel able to place any reliance on the evidence of either the plaintiff or the defendant, but I feel reasonably confident that the essential facts are as follows: Some time in the year 1927 the plaintiff approached the defendant with a view to marrying his niece, Marie Sesay, and sent the defendant a present of the value of 8s. as being both customary and 40

necessary for the favourable progress of his suit. Negotiations followed, which appear to have centred on the amount of dowry or bride-price to be paid, and eventually goods and money to the value of £5 were handed over by the plaintiff to the defendant as part of the dowry. Then, although the full dowry or bride-price had not been paid, even if it had been finally settled, which is doubtful, the plaintiff persuaded Marie Sesay to leave the defendant and live with him as his wife without going through the formality of marriage. As to whether or not the defendant consented to this unlawful adultery I feel unable, on the evidence before me, to express any decided opinion. Being no longer a virgin, Marie Sesay was probably free to choose for herself, but it does seem reasonably clear that the defendant raised no serious objection to the course she decided to adopt.

The plaintiff says that she stayed with him for four months only, but on that point I feel no difficulty in rejecting his evidence in favour of that given by the defendant and Marie Sesay. I find as a fact, therefore, that she lived with him for about three years after which they quarrelled, and she returned to her uncle, the defendant, in the year 1930.

The plaintiff is now claiming return of the payments he made by way of dowry which he assesses at £5.12s.0d. and I assess at £5, since in my opinion the preliminary gift of 8s. to her uncle constituted a sort of hearing fee which is not recoverable as dowry.

Two facts must be borne in mind — (i) that the full amount of the dowry or bride-price was never paid, and (ii) that no marriage ever took place. Now to my mind this latter fact is of great importance because I hold that in Muslim law, as in English law, it is of the essence of marriage that a life-long union should be intended. In this case I cannot believe that any such intention existed, at any rate on Marie Sesay's part, and as the plaintiff admittedly indulged in sexual intercourse with Marie Sesay without marrying her — an offence against the Koran for which severe corporal punishment was prescribed — I am of the opinion that his own wrongful conduct debars him from recovering anything he paid on account of an intended marriage for which he himself substituted an unlawful union.

There will therefore be judgment for the defendant, though I make no order as to costs in view of the conduct of the parties.

Suit dismissed.