1877
November 21.

APPELLATE CIVIL.

Before Mr. Justice Pearson and Mr. Justice Oldfield.

TAUFIK-UN-NISSA (PLAINTIFF) *v.* GHULAM KAMBAR (DEFENDANT).*

Muhammadan Law—Dower.

Under Muhammadan law, when on marriage it is not specified whether a wife's dower is prompt or deferred, the nature of the dower is not to be determined with reference to custom, but a portion of it must be considered prompt. The amount to be considered prompt must be determined with reference to the position of the wife and the amount of the dower, what is customary being at the same time taken into consideration. *Eidan* v. *Mazhar Husain* (1) followed.

THIS was a suit to recover Rs. 25,000 out of Rs. 51,000 due to the plaintiff as dower, the suit being based on Muhammadan law. The plaintiff stated in her plaint that according to that law her dower must be considered prompt, because at the time of marriage it was not specified that the dower was deferred dower. The defendant alleged that for that reason it could not, under Muhammadan law, be considered prompt, that, under that law, where it was not specified whether dower was prompt or deferred, it was necessary to refer to custom to determine whether it should be considered prompt or deferred, and that according to the custom obtaining in such a case in Budaun, where the parties to the suit resided, the dower must be considered deferred dower. The Court of first instance held that, in the absence of any specification whether the dower was prompt or deferred, it was necessary to refer to custom to determine the nature of the dower, and that, according to the custom obtaining in such cases in Budaun, the dower must be considered deferred dower, and dismissed the plaintiff's suit.

The plaintiff appealed to the High Court contending that, under Muhammadan law, where at the time of marriage it was not specified whether dower was prompt or deferred, it must be considered prompt, that the custom on which the lower Court relied was opposed to this law and could not therefore be recognized, and that such custom was not proved by the evidence on record.

Mr. *Mahmood* and Maulvi *Obeidul Rahman*, for the appellant.

* Regular Appeal, No. 44 of 1877, from a decree of Maulvi Abdul Majid Khan, Subordinate Judge of Shâhjahânpur, dated the 1st September, 1876.

(1) I. L. R. 1 All. p. 483.

1877

TAUFIK-UN-NISSA v. GHULAM KAMBAR.

Munshi *Hanuman Prasad* and Shah *Asad Ali*, for the respondent.

The judgment of the High Court was delivered by

OLDFIELD, J.—This is a claim to recover Rs. 25,000 as prompt dower. It is not disputed that the amount of dower stipulated for at marriage was Rs. 51,000, and it is admitted that it was not specified at the time whether the dower was prompt or deferred. The plaintiff contends that, under such circumstances, the entire amount is exigible as prompt dower on demand, though she only claims in this suit a portion. The defendant contends that in such a case the custom of the place should be referred to, and by the custom of Budaun the entire dower is to be considered as deferred. The lower Court has dismissed the claim, with reference to what it holds to be the custom. It considers that when there has been no specification of dower, the law requires that a reference should be made to custom to determine not only the proportion of the dower which shall be considered to be prompt, but whether any at all shall be so considered, and it holds that in Budaun it is the custom to consider the whole as deferred. This judgment cannot be supported. The law on the point is that stated in Baillie's Digest from the *Fatawa Kazee Khan*, which has been followed by this Court in recent decisions—*Eidan* v. *Mazhar Husain* (1); *Habib-un-nissa* v. *Nizam-ud-din*, decided the 31st July, 1877 (2). When nothing has been said as to the character of dower, the Court may determine the amount to be considered prompt with reference to the position of the woman and the amount of the dower named in the contract, taking into consideration at the same time what is customary. The reference to custom appears to be in respect of the proportion to be held as prompt, and it does not appear to have been contemplated to refer to custom to decide whether or not the entire dower should be deferred. We have been shown a translation of an extract from Jami-ur-rumuz, a commentary on Mukhtasar Vakaya, which will, however, bear another construction. However this may be, we do not concur with the Subordinate Judge in holding that any custom is proved by which the entire dower is considered deferred. (After considering the evidence as to the custom the

(1) I. L. R. 1 All. p. 483. (2) Unreported.

1877

TAUFIK-UN-NISSA v. GHULAM KAMBAR.

judgment proceeded as follows:) We hold that neither by law or custom is the plaintiff debarred from obtaining prompt dower, and we consider Rs 17,000, or one-third of the total dower, a reasonable sum to award. We reverse the decree of the lower Court and decree accordingly with all costs.

Appeal allowed.

1877
November 22.

APPELLATE CIVIL.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Oldfield.

IMAM ALI AND OTHERS (DECREE-HOLDERS) *v.* DASAUNDHI RAM (JUDGMENT-DEBTOR).*

Execution of Decree—Special Appeal—"Final Decree of Appellate Court"—Limitation—Act IX of 1871 (*Indian Limitation Act*), *sch. ii, art.* 167.

The Munsif gave the plaintiffs in a suit for possession of land and for mesne profits a decree for possession but dismissed the claim for mesne profits. An appeal was preferred to the Judge, who affirmed the decree for possession and remanded the case to the Munsif, under s. 351 of Act VIII of 1859, to determine the mesne profits due to the plaintiffs. The Munsif gave the plaintiffs a decree for certain mesne profits. Subsequently a special appeal was preferred to the High Court against the Judge's decree. While this was pending an appeal was preferred to the Judge against the decree of the Munsif for mesne profits, and on the 7th June, 1873, the plaintiff again obtained a decree for mesne profits. Finally, on the 6th March, 1874, the High Court modified the Judge's decree for possession but did not interfere with the order of remand. *Held*, on the plaintiffs applying for execution of the Judge's decree, dated the 7th June, 1873, that the limitation for the execution of such decree ran not from the date of such decree but from the date of the High Court's decree, which was "the final decree of the Appellate Court," and the only "final decree," within the meaning of art. 167, sch. ii of Act IX of 1871.

THIS was an application for the execution of a decree of a District Court, dated the 7th June, 1873. The facts of the case are sufficiently stated in the judgment of the High Court to which the decree-holders appealed against the order of the Judge, affirming the order of the Munsif, which decided that execution of the decree was barred by limitation.

The decree-holders appealed to the High Court on the ground that limitation began to run from the date of the decree of the High

* Miscellaneous Special Appeal, No. 62 of 1877, from an order of H. M. Chase, Esq., Judge of Saháranpur, dated the 18th May, 1877, affirming an order of Maulvi, Muhammad Imdad Ali, Munsif of Saháranpur, dated the 21th March, 1877.