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the plaintiff's suit failed by reason of his inability to prove payment of "exigible" dower. It was argued on his behalf, that a wife cannot refuse herself to her husband after such consummation or complete retirement as was proved in the present case by the cohabitation of the parties from 1873 to 1878. This contention was supported by a quotation from Baillie's Digest, p. 125; but upon careful consideration of it and a judgment of this Court, which appears directly in point, *Abdool Shukkoar* v. *Raheem-oon-nissa* (1), we are of opinion that the views propounded by Aboo Haneefa should be followed, and that a woman entitled to dower, that is "*munjjil*" or "prompt" may, even after consummation or valid retirement, deny her husband access to her person or her society, if it remains unpaid. Dower it must be remembered is the woman's right and she may decline him the use of her person in order to enforce the man's pecuniary obligation to her. Of course where the dower is "*muwajjil*" or "deferred," other considerations arise, which it is unnecessary to discuss. It may be added, that passages will be found favouring the opinion we have expressed in Macnaughten's Muhammadan Law, ed. of 1870, p. 281; Ballie's Imameea, p. 73 (the plaintiff being a *Shia*); and Grady's Manual of Muhammadan Law of Inheritance and Contract, p. 246.

The lower appellate Court has found that the amount of dower in the present case was Rs. 5,000, that it was prompt, and that the plaintiff has not been paid it. The respondent's plea was therefore established and the plaintiff's claim has been properly disallowed. The appeal is dismissed with costs.

Appeal dismissed.

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April 6.

Before Mr. Justice Oldfield and Mr. Justice Straight.

RAM LAL (PLAINTIFF) *v.* HARRISON (DEFENDANT).*

Amendment of Plaint—Limitation—Act X of 1877 *(Civil Procedure Code), s. 53—Act XV of* 1877 *(Limitation Act), s.* 4—*Mortgage—Oral Evidence—Documentary Evidence—Act I. of* 1872 *(Evidence Act), ss.* 92, 95.

The plaint in a suit for money charged upon immoveable property which described such property as "the defendants' one-biswa five-biswansi share within

* Second Appeal, No. 899 of 1879, from a decree of C. W. Moore, Esq., Judge of Aligarh, dated the 5th May, 1879, modifying a decree of Maulvi Farid-ud-din Ahmad, Subordinate Judge of Aligarh, dated the 13th February, 1879.

(1) H. C. R., N.-W. P., 1874, p. 94.

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the jurisdiction of the Court." was presented on the 21st November, 1878, within the period of limitation prescribed for such a suit by Act XV of 1877. It was subsequently returned for amendment, and, having been amended by the insertion of the words "in mauza *S*, pargana *S*" after the word "share" was presented again on the 8th January, 1879, after such period. *Held* that the date of the amendment of the plaint did not affect the question of limitation for the institution of the suit, and the return of the plaint for amendment and its subsequent presentation and acceptance by the Court did not constitute a fresh institution of the suit.

The obligors of a bond for the payment of money describing themselves as "sons of *R*, zamindar and pattidar, resident of mauza *S*" hypothecated as collateral security for such payment "their one-biswa five-biswansi share". *Held*, in a suit on the bond to enforce a charge on the one-biswa five-biswansi share of the obligors in mauza *S*, that, under *Proviso* 6, s. 92, and s. 95, of Act I. of 1872, evidence might be given to show that the obligors hypothecated by the bond their share in mauza *S*.

THE plaintiffs in this suit claimed Rs. 1,039-10-0 on a bond dated the 23rd November, 1866, praying, *inter alia*, that the property hypothecated in the bond might be brought to sale, in case the defendants did not satisfy the judgment-debt. The suit was instituted on the 21st November, 1878, the heirs of the original obligors of the bond, and one Harrison, the representative of a subsequent mortgagee of the property alleged to have been hypothecated by the bond to the plaintiffs, being made defendants. In the bond the original obligors, describing themselves as "the sons of Risal Singh, caste Thakur Bunder, zamindar and pattidar, resident of mauza Sakhauli," agreed to repay the sum advanced to them by the obligees, Rs. 500, with interest at twelve annas per cent per mensem, on demand, and as collateral security for such payment hypothecated "their one-biswa five-biswansi share." In the original plaint in the suit the plaintiffs described the property as "the defendants' one-biswa five-biswansi share within the jurisdiction of the Court." On the 8th January, 1879, the plaint having been returned for amendment, the amended plaint was filed. The amendment consisted of the insertion after the word "share" of the words "in mauza Sakhauli, pargana Sikandra Rao." The Court of first instance gave the plaintiffs a decree as claimed. On appeal by the defendant Harrison the lower appellate Court held, *inter alia*, that the claim to enforce a charge upon the one-biswa five-biswansi share in mauza Sakhauli must be taken to have been instituted on

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the date on which the plaint was amended, and, as limitation ran from the date of the bond, was barred by limitation.

The plaintiffs appealed to the High Court.

Babu *Jogindro Nath Chaudhri*, for the appellants.

Munshi *Hanuman Prasad*, for the respondent.

The Court (OLDFIELD, J., and STRAIGHT, J.,) remanded the case to the lower appellate Court for the trial of the issues indicated in the order of remand, which was as follows :—

OLDFIELD, J.—The plaintiffs sue to recover money due on a bond by sale of a one-biswa five-biswansi share in mauza Sakhauli hypothecated in the bond. They made the obligors and T. B. Harrison defendants, the latter being the representative of a subsequent mortgagee, and who has objected to the sale of the mortgaged property. The first Court decreed the claim. The lower appellate Court has dismissed that part which seeks to make the property liable. The Judge holds that the period of limitation will run in this suit from the date of the bond, 23rd November, 1866, and though the suit was instituted on the 21st November, 1878, yet since the property mortgaged was not indicated by name in the original plaint, and not until 8th January, 1879, when an amended plaint was filed to the effect that the property hypothecated and claimed is in mauza Sakhauli, therefore the suit so far as it affects the property must be held to have been instituted on the 8th January or after the expiry of the term of limitation ; and the Court further holds that the deed does not distinctly show that the share of one biswa five biswansis hypothecated in the deed is a share to that amount in mauza Sakhauli ; and on the above grounds the Judge dismissed the suit.

We are of opinion that the decision cannot be maintained. The date of amendment of a plaint will not affect the question of limitation for the institution of a suit; the limitation is determined with reference to the date of institution of a suit, and by s. 4 of the Limitation Act a suit is instituted in ordinary cases when the plaint is presented to the proper officer, and its return for amendment and subsequent presentation and acceptance by the Court will not

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constitute a fresh institution of the suit.—(See cases referred to in note to s. 53, Broughton's Civil Procedure Code, Act X of 1877). It is true that when after the institution of the suit a new plaintiff or defendant is substituted or added the suit shall as regards him be deemed to have been instituted when he was so made a party, but this rule is inapplicable to the case before us where the defendant Harrison had been made a party at the first institution of the suit. The principal ground, therefore, on which the Judge has dismissed the claim to bring the property to sale is invalid, and his remarks on the indistinctness of the deed as indicating that the share in mauza Sakhauli was mortgaged do not adequately dispose of the claim. It is for the Judge to determine whether as a matter of fact the parties to the deed did mortgage the share in Sakhauli by the bond, and evidence on the point may be adduced.—See *Proviso* 6, s. 92, and *Illustration* to s. 95, Evidence Act. The Judge must also decide the question (raised by one of the pleas taken by the respondent) whether, looking to the conduct of the plaintiffs at the time the second mortgage was made, they are debarred now from enforcing their prior lien.

We remand the case for trial of the issues indicated: on submission of the finding ten days will be allowed for filing objections.

Cause remanded.

CRIMINAL JURISDICTION.

1880
April 13

Before Mr. Justice Straight

EMPRESS OF INDIA *v.* NAWAB AND ANOTHER.

Security for Good Behaviour—Act X. of 1872 (*Criminal Procedure Code*), *s.* 506.

Held that s. 506 of Act X. of 1872 solely relates to the calling upon persons of habitually dishonest lives, and in that sense "desperate and dangerous," to find security for good behaviour, as a protection to the public against a repetition of crimes by them in which the safety of property is menaced and not the security of the person alone is jeopardised.

Where, therefore, the evidence adduced before the Magistrate did not show that a person was "by habit a robber, house-breaker, or thief, or a receiver of stolen property, knowing the same to have been stolen," but showed only that he