Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

RUKIA BEGAM (PLAINTIFF) v. MUHAMMAD KAZIM AND OTHERS (DEFENDANTS.).*

1910. *February* 28.

Muhammadan law—Marriage—Dower—Act No. XVIII of 1876 *(Oudh Laws Act).*

Held that the mere fact that a marriage was celebrated in Lucknow, the parties being afterwards domiciled in the province of Agra, was not sufficient to authorize a court in the province of Agra to apply to a suit brought by the wife against the heirs of her deceased husband for recovery of her dower the provisions of the Oudh Laws Act, 1876. *Zakeri Begum* v. *Sakina Begum* (1) followed.

THE facts of this case were as follows:—The plaintiff, the widow of a Muhammadan gentleman, brought this suit against the heirs of her deceased husband for the recovery of her dower. The deceased was a resident of Muzaffarnagar where he practised as a vakil. The marriage had taken place at Lucknow. The amount of dower fixed was Rs. 1,25,000. The wife only sued the heirs for Rs. 25,000 which represented the assets of the husband. The property against which the decree was sought was situated at Meerut. The court of first instance gave a decree for Rs. 10,000 relying on the provisions of the Oudh Laws Act, XVIII of 1876, which render dower reducible in certain cases by the court.

The plaintiff appealed.

The Honb'le Pandit *Moti Lal Nehru*, for the appellant, contended that the discretion given to the courts of Oudh did not extend to courts in other parts of the country. The courts of Oudh had been given some special powers which the courts of other provinces could not exercise. The Additional Judge of Meerut had no jurisdiction to administer the provisions of the Oudh Laws Act and had no authority to reduce the dower fixed. He relied on the Privy Council case of *Zakeri Begum* v. *Sakina Begum* (1).

The respondent was not represented.

STANLEY, C. J., and BANERJI, J.—The plaintiff in the suit out of which this appeal has arisen is the widow of the late

*First Appeal No. 284 of 1908, from a decree of Kanhaiya Lal, Additional Judge of Meerut, dated the 30th of June, 1908.

(1) (1892) I. L. R., 19 Calc., 689.

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Muhammad Husain, a pleader of Muzaffarnagar. She claims against the representatives of her husband a portion of the dower which was fixed on the occasion of her marriage. The amount of the dower is alleged to have been Rs. 1,25,000. She abandons a large portion of the amount and only claims Rs. 25,000. The parties were married at Lucknow, where the plaintiff resided at the time of her marriage, and the marriage contract was entered into at Lucknow. The wife went with her husband to Muzaffarnagar, of which he was a resident. The learned Additional Judge came to the conclusion that inasmuch as the marriage contract was entered into in Lucknow, he had jurisdiction to administer the law provided by the Oudh Laws Act, Act XVIII of 1876. After hearing the evidence he came to the conclusion that a sum of Rs. 10,000 was an ample sum to allow for dower in view of the means and circumstances of the husband and wife.

From his decision this appeal has been preferred, and the contention before us is that the learned Additional Judge of Meerut had no jurisdiction whatsoever to administer the provisions of the Oudh Laws Act, and had no authority to reduce the dower fixed on the occasion of the marriage. The respondents are not represented, and this is to be regretted when a point of law of the importance of the question before us arises. Our attention, however, has been called to a case decided by their Lordships of the Privy Council, which apparently was not brought to the notice of the learned Additional Judge. That is the case of *Zakeri Begum* v. *Sakina Begum* (1). The facts of that case are as follows:—A Muhammadan, a resident in Patna, was married to the plaintiff, while he was for a time in Lucknow, where she lived. Upon her claim as his widow for her deferred dower, it was found to have been contracted for at the moment alleged by her. It was held by the court of first instance that the question of the amount of her dower was one determinable without reference to the usage having the force of law in Oudh which renders dower reducible in certain cases by the court, and that the place of the celebration of the marriage did not make this law applicable. The decision of the Subordinate

(1) (1892) I. L. R., 19 Calc., 689.

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Judge was varied by the High Court only as regards the amount of the dower. An appeal was preferred and the judgement of their Lordships of the Privy Council was delivered by Lord Hannen, who in the course of his judgement sets out the defence raised by the defendants, namely, amongst others, that, as the marriage took place at Lucknow, the contract of dower was regulated by the usages and customs of Oudh, and that by those usages and customs the agreed amount of dower, if excessive, might be reduced by the court to an amount suitable to the circumstances and position of the husband and wife. This contention the court of first instance repelled, and, their Lordships say, rightly. At page 698 of the report in reference to this matter their Lordships say, that they "agree with the Subordinate Judge that the usages and customs of Oudh as to dower were not applicable to the marriage in question." Fortified by this decision of their Lordships of the Privy Council we are unable to uphold the decision of the court below. We may further point out that the Act XVIII of 1876 is stated in the preamble to be "an Act to declare and amend the laws to be administered in Oudh." This indicates that it is only the courts administering laws in Oudh which could put in force the provisions of the Act.

We therefore allow the appeal. We modify the decree of the court below, and allow the plaintiff, in lieu of the sum of Rs. 10,000 awarded to her, the full amount claimed by her, namely, Rs. 25,000. The plaintiff will have her costs in both courts.

Appeal decreed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Griffin.

1910

March 4.

LALTA PRASAD AND ANOTHER (PLAINTIFFS), *v.* ZAHUR-UD-DIN AND ANOTHER (DEFENDANTS).*

Contribution—Attachment—Purchase of part of attached property by a third party who satisfies the whole claim—No right of contribution against the remainder acquired by the purchaser.

An attaching creditor does not obtain by his attachment any charge or lien upon the attached property. Where therefore a third party purchased a portion of certain property under attachment and satisfied the whole of the creditor's claim, it was *held* that the purchaser acquired no right of contribution as against the

* Second Appeal No. 112 of 1909, from a decree of W. H. Webb, District Judge of Bareilly, dated the 9th of November, 1908, modifying a decree of Girraj Kishore Dat, Subordinate Judge of Bareilly, dated the 12th December, 1906.