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property in suit or any of it unconditionally or should they be put upon terms, if so, upon what terms?

The first issue the court below will try in the light of the remarks we have made above. We, therefore, allow the appeal, set aside the decree of the court below and remand the case for trial under order XLI, rule 23, of the Code of Civil Procedure. The costs of this appeal to abide the event.

*Appeal allowed and cause remanded.*

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*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.*

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*March*, 21.

MUHAMMAD SUBHAN-ULLAH (DEFENDANT) *v.* SAGHIR-UN-NISSA BIBI (PLAINTIFF.)*

*Muhammadan law—Sunnis—Dower—No determination at marriage whether dower is to be prompt or deferred—Presumption.*

Amongst Sunni Muhammadans, where there is no express agreement as to how much of the wife's dower is to be prompt, it is to be presumed that a reasonable proportion thereof will be prompt. A proportion of 72 per cent. is certainly reasonable. *Umda Begam* v. *Muhammadi Begam* (1) followed. *Mirza Bedar Bukht Mohammed Ali Bahadoor* v. *Mirza Khurrum Bukht Yahya Ali Khan Bahadoor* (2) distinguished.

THE facts of this case are fully stated in judgment of the Court.

Dr. *S. M. Sulaiman*, for the appellant.

Maulvi *Iqbal Ahmad* (with him Mr *T. N. Chadha* and Maulvi *Mukhtar Ahmad*), for the respondent.

RICHARDS, C.J., and BANERJI, J. :—This appeal arises out of a suit in which the plaintiff sued her husband to recover the sum of Rs. 35,000 being the balance of dower alleged to be due by the defendant to the plaintiff. It appears that the parties were married a considerable time ago and the plaintiff has borne four sons to her husband. She alleges in her plaint that about 7 or 8 years ago her husband contracted an intimacy with another woman and from that time he took very little interest in her. She contends that her dower was the sum of Rs. 1,25,000, but she admits that a considerable amount of this sum has already been satisfied by transferring certain property. She says that

* First Appeal No. 188 of 1917, from a decree of Gopal Das Mukerji, Additional Subordinate Judge of Gorakhpur, dated the 21st of February, 1917.

(1) (1910) I. L. R., 33 All., 291. (2) (1873) 19 W. R., C. R., 315.

the whole of her dower was prompt, and therefore she is entitled to recover the balance. The defendant contended that her dower was only Rs. 14,000; that there was no settlement as to how much of the dower should be prompt, and that in no event should the plaintiff be allowed to recover any further sum having regard to the fact that he had already transferred to her certain property in lieu of dower. It appears that on the 10th of December, 1913, the defendant executed a sale deed in favour of his wife, the plaintiff, transferring certain immovable property in consideration of the discharge of Rs. 90,010 dower-debt, part of Rs. 1,25,000. The validity of this transfer was subsequently challenged by a creditor of the defendant who alleged that the deed had been executed for the purpose of defrauding creditors. To this suit both the plaintiff and the defendant were parties. The suit ended in the validity of the deed of transfer being upheld, the court holding that the dower was Rs. 1,25,000. In the present suit the learned Subordinate Judge held that the decision in this previous suit operated as *res judicata* and he refused to allow the defendant to give evidence or to contend that the dower was anything less than Rs. 1,25,000. We think that this decision was wrong in law and rather unfortunate. In the previous litigation the plaintiff in this suit was plaintiff, and she sued a certain Bank, which was the creditor of her husband, making her husband a *pro formâ* defendant, she asking for a declaration that the property which had been transferred to her was her property and was not liable to be sold in execution of a decree against her husband. The amount of the plaintiff's dower was only incidentally in controversy in that suit, and it is clear that there was no issue between the plaintiff and the present defendant in that suit as to the actual amount of the plaintiff's dower. The ruling of the Subordinate Judge was unfortunate because it had the result of keeping out some evidence of what was said and done at the time of the plaintiff's marriage with the defendant. It also afforded to some extent an excuse to the defendant for not entering the witness-box. In the present case, for reasons which will presently appear, we do not think that it is necessary for us to decide what was the amount of the plaintiff's dower. The real issue in the case was

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"was all the dower prompt." Involved in this issue is the issue as to whether at the time of the marriage any express settlement or agreement was come to as to whether the dower should be prompt or deferred, whether in fact, there was any agreement one way or the other. We may state here our opinion that if there was no express agreement that the dower should be prompt then according to Muhammadan law amongst the *Sunnis* only a reasonable portion of the dower should be deemed to be "prompt" and what is a reasonable sum for prompt dower depends upon the circumstances of each case. During argument it was contended on behalf of the respondent that in the absence of any express agreement, it should be presumed that the whole of the dower was prompt, and the case of *Mirza Bedar Bukht Mohammed Ali Bahadoor* v. *Mirza Khurrum Bukht Yahya Ali Khan Bahadoor* (1) was relied upon. That case was an Oudh case and the parties were *Shias*. In the present case the parties are *Sunnis*. A careful perusal of the case will show that the head-note is hardly borne out by the judgment of their Lordships of the Privy Council, and it seems to us that their Lordships never decided that even amongst *Shias*, in the absence of express agreement, the whole dower is presumed to be prompt. A contrary view has always been held in this Court—see the case of *Umda Begam* v. *Muhammadi Begam* (2), where the authorities are reviewed. Furthermore, it would seem that the view taken by Mr. Ameer Ali in his work on Muhammadan law is in consonance with the decisions of this Court. We have, therefore, to see whether there was any express agreement at the time of the plaintiff's marriage with the defendant that the whole of the dower should be prompt. The dower, assuming it to be (as alleged by the plaintiff) Rs. 1,25,000, was very considerable, and it was admitted by both the learned gentlemen who appeared for the parties that it would have been very unusual if the parties had declared the whole dower to be prompt, unless there were some very special reasons why they should have done so, and in considering the evidence we have to bear this in mind. In our judgment no special circumstances were proved. It was admitted that the defendant had treated his first wife badly and

(1) (1873) 19 W. R., C. R., 315. (2) (1910) I. L. R., 33 All., 291.

that this might be a special circumstance, but no witness said that the relatives of the plaintiff stipulated that the dower should be prompt to safeguard the plaintiff. The plaintiff produced three witnesses to prove that it was declared at the time of the marriage that the whole dower was prompt. It seems to us that so far as oral evidence goes, the evidence of the defendant was more reliable than the evidence given by the plaintiff, and we agree with the court below that the *onus* of showing that all the dower was prompt lay on the plaintiff. The court below, however, considers that the sale deed of the 10th of December, 1913, corroborates the plaintiff's story. It seems to think that the words used in the recital in that deed amount almost to an admission that all the dower was prompt. No doubt the words "*wajib-ul-dain*" and "*wajib-ul-ada*" are used, but not the word "*muaajjal.*" The latter word is the technical word for "prompt" dower. The words used, it seems to us, are quite consistent with a portion of the dower being payable, which would be the case if no express agreement had been arrived at the time of the marriage. On behalf of the appellant it is contended that the language in the sale deed of the 10th of December, 1913, is entirely explained by its being a document which was executed for the purpose of putting the property of the defendant out of the reach of his creditors (if it was not actually a fraud upon them). On the other hand, it is said that at the time the defendant was possessed of other means and that the court ought not to deal with the case on the supposition that there was any intention either to defraud creditors or even to protect the property of the defendant. We think that, even if the defendant was merely satisfying his wife by making a substantial payment to her of a part of her dower, the language used in the deed is not inconsistent with there not having been any declaration one way or the other as to the dower being prompt. After carefully considering the evidence, we have come to the conclusion that there was no express agreement at the time of the marriage that the whole of the dower should be prompt. This being so, we have to consider whether the defendant has not discharged so much of the dower which in the circumstances of the present case may

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reasonably be regarded as prompt. We have already stated that the dower was very considerable. Property worth Rs. 90,000 has been transferred, which is, roughly speaking, 72% of Rs. 1,25,000 (assuming this sum to have been the dower). We think that under the circumstances of the present case, and, even assuming that the defendant has taken a third wife, the portion of the dower already discharged is all that ought to be considered prompt and therefore the present suit ought not to have been instituted. We allow the appeal, set aside the decree of the court below and dismiss the plaintiff's suit with costs in all courts.

*Appeal allowed.*

## PRIVY COUNCIL.*

P. C.* 1919 *January*, 30, 31.

RAGHUBAR DAYAL (DECREE-HOLDER) *v.* THE BANK OF UPPER INDIA (JUDGMENT-DEBTOR.)

[On appeal from the court of the Judicial Commissioner of Oudh, at Lucknow.]

*Companies Act (VII of 1913), section 153—Scheme or arrangement made between Bank in liquidation and its creditors—Date from which such arrangement is binding on the construction of section 153—Creditor who has obtained a decree and is not one of those who have assented to the arrangement.*

A scheme or arrangement made between a company in liquidation and its creditors under section 153 of the Companies Act (VIII of 1913) becomes on the true construction of that section operative and binding from the date it is made and duly assented to by a three-fourths majority of the creditors, and not from the date of its being sanctioned by the Court. A creditor, therefore, who has obtained a decree between these dates cannot execute it against the company after the former date, although he has not assented to the arrangement,

APPEAL No. 5 of 1917 from a judgment and decree (dated the 16th of September, 1915,) of the Court of the Judicial Commissioner of Oudh, which varied a judgment and decree (dated the 3rd of July, 1915,) of the Subordinate Judge of Lucknow.

The only issue in this appeal was whether the appellant was precluded from executing the decree of the Subordinate Judge of Lucknow by reason of an agreement or compromise entered into by the creditors of the respondent Bank, and duly

*Present:—Viscount HALDANE, Viscount CAVE, Lord PHILLIMORE, Sir JOHN EDGE, and Mr. AMEER ALI.