Before Mr. Justice Dalal and Mr. Justice Pullan.

MUHAMMAD SIDDIQ AND ANOTHER (PLAINTIFFS) *v.* SHAHAB-UD-DIN AND ANOTHER (DEFENDANTS).* 1927 *January*, 28.

Muhammadan law—Dower—Liability of father of minor son who gives his consent to the marriage.

A Muhammadan father does not, by simply giving his consent to the marriage of his minor son, without making himself a surety for the payment thereof, become liable for the payment of his daughter-in-law's dower.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

Mr. *Akhtar Husain Khan* and Mr. *A. M. Khwaja*, for the appellants.

Maulvi *Mushtaq Ahmad*, for the respondents.

DALAL and PULLAN, JJ. :—The parents and heirs of a deceased wife sued the deceased's husband and the husband's father for recovery of their share of the dower debt. The suit was decreed against the son alone, who does not appear to own any property. The plaintiffs have come here in second appeal to obtain a decree against the father. Both the subordinate courts have held it as a finding of fact that the father was not a surety for the payment of the debt at the time of the marriage. The husband was a minor at the date of the marriage, which was arranged by the father. The question which arises is whether the father by his consent to the marriage becomes a surety for the payment of the dower debt fixed at the time. It would appear from a statement in Mr. Tyabji's "Principles of Muhammadan Law," second edition, page 179, section 104 (1), that his becoming such a

* Second Appeal No. 1538 of 1924, from a decree of E. Thurston, District Judge of Budaun, dated the 3rd of July, 1924, confirming a decree of Pran Nath Agha, Munsif of East Budaun, dated the 21st of December, 1923.

1927

MUHAMMAD SIDDIQ v. [illegible] DIN.

surety would be presumed. What he says is that where the marriage has been contracted on behalf of a minor of the male sex by his guardian for marriage, the property of the minor is liable for the dower, and, if he has no property, the guardian is liable to pay it to the wife. The statement is not very clear, but possibly it means that the guardian would be perpetually liable and not only till the minor attains the age of majority according to Muhammadan law, i.e , on his reaching puberty. Unless such were his opinion it will not help the appellants, because obviously the son was sixteen years of age at the time of the death of the plaintiffs' daughter and was a major according to Muhammadan law. As pointed out by the learned Judge of the lower appellate court, Mr. Tyabji, who as a rule gives Baillie for his authority, has not given any reference to that authority in support of this particular opinion of his. We have referred to Baillie's book, edition 1875. What he says at page 141 is that when a man has married his infant son to a woman, and becomes his surety for the dower, and the transaction has taken place while the father was in good health, the suretyship is valid if accepted by the woman. The conditions for the liability of the father according to this authority are his becoming a surety, his being in good health and the acceptance by the bride. We are of opinion that if this authority had desired to lay down in accordance with the text that a father simply by giving his consent to the marriage automatically becomes a surety for the payment of the dower debt, he would not have laid down this rule of the father becoming a surety at the time of the marriage and the other conditions attached to the validity of such surety. It may be admitted that the passage from Ameer Ali quoted by the lower appellate court is not helpful, because

there the question considered is only of the death of the son without leaving any property, and no statement is made as to the liability of the guardian who gave the consent if the son did not happen to possess any property. At the same time if there had been such a tenet of Muhammadan law as to make a guardian of the minor bridegroom liable for the payment of dower debt, simply because he arranged the marriage and gave his consent, a statement to that effect would have been found in Ameer Ali's book. In consideration of all these points we are not prepared to follow the principle of law laid down in section 104 of Mr. Tyabji's book.

We dismiss this appeal and make no order as to costs.

Appeal dismissed.

REVISIONAL CIVIL.

Before Mr. Justice Mukerji.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND ANOTHER (DEFENDANTS) *v.* DWARKA PRASAD (PLAINTIFF).*

1927 *February*, 3

Act No. I of 1872 (Indian Evidence Act), section 106—Burden of proof—Negligence—Property adjacent to railway line burnt by spark from engine—Liability of railway company.

On suit against a railway company based on the allegation that certain property belonging to the plaintiff, being at the time near the railway line, had been destroyed by reason of sparks flying from an engine: *held* that it was on the railway company to show that they had taken proper precautions to avoid damage to property adjacent to the line by reason of sparks from engines.

THE facts of this case sufficiently appear from the judgement of the Court.

* Civil Revision No. 149 of 1926.