The 10th January 1866.

Present:

The Hon'ble W. S. Seton-Karr and A. G. Macpherson, *Judges.*

Mahomedan Law (of Inheritance)—Sister's Son —Widow.

Case No. 2295 of 1865.

Special Appeal from a decision passed by the Principal Sudder Ameen of Dacca, dated the 20th May 1865, reversing a decision passed by the Moonsiff of Naraingunge, dated the 29th February 1864.

Moonshee Mahomed Noor Buksh and others (Defendants), *Appellants,*

versus

Moulvie Mahomed Hameedool Huq (Plaintiff), *Respondent.*

Baboo Woomesh Chunder Banerjee for Appellants.

Baboos Onoocool Chunder Mookerjee and *Kalee Mohun Doss* for Respondent.

According to Mahomedan Law, where a man dies leaving no children, a sister's son can claim his inheritance after the widow has obtained her one-fourth share.

THE appellant raises a point, which was not raised in the Lower Court, to the effect that the plaintiff was not in a position to sue at all for the inheritance of Moheeooddeen, while the wife of this person was alive and was entitled to the property. We have heard the pleaders on both sides, and have referred to Macnaghten's Mahomedan Law on this subject, Section 3 of Inheritance, and Case 15 of Precedents of Inheritance. We find that the law, read carefully, and interpreted by the Precedent of Case 15, is decidedly adverse to the appellant's claim. The widow, under no circumstances, can be entitled to more than one-fourth of her husband's property, the rest going to sister's sons and to various other distant members after the widow's share has been satisfied. The law of the precedent, Case 15, says: "A widow takes one-eighth where "there are children, and a fourth where "there are none. The remainder goes to "the legal sharers; in default of them, to "the residuary heirs; in default of them, to "the distant kindred."

On this point, then, we have no hesitation in pronouncing the appellant's contention not warranted by the law. The plaintiff, as a sister's son, is clearly among the legal heirs, and only claims his inheritance after the widow has obtained her one-fourth. There were no children of Moheeooddeen in this instance.

On a *second* point urged, the Lower Court has expressly found that, by oral and documentary evidence, the plaintiff has been in possession through his brother Kootubooddeen. This is a finding of fact with which we cannot interfere.

We dismiss the appeal with costs.

The 10th January 1866.

Present:

The Hon'ble H. V. Bayley and Shumbhoonath Pundit, *Judges.*

Mahomedan Law of Dower—Proof of—Largeness of amount of.

Case No. 35 of 1865.

Regular Appeal from a decision passed by Moulvie Syud Mahomed Waheedoodeen Khan, Principal Sudder Ameen of Bhaugulpore, dated the 28th September 1864.

Mulleeka and others (Defendants), *Appellants,*

versus

Beebee Jumeela and others (Plaintiffs), *Respondents.*

Mr. C. Gregory, Moonshee Ameer Ali, and *Baboo Kalee Kishen Sein* for Appellants.

Mr. W. A. Montriou and *Baboo Aushootosh Dhur* for Respondents.

The production of a deed of dower is not indispensable to the truth and validity of a claim for dower; nor is such a claim to be set aside by reason of the largeness of the amount of dower.

IT is admitted by both the parties before us that all that has to be decided in this appeal is the question what was the amount of dower proved to have been fixed at the time of the marriage, and that the remand order of Justices Norman and Loch was made only for the purpose of evidence being given on this point, and the case being decided accordingly.

The remand order was this: After holding that the dower was recoverable from the estate of Syed Mahomed, the Judges added these words: "But, as we have no "evidence before us to determine satisfacto-"rily the amount, we think that the Lower "Court will be able to come to a satisfactory "conclusion on this point. We reverse the

"decision of the Lower Court with costs, "and remand the case to the Principal "Sudder Ameen to dispose of the question "as regards the amount of dower."

The Principal Sudder Ameen on this remand put in issue (1) what was the actual amount of plaintiff's dower; and (2) whether she is entitled to it or not, and then decided that the amount claimed (16,25,000 rupees) should be decreed to plaintiffs Jumeela, Sumbut Koonwar, and Mr. King, with interest from date of suit, from the defendants in possession of the property left by Syed Mahomed, in proportion to their respective appropriations, as well as from the other property left by Syed Mahomed.

We have here to notice that the appellants, representing the 12 annas share, have entered into a compromise with the respondents as to their respective interests in the case.

The grounds of the Principal Sudder Ameen's decision on the remand are: *1st*, That the verbal statements of Syed Mahomed and of the vakeel of Beebee Mulleeka showed that they relied solely on the plea of limitation, and had not questioned the correctness of the amount of dower claimed; and that their written statements went mainly on the plea of the insufficiency of proof to warrant a decree on the dower claimed when no deed of dower was produced; *2ndly*, That the custom prevailing in the plaintiff's family, and in other respectable families of that class at Bhaugulpore, was to make dowers of 1,80,000, half in rupees, and half in gold mohurs; or, *literally*, half *red* and half *white*.

The Principal Sudder Ameen states that the main evidence on which he relied to support the finding is in these terms: "It also appears from the deed of *hye-* "*mokasa*, or sale in lieu of dower, exe- "cuted by Moulvie Imdad Ali, Principal "Sudder Ameen of Tirhoot, vested with "powers of a Small Cause Court Judge, "dated the 9th October 1857, brought by "plaintiff's witness, Moulvie Ally Hossein, "second son of the above-named Principal "Sudder Ameen, that the amount of the "dower in it is just the same as claimed by "plaintiff, *i. e.*, 1,80,000, a moiety gold mo- "hurs, and the other moiety rupees. As "regards the evidence of witnesses, it is "to be observed that the depositions of "Moonshee Mukeeooddeen Ahmed, a plead- "er of the Civil Court, Gyasooddeen "Khan, a respectable mooktear, Mirza Ma- "homed Hossein, a pleader of the Sudder "Ameen's Court, Sheikh Abtaf Ali, a "relative of the plaintiff, Moulvie Mahomed "Gosil, daughter's son of Mahomed Mojeed, "former Principal Sudder Ameen of Bhau- "gulpore, Nazir Mahboot Khan, nazir of "the Judge's Court, Moulvie Ali Hossein, "second son of Moulvie Syed Imdad Ali, "Principal Sudder Ameen of Tirhoot, Nujat "Ali Khan, mooktear, Arzeez-ur-Ruhman, a "relative of the plaintiff, Hajee Syed Ma- "homed Hossein, a pleader of the Sudder "Ameen's Court, Sheikh Muyher Hossein, "naib mohafiz of the Judge's Court, Mahomed "Soleem, a relative of the plaintiff, Samdat "Khan, Sheikh Kader Buksh, a zemindar, "Mudar Buksh, and Syed Ali, prove fully "to the satisfaction of the Court that "it is the custom in the *Mowlana Shabhaz* "family in this city of Bhaugulpore to fix "the dower at 1,80,000, all red coins, *i. e.*, "gold mohurs, a fact verified by Moulvie "Mahomed Rofik Khan, Judge of the Court "of Small Causes at Monghyr, a member "of that family. Another custom prevail- "ing in other families in Bhaugulpore is "to fix it at 1,80,000, a moiety rupees, and "the other moiety gold mohurs, or at one "lakh rupees and eighty thousand gold "mohurs."

"The other witnesses for the defendants "depose that Moonshee Mobarik Oollah "wanted to marry his daughter for a dower "of 1,80,000, half gold mohurs, and the "other half rupees, insisting it to be "the custom in his family; but Syed "Mahomed did not agree, saying it was the "custom in his family to fix the dower at "40,000 rupees and forty gold mohurs; "and that at last the marriage was solemnized "according to the custom of Syed Mahomed's "family. The tenor of this deposition "also proves that it is the custom in plaint- "iff's family to grant 1,80,000 rupees. "Moreover, this custom is borne out by the "*Muzernamah*, written opinion of respect- "able men, filed on behalf of the plaintiff, "which bears the seal and signature of Syed "Shah Enaet Hossein, Sojjada Nusheen, and "other respectable men of this city."

"The *second* point to be determined is "the amount of dower settled on plaintiff's "marriage. As to this point, I have to "remark that Moulvie Mahomed, Sharek "Azeezut Ruhmun, Mahomed Subun Sawdut "Khan, Sheikh Kader Buksh, Muder Buksh, "and Syed Share Ali, witnesses for the "plaintiff, depose, they saw with their own "eyes plaintiff's marriage settled at 1,80,000, "a moiety rupees, and the other moiety "gold mohurs, and as this deposition is "perfectly consistent with the general

"custom, it is no doubt true and fit to be "credited by the Court. This fact is "also borne out by the plaintiff's husband, "Syed Mahomed's own petition of 26th "September 1837. Again, in the verbal "statements of the defendants, taken down "by the former Principal Sudder Ameen, "Mr. Robert, alluded to above, they (de- "fendants) do not deny the amount of "the dower pleaded by plaintiff. Although "in the written statements, which were re- "turned, objection has in a manner been "raised by the words 'heavy, without *ka-* "*beenamah*, &c.,' it is no direct denial. As "regards the *kabeenamah*, it is to be re- "marked that the defendants now allege the "dower to be 40,000 rupees and forty gold "mohurs, which amount they themselves say "has been settled without a *kabeenamah*, and "it is well known that a *kabeenamah* is not at "all customary among the respectable Syeds "and Sheiks of the *Ohaly* sect, and, even "granting it to be a denial, still it is of no "avail in the face of oral statements taken "down by the former Principal Sudder "Ameen in his own hand-writing. It is "quite obvious that the plea now set up "by the defendants, after four years' pen- "dency of the suit, as to the dower being "40,000 rupees and forty gold mohurs, "is a plea only which is usually taken in "such cases, and the corroboration of this "plea by the defendant's witnesses is by no "means fit to be taken notice of, as these "witnesses are men of little worth, and, com- "pared with the witnesses for the plaintiff, "have no worth at all; for witnesses Suffa- "nent Hossein and others are residents "of different remote stations, Monghyr, "Gogry, Sooruj Gurrah, &c., and of different "castes; most of them are illiterate, and are "rather of the plebeian order, their deposi- "tions are contradictory and conflicting."

The Principal Sudder Ameen concludes his judgment by ruling: "The point to be "determined in the *third* place is, whether "a claim for such a large amount of dower "can be entertained by the Court? Now, "according to Macnaghten's Mahomedan "Law, page 288, and decision of the Sudder "Court, dated 20th July 1801, in the case of "Golam Hossein Ali, for dower to the "amount of 3,00,000 gold mohurs, the "largeness of the amount does not vitiate "the claim; certain of plaintiff's witnesses "say that the object of granting dower to "such a large amount is to secure to the "wife, after the death of her husband, all "that he might acquire. What harm, then, "if it was granted with this object? In "this view it is apparent that all the pro- "perty left by Syed Mahomed cannot but "come under the operation of this decision."

The defendant appeals from this decision, and urges:—

1st.—That such a decree cannot be given without the production of a deed of dower.

2nd.—That the written statements recorded at the previous hearing in 1860 are not sufficient evidence in this case.

3rd.—That the depositions of the plaintiff's witnesses are not credible.

4th.—That the *bye-mokasa* of Moulvie Imdad Ali, relied on by the Principal Sudder Ameen, is not a genuine document.

5th.—That the copy of the petition of Syed Mahomed, dated 26th September 1837, has already been rejected by the Judges of this Court who ordered the remand.

6th.—That the evidence does not show a uniform custom of fixing, as dower amongst the respectable families of Bhaugulpore, the large amount claimed in this case.

7th.—That the *muzernamah* was not deposed to by those who signed it.

8th.—That defendant's witnesses prove the dower fixed to have been 40,000 rupees.

9th.—That the suit being a speculative one for the property of Syed Mahomed on the part of the present plaintiffs, and not really one on the Mahomedan Law of dower, should be dismissed.

We omit to notice the other grounds of appeal, such as refer to the Principal Sudder Ameen's personal knowledge of these matters, and the probability or otherwise of Mahomed Syed's double journey to Sahibgunge, as our judgment need not have reference to these items.

Judgment.—After consideration of the arguments of pleaders, and the evidence they have used to support them, we are clearly of opinion that there is no sufficient ground to interfere with the judgment below.

On the *first* of these pleas, we would observe that, although ordinarily, where the actual deed of dower, upon which a suit for dower is brought, is not produced and proved, the Courts require other sufficiently convincing evidence to establish the contract before they will give a plaintiff verdict in his favor, still it would be absurd to hold, as an absolute rule of law, that, where such a deed is not produced, no claim of dower shall ever be decreed. Each case must depend upon the circumstances of it. Experience shews us that a deed of dower

is not in all cases indispensable to the truth and validity of a claim for dower, and this leads us to the *second* and *third* pleas in appeal.

With respect to the *second* plea, we see no reason why the statements recorded in Court by parties in a position to know the facts should not have a certain weight. The Principal Sudder Ameen has not relied upon them absolutely, but only as one and by no means the strongest of the grounds upon which his decision has been based.

The *third*, *sixth*, and *eighth* pleas may well be taken together. We are of opinion as to these that there is on plaintiff's part an amount of evidence, as set forth in the Principal Sudder Ameen's detailed judgment, and as read to us, which establishes sufficiently that the dower claimed was that agreed to and customary. It is, of course, difficult in such cases as this after 30 or 40 years for plaintiffs to produce such full and direct evidence as they otherwise might have done. But taking all the evidence on their side as a whole, and looking to the respectability of many of the witnesses, and to the consistency of the testimony as a whole, and, further, considering that defendant does not in any way establish his plea that the dower was 40,000 rupees and 40 gold mohurs, we see no reason why we should say that the Principal Sudder Ameen is wrong, and reverse his judgment. It may be true that the sum claimed and deposed to, as agreed upon and customary, is a very large sum: but the Mahomedan Law books, and the decided cases, and also the experience of the country, show that it is a fact that sums so apparently beyond the means of the parties are fixed as dower amongst Mahomedans from the lowest to the highest.

The *fourth* plea is not established, nor is it one very material either way.

We admit that the *fifth* plea has some weight, and it is the only one that has. This Court certainly did, before remand, pronounce an opinion unfavorable to the *bonâ fide* character of the petition of Syed Mahomed of the 26th September 1837. But, excluding it altogether from our consideration, we think there is sufficient evidence without it to warrant our not interfering with the decision of the Principal Sudder Ameen.

On the *seventh* plea, we notice that the *muzeranamah* or statement "not on oath before the Court" of respectable parties is not essential to plaintiff's proving his case, and, therefore, may be put out of it; but it is certainly not opposed to his claim.

The *ninth* plea may be correct as to the speculative character of the suit; and yet those who are legally plaintiff's, and can establish the original claim of dower, have a legal right to a verdict.

Upon these grounds we see no sufficient reason to interfere with the decision of the Principal Sudder Ameen, and we accordingly dismiss the appeal with costs.

The 10th January 1866.

Present:

The Hon'ble H. V. Bayley and Shumbhoonath Pundit, *Judges.*

Evidence—Civil Court not bound by Magistrate's opinion of a document.

Case No. 1970 of 1865.

Special Appeal from a decision passed by Mr. G. G. Balfour, Judge of Chittagong, dated the 20th April 1865, affirming a decision passed by the Moonsiff of Satkaneah, dated the 16th December 1863.

Nittyanund Surmah and others (Defendants), *Appellants,*

versus

Kashenath Nyalunker (Plaintiff), *Respondent.*

Baboo Chunder Madhub Ghose for Appellants.

Mr. R. E. Twidale for Respondent.

A Civil Court is not bound to adopt the view of a Magistrate as to the genuineness or otherwise of a document.

THE ground of special appeal in this case is, that the Magistrate (to whom the Moonsiff referred the *first* document now pronounced to be spurious) found it not to be so, and that, therefore, the Civil Court was bound so to regard it. In respect to the *second* document, the special appellant urges that no sufficient grounds have been given for its rejection.

We are not aware of any law or rule of legal practice which compels a Civil Court to adopt the view of a Deputy Magistrate as to the genuineness or otherwise of a document. The Judge has found, as a fact, on all the circumstances shown by the evidence, and on the appearance of the *second* document, that neither of the documents is trustworthy. With this finding of fact we cannot interfere in special appeal, and we, accordingly, dismiss this special appeal with costs.