1870. *March* 30.

rated, because whatever may be the extent of the powers of the Local Legislature in regard to the conferring jurisdiction over European British Subjects,—it is at least necessary that the intention of the Legislature creating the offence should not appear to be inconsistent with the conviction and punishment of offenders by the High Court and, reading the whole of the section together as we are bound to do, the obvious intention was to create an offence punishable only on summary conviction before a Magistrate. In our opinion, therefore, the enactment must be given the same effect whether the assumption that the Local Legislature has not the power to make European British Subjects liable to punishment by a Magistrate is right or wrong.

This short ground is sufficient to dispose of the question reserved, and we have no desire to enter, and think we ought to abstain from entering unnecessarily, upon the further grave question mooted by the Crown Prosecutor, Mr. Mayne, as to the power of the Local Legislature to render European British Subjects punishable by a Magistrate on summary conviction for an offence newly created by them.

The result is, that the conviction in the present case must be annulled, and the defendant's recognizance discharged.

It is necessary to add that this is the judgment of my brother Bittleston and myself only. My brother Holloway has intimated to me that he dissents from the judgment but does not desire to say more.

Appellate Jurisdiction. (*a*)

Referred Case No. 15 *of* 1870.

In the case of an advance of money on a contract that it should be held on loan by the husband (a Mopla following the Mahomedan law) without liability to interest, the repayment to be made by the husband in the event of a divorce taking place, or out of his effects at his death.

Held, that the Mahomedan law of dower was not applicable to the suit, and that the period of limitation was three years from the date of the divorce or the death of the husband.

1870. *April* 1. *R. C. No.* 15 *of* 1870.

THIS was a case referred for the opinion of the High Court by Strinivasa Rao, the Principal Sadr Amin of Mangalore in Appeal Suit No. 316 of 1868.

Present: Scotland, C. J. and Innes, J.

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April 1.
R. C. No. 15
of 1870.

The following was the case stated :—

Under the provisions of Section 28, Act XXIII of 1861, I beg respectfully to submit the following case for the decision of the Honorable Judges of the High Court of Judicature :

In Appeal Suit No. 316 of 1868, pending before this Court, the plaintiff sued to recover Rupees 200 and interest being Kassi (dower) given to his late son-in-law the 5th defendant's husband at his marriage. The latter died on the 17th August 1861 and is succeeded by the first four defendants, and the suit has been instituted on the 7th March 1866, *i. e.*, after four years.

The 1st and 2nd defendants denied the claim alleging that plaintiff never gave 200 Rupees on account of Kassi ; that Kunhali, uncle of 5th defendant, promised to give a dower of 50 Rupees, but having no money in hand mortgaged his garden verbally for that sum, that he held possession of the garden and gave its produce to their deceased brother (plaintiff's son-in-law).

The Munsif of Bekal awarded to plaintiff the principal amount claimed and costs of the suit.

Being dissatisfied with this decision, the 1st and 2nd defendants have preferred this appeal.

The parties to the suit belong to the Mopla caste professing the Mahomedan religion.

The witnesses examined for plaintiff depose that the term Kassi is not recognised by the Mahomedan law ; that at the marriage of a girl Kassi is given by her relations to the bridegroom either in money or land ; that the latter is to enjoy the produce thereof ; that Kassi is given to a bridegroom as a loan recoverable on his death or divorce. It is true that a custom of returning Kassi prevails among Moplas in this District.

The pleader for the appellant argues that as stated by plaintiff's witnesses the sum said to have been given by plaintiff is to be considered as a mere loan ; that there being no written document to support it, the claim ought to have been brought within three years from date of demise of plaintiff's son-in-law. He distinguishes a case of Kassi from

1870. *April* 1. *R. C. No.* 15 *of* 1870.

Mahar, the one being for money actually given, and the other for money promised to be paid after the demise of husband.

But the vakil for plaintiff urges that Kassi is not a loan of money; that it is like Mahar (dower), the claims to which come under the provisions of Section 16th of the Limitation Act, as decided by the High Court of Bengal.

My own opinion is that the claim brought by plaintiff to recover money paid on account of Kassi is not of the nature described in Clause 9 of Section I, but one for which no special provision is made by Law. As the Mahomedan law makes no difference in the dower given by the relations of a bride or bridegroom, and the cause of action in similar cases arises from date of divorce or death of the husband, I think that this case, like claims to Mahar, falls under the provisions of Section 16th, Act XIV of 1859.

Therefore the point for decision is whether the time for instituting suit for Kassi is three years or six.

No counsel were instructed.

The Court delivered the following

JUDGMENT:—The Mahomeden law relating to dower is not, it appears to us, in any way applicable to the present question. Upon the facts stated, we think the transaction called "Kassi" is really no more than an advance of money on a contract that it should be held on loan by the husband without liability to interest, and the amount repaid by him in the event of a divorce taking place or out of his effects at his death.

So regarded, Clause 9 of Section 1 of the Act of Limitations applies to the suit, and three years is the period of Limitation.