

*Judgment of the Lords of the Judicial Committee of
the Privy Council on the Appeal of Abdul
Ali Khan v. Massooma Beebe, from the late Sudder
Dewanny Adawlut, North-Western Provinces, Agra;
delivered July 11th, 1871.*

Present:—

SIR JAMES W. COLVILLE.

SIR JOSEPH NAPIER.

LORD JUSTICE JAMES.

LORD JUSTICE MELLISH.

SIR LAWRENCE PEEL.

THIS was a suit which was brought by the Plaintiff and Respondent before us against the father of the two Appellants, who had been the husband by the second marriage of the Respondent's mother, to recover the Respondent's share of the mother's dower, a sum of two lacs and 75,000 rupees, and also to recover her share of her mother's property, which was also laid at two lacs and 73,186 rupees. The first Court gave Judgment for the full amount claimed for dower, and gave Judgment, with certain deductions, for the sum claimed for the share of the personal property. On appeal, the Sudder Court affirmed in the first instance the Judgment as to dower, but reduced very largely the sum found for the personal property. Then there was a review granted upon a document which will be stated presently, which made a material difference in the case, and on that they reduced the Plaintiff's share of the dower to one and a quarter lac, and they also further reduced the sum which they had given for the share of the personal property to one-fifth of the amount which had been given by the Principal Sudder Ameen in the Court below.

An Appeal having been brought before us, it was admitted by the Counsel for the Appellant that the questions before us were entirely

questions of fact. And really the questions were not only questions of fact, but they were entirely questions of amount, whether the sum given for the share of the dower was too much, and whether the sum given for the share of the personal property was too much.

The general evidence as to the amount of dower in the first instance was this, that a large number of witnesses, no doubt speaking of matters which had happened a great many years before they gave their evidence, professed to have been present when the contract for the dower was made and the marriage was agreed upon, and they all swear that the sum agreed upon was two lacs and 75,000 rupees. Then there were some witnesses in opposition to them, for the Defendant, who were disbelieved by the Principal Sudder Ameen, who swore that, it being the second marriage, it was expressly agreed that it should be a merely nominal amount; and the Defendant himself said, on being examined, that in the family of the lady the usual amount of dower on a first marriage was one lac and 25,000 rupees, but that the usual dower on a second marriage was a mere nominal amount, though at the same time he could not state that there was any instance of a second marriage in the family. On that, the Principal Sudder Ameen believed the witnesses for the Plaintiff, and the Sudder Court agreed with him. Then, in the course of the investigation—not in the first instance—there was found a copy of a marriage settlement, registered at Benares, which, after a very careful inquiry, the Principal Sudder Ameen came to the conclusion was a genuine document, and that conclusion has not been disputed before their Lordships. Now, by that document, which appears to have been executed more than a year after the marriage, the husband says,—“ I promise and engage faithfully, and
 “ according to the Mahomedan law, to pay the sum
 “ due on account of dower, as is customary among
 “ people of high rank, according to the amount
 “ agreed upon, fully and freely, and without being
 “ constrained thereto, between me and my wife
 “ aforesaid, in the presence of the persons present
 “ at the marriage.” That is certainly wholly inconsistent with his account, because, although the amount does not appear, yet it would appear to be

a large amount, certainly a substantial amount, it is "the sum due on account of dower as is customary among people of high rank, according to the amount agreed upon." Then he goes on to pledge the whole of his property, and what he might acquire, in payment of that dower. It was on this document the Court thought that there was a substantial sum agreed to be given, and as there was no other sum of which there was evidence being a substantial and large sum, except the amount deposed to by the Plaintiff's witnesses, they on that gave their Judgment for that sum; but after they had given that Judgment, the marriage settlement of the lady with her first husband was discovered, and on that the Defendant petitioned for a review. By that marriage settlement it appeared that the dower that had been agreed to be paid by the first husband was one lac and 25,000 rupees, and thereupon the Court thought there was sufficient justification for them to reduce the amount of dower which was given to the same sum as had been given on the first marriage, upon the ground that it was not probable, or right in fact, that a larger sum should be given on the second marriage than on the first; and in fact this agreement, which was registered at Benares, no particular sum being mentioned, even assuming that their Lordships were to doubt whether any express sum was agreed upon on the occasion of the marriage, at all events, would amount to an agreement to pay a fair and proper sum, such as was reasonable, having regard to her rank.

Then there is the evidence of the Defendant himself that the ordinary sum paid in the family on a first marriage was one lac and 25,000 rupees. It is true, he says, that on a second marriage, it ought to be only a nominal sum, but of that he has produced no evidence at all.

The question for their Lordships, then, is this—can they say that this conclusion of the Sudder Court is wrong? They are of opinion that there is no ground at all on which they can say that the amount the High Court has fixed is wrong. It appears quite clear from this agreement, which is registered, that a substantial amount for a lady of rank was agreed to be given, and there is evidence as to what is the usual amount in that family. The

Sudder Court have come to that conclusion, and there appears nothing very unreasonable in that amount being agreed upon. It may be perfectly true that the husband, the father of the present Appellant, the original Defendant, was, comparatively speaking, but a poor man at the time when the marriage took place; but the lady, it is evident, was entitled at that time to considerable property, and claimed considerable property. He got the entire management of that property, and it appears very clearly that he has made a very good thing out of it, and has come to be possessed of large sums; and he also had expectations of his own. It does not appear to their Lordships to be at all unreasonable that he should give such a sum, nor can they say the Sudder Court was wrong in fixing upon that sum.

Then, as to the question of the personal property, no doubt there is very little satisfactory evidence as to what the amount was, but it appears highly probable that the lady had a considerable amount of personal property—jewels and property of that kind. The Defendant, who might have made the matter clear, does not choose to make it clear, but chooses to say that she had nothing at all, and to deny that there was anything. He might probably have brought the actual jewels forward, and had them valued, and shown the real amount. He has not chosen to do so. Then, the Sudder Court say: "Looking at the list filed by the Plaintiff, we can see that the Plaintiff is greatly exaggerating their amounts." They take one item, "an elephant," and they say "that is charged at Rs. 5000, and we can see that that is a vast deal too much;" and therefore they come to the conclusion that a fifth will be more likely to be the right sum than the sum which the Court below have given, and they come to the conclusion to give that sum. Their Lordships have no ground for saying their conclusion is wrong, or differing from that Judgment. It may be impossible to come to what is the real, true, fair, and just amount, but there is no reason to suppose that the amount given is not as likely to be right as any other sum that could be arrived at.

On the whole, therefore, their Lordships will humbly recommend to Her Majesty that this Appeal should be dismissed with costs.