Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Ranee Khajooroonissa v. *Ranee Ryeesoonissa and Ranee Ryeesoonissa* v. *Ranee Khajooroonissa* (*Nos.* 22 *and* 45 *of* 1870), *from the High Court of Judicature at Fort William in Bengal; delivered June 4th*, 1875.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THESE cross Appeals arise in a suit brought by the Ranee Ryeesoonissa against the Ranee Khajooroonissa, the Defendant being the representative of the estate of Rajah Enajet Hossein. The suit was brought to recover the sum of a lac of rupees in respect of dower, less certain payments which had been made in the lifetime of the Rajah, and which reduced the total claim under the contract of dower to Rs. 91,875. The two Ranees were the widows of the Rajah. The Plaintiff Ryeesoonissa was the elder wife; and it appeared that she had separated from her husband several years before his death, and before his marriage with the Ranee Khajooroonissa. The claim for dower is divided into two parts. By the Kabeennamah, under which the dower was agreed to be paid, one-fourth was declared to be prompt, and the remaining three-fourths deferred dower. The Principal Sudder Ameen gave judgment for the Plaintiff for the full amount of her claim, that is, both for the prompt and for the deferred dower. On appeal

the High Court affirmed so much of the judgment of the Principal Sudder Ameen as related to the deferred dower, but reversed it as to the prompt or exigible dower; being of opinion that there had been a demand of that dower in the lifetime of the Rajah, and a refusal of it, and that the claim was barred by the Statute of Limitations. Both the Ranees appealed from that decision. The Ranee Khajooroonissa appealed upon the ground that the Kabeennamah itself, which was the foundation of the Ranee Plaintiff's claim, was not a genuine document, and also upon the ground that the deferred dower was barred by the Statute of Limitations. The ground upon which the deferred dower was alleged to be barred was that there had been a divorce between the parties, and that the deferred dower then became payable. It was also said that the Rajah had made an aila or vow that he would have no further intercourse with his wife, and that that also made the dower payable at a period which would render the Statute of Limitations a bar.

On the opening of the appeal for the Ranee Khajooroonissa by Mr. Leith, it clearly appeared that the facts entirely failed the Appellant, and that no question really arose for their Lordships' decision. The genuineness of the deed was entirely a question of fact, which had been decided by both the Courts below in favour of the Ranee the Plaintiff. With regard to the divorce and the aila, these also were questions of fact which had, in like manner, been decided against the Ranee Defendant. Her appeal therefore must be dismissed, and dismissed with costs.

The only question in the cross appeal, and it is a question of some importance, is whether the prompt dower is barred by reason of there having been, as alleged on the part of the Defendant

Rance, a demand and a refusal of that dower in the lifetime of the Rajah, beyond the period prescribed by the Statute of Limitations.

It is not necessary to decide whether the limitation to be applied is that in the 9th clause of the first section of the Act 14 of 1859, or that in the 16th, because whether the term be the three years mentioned in the one, or the six years mentioned in the other, the interval between the alleged breach or cause of action and the commencement of the suit has been longer than either. For the present purpose, the terms used in the two sections, although differing in language, are the same in substance. The limitation in one runs from the breach of the contract, in the other from the cause of action. If there had been a breach, there would be a cause of action; therefore the terms may be regarded as identical so far as the decision of the present appeal is concerned.

The question is, whether certain proceedings, which were taken by the Ranee Ryeesoonissa in Court with a view to obtain leave to sue her husband for this dower *in formâ pauperis*, amount to such a demand as would be sufficient to constitute a cause of action within the meaning of the Statute. It is unnecessary to say what would have been the effect of an abortive suit brought at that time, because their Lordships are disposed to come to the conclusion that these proceedings did not arrive at the stage when they became a suit. The object of the Ranee was to place herself in a position to maintain a suit as a pauper, without incurring the expense, which she alleged she was unable to pay, of a regular suit. Her application to the Court was for that purpose; but in making it she was obliged to conform to "The Civil Procedure Code," Act VIII. of 1859. The portion of the Act which relates to pauper suits requires

that the application when made shall be by petition, containing the particulars required in regard to plaints, the object being that if the application be ultimately successful, the petition is to be deemed the plaint in the suit. But the application to the Court is really only for permission to sue *in formâ pauperis*. Section 299 says:—"The application to the Court for "permission to sue *in formâ pauperis* shall be "by petition which shall be written on a stamp "paper of eight annas." Then section 308 enacts, "If the application of the petitioner be "granted, it shall be numbered and registered, "and shall be deemed the plaint in the suit, "and the suit shall proceed in all other respects "as an ordinary suit, except that the Plaintiff "shall not be liable to any further stamp duty "in respect of any petition, appointment of a "pleader, or other proceeding connected with "the suit, or with the execution of any decree "passed on it." Therefore, if the application of the Ranee had been successful, the petition would have been turned into and would have become a plaint. But it was unsuccessful. The Principal Sudder Ameen was of opinion that she had sufficient means to pay the expenses of the Court, and ordered that the petition "of pauperism be rejected." Her application, therefore, fell to the ground, and the petition never became a plaint.

Since the decisions which have taken place at their Lordships' Board, there is really no doubt as to what is the nature of prompt or exigible dower, and under what circumstances the Statute of Limitations will run. Prompt or exigible dower may be considered a debt always due and demandable, and certainly payable upon demand, and therefore, upon a clear and unambiguous demand and refusal, a cause of action would accrue, and the Statute would

begin to run. The question here is, whether the proceedings to which reference has been made really do amount to such a demand. No doubt the form of the proceedings takes the shape of a demand in a plaint, but their Lordships think that, with a view to ascertain the intention of the Ranee, and the force to be attributed to her application, they must look at the substance and nature of the proceedings, and consider that the form is that prescribed by the law, and is not the voluntary choice of the parties. So regarding them, what the Ranee says to the Court is no more than this:—"I desire to make a demand "against my husband in the form of a suit, if you "will enable me effectually to do so by allowing "me to sue *in formâ pauperis*." The Court rejects her application, and says, "We will not allow you to make a demand in that way." The petition of the Ranee seems to their Lordships to be an expression, and a strong expression, of an intention to sue the husband in that form if she is permitted to do so, but it does not appear to them to amount to a demand by way of action until she has that permission. The application she makes to the Court to be allowed to bring an action is made conditionally only upon her obtaining leave to do it as a pauper.

It is said that the husband, by his counter-petition, denied his liability to pay the dower, raising several objections both to the deed and to the amount claimed; but their Lordships think that his opposition does not alter the character of the proceedings. No amount of opposition on his part would be sufficient to constitute a cause of action, unless the wife had made a previous demand. The option lay with her to demand the dower or not. It was for her to elect the time at which she would do it, and if she has not done it, his opposition, however strongly expressed, would be immaterial.

It is to be observed that there is no evidence of any demand other than the proceedings referred to.

Under these circumstances, their Lordships think that the ground upon which the Court held that the Statute of Limitations applied fails, and that the Appeal on the part of the Plaintiff Ryeesoonissa ought to succeed. In the result, therefore, they will humbly advise Her Majesty to dismiss the Appeal of the Ranee Khajooroonissa, and to allow the Appeal of the Ranee Ryeesoonissa, and to direct that the judgment of the High Court be reversed, and the decree of the Principal Sudder Ameen affirmed. Their Lordships are also of opinion that the Ranee Ryeesoonissa should have the costs incurred in India, and the costs of these Appeals.