Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Prince Mirza Suleman Kadr v. *Nawab Mehdi Begam Surreya Bahu (Appeal and Cross Appeal consolidated), from the Court of the Judicial Commissioner of Oudh, Lucknow; delivered* 8*th July* **1893.**

Present:

LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The Plaintiff in this suit is the wife of the Defendant, and she sues to obtain the dower which on their marriage he contracted to pay. The Defendant has in all the stages of the litigation until the argument at this bar contended on several grounds that he is not liable to pay any dower, but those defences have been over-ruled in the Courts below, and have rightly been abandoned on the argument of this appeal. There is now no question except as regards the amount to be paid by the husband to the wife.

The marriage took place on the 2nd August 1871. On the 3rd two deeds were executed by the Defendant. One, written in Persian, declares the contract completed. After a florid exordium, relating mainly to the excellence of the married state, it states that the Defendant had, in consideration of a marriage settlement and dower of the sum of 10 lacs of rupees and Rs. 150 *per*

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mensem, brought within the net of perpetual marriage the Plaintiff, whose personal merits it extols in highly extravagant terms. The other deed, written in Urdu, is more business-like. It makes the same statement as to the amount of dower, and adds that the second item, viz. the annuity, is for the lifetime of the wife, and for the purposes of her personal expenses. And the Defendant then goes on to mortgage a bond for Rs. 8,500, and his own dwelling-house, valued at Rs. 20,000, by way of security for the annuity.

The parties lived together till the year 1886, when the wife withdrew from her husband's society. Legally speaking, her withdrawal has no effect on her claim to dower. Practically it led to a discontinuance of her annuity, and to the present suit, in which she asks for a performance of the contract, and for the arrears of her annuity.

It is so common a thing among Mahomedans in this part of the world to put into marriage contracts for dower sums far larger than the husband can pay, or than the wife expects to receive, that Courts of Justice are armed with large powers over that class of contract. By the Oudh Laws Act 1876, it is enacted :—

" Where the amount of dower stipulated for " in any contract of dower by a Muhammadan " is excessive with reference to the means of " the husband, the entire sum provided in the " contract shall not be awarded in any suit " by decree in favour of the plaintiff, or by " allowing it by way of set-off, lien or other- " wise to the defendant ; but the amount " of the dower to be allowed by the Court " shall be reasonable with reference to the " means of the husband and the status of " the wife."

In this case the lady is of high status, being, as her husband is, a member of the Royal family of Oudh. But with respect to the means of the husband, it was found by the District Judge that they consisted of property worth Rs. 60,000, which was his absolutely, and of an income of Rs. 2,940 *per mensem*, which was his for his life. It further appears that at the date of the marriage he had two married wives, and three temporarily married wives; and he must then have had some children, for in the year 1887 he had four sons, two daughters, and eight grandchildren.

There is some evidence of his having had other property at some time; but it is clear enough that a contract by a man situated as the Defendant was, to pay a million of rupees down, besides an annuity of Rs. 1,800 a year for the life of his wife, is a mere piece of bravado, allowed or possibly required by custom, but never intended for actual fulfilment.

In the exercise of the discretion given him by law, and under the above stated circumstances, the District Judge found that Rs. 25,000 was a reasonable sum to cover all demands by the wife. The Plaintiff appealed from his decree, and the Defendant lodged objections. Each party took the same grounds before the Judicial Commissioner as before the District Judge.

The Judicial Commissioner found no evidence to show that the means of the husband were any larger than the District Judge had concluded, and he refused to grant the Plaintiff any larger sum in actual cash than Rs. 25,000. But he added, " I do not however perceive why the " Lower Court has not granted the Appellant " the continuance of the monthly stipend of " Rs. 150 which was expressly selected by the " Defendant as the mode in which he will always " pay part of the Plaintiff's dower." And he

decided that the monthly allowance of Rs. 150 ought, under all the circumstances of the case, to be also decreed to the Plaintiff. From the decree so modified both parties have appealed to Her Majesty in Council.

Their Lordships feel much difficulty in interfering with the exercise of a discretionary jurisdiction such as this. Nevertheless, when the first Appellate Court has over-ruled the discretion of the Primary Judge, and has altered his decree, an ulterior Court of Appeal can hardly refuse to examine the grounds on which the alteration is made. Now the Judicial Commissioner states that he could not perceive why the District Judge did not decree payment of the annuity. But the reason is to be found in the judgment of the District Judge, viz. that to give a lump sum is likely to avoid future trouble. That is a reason which strikes their Lordships as having considerable weight. Moreover, it clearly shows that the District Judge was looking at the case as a whole, and was considering what payment it was reasonable to substitute for the entire contract which could not take effect. The Judicial Commissioner also holds in one part of his judgment that the annuity is an integral part of the dower; but when he comes to fix the reasonable amount, he separates the two items; he takes a distinction between that part of the dower which was payable at once because no time was fixed, and that which was payable by monthly instalments; and he thinks that the latter ought to be more specifically executed than the former. It appears to their Lordships that the District Judge took the course indicated by the Statute, in considering whether the dower as a whole was excessive in reference to the means of the husband, and in considering what as a whole was a reasonable amount to be substituted.

They are not intimating any general opinion against the award of an annuity in preference to, or in addition to, a sum down. Each case must depend on its own circumstances. In this case however they do not find any expression of opinion on the part of the Judicial Commissioner, that, having regard to the Defendant's means, the District Judge had awarded too little. He does not address himself in terms to that question, he only states that the Defendant had selected an annuity as a mode of paying part of the dower, and that he could not perceive why the Court had not decreed it. Certainly the sum of Rs. 25,000 does not seem to be a small sum for a man to settle who has only Rs. 60,000 in absolute interest, and who had at the time of his marriage, and has now, many family obligations to answer out of his life income. But their Lordships are not in a good position for forming any opinion of their own as to what is a reasonable amount. They prefer to maintain the decree of the District Judge because he seems to have addressed his mind most directly to that which the Oudh Act requires, and his reason seems to have been overlooked by the Judicial Commissioner.

The result is that they will humbly advise Her Majesty to reverse the decree of the Judicial Commissioner, to dismiss the Plaintiff's appeal to the Judicial Commissioner with costs, and to restore the decree of the District Judge. The Plaintiff must pay the costs of these appeals.