Special Appeal No. 88 *of* 1865.

1865.
Dec. 6.

FA'TMA' BIBI' kom SADRUDDIN .....*Appellant.*
SADRUDDIN valad NIZA'MUDDIN .....*Respondent.*

Muhammadan Law—Dower—Limitation—Act XIV. of 1859.

In a suit by a Muhammadan wife against her husband for her dower :—

Held that the cause of action arose when the suit was instituted, and at no earlier period; and that, therefore, the claim was not barred under any of the sections of Act XIV. of 1859.

Held also, as no specific amount of dower had been declared exigible, and as there was no clear evidence of what was customary, that the Assistant Judge in appeal committed no error in law, in holding that one third of the whole may be considered exigible, during the lifetime of the husband, the remaining two thirds being claimable on his death.

THIS was a special appeal from the decision of C. B. Izon, Assistant Judge of Puná, in Appeal Suit No. 139 of 1864, amending the decree of the Principal Ṣadr Amín of Puná, in Original Suit No. 131 of 1863.

The case was heard before COUCH, TUCKER, and WARDEN, JJ.

Ganesh Hari Paṭvardhan and *Vishvanáth Govind Cholkar* for the appellant.

Shántárám Náráyan and Ganesh Amrit for the respondent.

The facts sufficiently appear in the judgment.

COUCH J. :—This is a claim by a Muhammadan wife to recover, during the lifetime of her husband, the full amount of dower settled at the time of her marriage. The amount of the dower entered in the register of the marriage, in the office of the District Kází, is stated to be forty-seven *tolá* of gold, and one and a half *ser* of silver; and it is not specified whether the payment is to be prompt or deferred.

The court of first instance found that the dower stipulated for was forty-seven *tolá* of gold, and one and a half *ser* of silver; and it awarded to the wife the pecuniary value of these quantities of gold and silver, at the current bazár rates, namely, Rs. 564 for gold, and Rs. 94½ for silver : total Rs. 658½.

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FA'TMA' v. SADRUDDIN.

On appeal, the Assistant Judge of Puná, following the precedent quoted in 1 Morley's Digest, 298, under the head, Husband and Wife, Exigible Dower, No. 78, held that the payment of only one-third of the dower agreed upon could be claimed in the husband's lifetime; and he, therefore, amended the decree of the Principal Ṣadr Amín to that extent, and awarded one third only of the dower, according to the Principal Ṣadr Amín's valuation, or Rs. 216, with costs in proportion.

In special appeal, it has been argued, for the wife, that she was entitled to the payment of the entire value of the quantities of gold and silver agreed upon: Macnaghten, Chap. VII., 22. On the other hand, it has been contended, for the husband, that the entire claim is barred by the law of limitation; and that, in the absence of any divorce, payment of more than one-third cannot be claimed during the husband's lifetime.

First, with respect to the question of limitation, which appears to have been raised specifically in both the lower courts, the decision of the Privy Council in *Ameeronissa* v. *Mooradoonissa* (*a*) distinctly lays down the rule that a Muhammadan wife has a right of suit to recover her dower, without a previous demand; and that she is not obliged to sue her husband immediately, or during his lifetime. Applying this rule to the present case, the cause of action arose at the time the present suit was instituted, and at no earlier period; and so under no section of Act XIV. of 1859 can the maintenance of the suit be held to be barred.

On the second question the decision of the lower court appears to be correct. The more approved rule on this subject is given in Baillie's Digest of Muhammadan Law, p. 126, as follows:—"When nothing has been said on the subject, both the woman and the dower mentioned in the contract are to be taken into consideration, with the view of determining how much of such a dower should properly be prompt for such a woman; and so much is to be *mooújjul*,

(*a*) 6 Moo. Ind. App. 211.

or prompt, accordingly, without any reference to the proportion of a fourth or fifth; but what is customary must always be taken into consideration."

In the present case no clear evidence of custom is adduced on either side; and in the absence of such evidence, the general rule laid down by the Ṣadr Diváṇí Adálat at Agra, in *Mereamoonissa Begum* v. *Imdadee Begum* (*b*), that where no specific amount of dower has been declared exigible, one third only of the whole should be considered exigible during the life of the husband, the remaining two thirds being claimable on the death of the husband, seems to be generally equitable, and one that may be properly followed in the present instance. It certainly has not been shown that in the adoption of this mode of settlement the lower appellate court has committed any error in law.

We, therefore, affirm the decree of the Acting Assistant Judge; and order that each party do bear his or her own costs in special appeal.

(*b*) 3 S. D. A. Dec., N. W. P. 185.

Referred Case.

NA'THI' *against* DA'UD.

1866.
Jan. 18.

Muhammadan Law—Dower—Limitation—Separation.

Held that the period prescribed by the Limitation Act does not begin to run in the lifetime of her husband against a Muhammadan woman's claim for dower, until she has demanded such dower.

Held, also, that separation does not make it incumbent upon her to make any such demand.

THIS was a reference by W. M. P. Coghlan, Acting Judge of Khándesh, under Sec. 28 of Act XXIII. of 1861.

The suit was brought by Náthí against her husband, Dáud, to recover from him Rs. 125, the amount of dower which Dáud had, on the occasion of his marriage with her, in 1860, agreed to pay her. She alleged in the plaint that