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

1866.
NA'THI'
v.
DA'UD.

Dáud, by keeping a mistress, and by ill treatment, had compelled her to leave him, and to reside with her father.

Dáud's defence was that Náthí had now no claim to dower; that she had brought a false charge against him and his mother, and caused their detention for a time in custody; that she had voluntarily left his house to go to her father's; that he had presented her with ornaments worth Rs. 132, at the time of the marriage; that those ornaments compensated for dower among Muhammadans, and were called *mahr*; that although a certain dower is nominally agreed to, it is never demanded or paid; that, the amount of dower being a debt, the claim was barred by Sec. 1 of Act XIV. of 1859; and that, moreover, Náthí had, by her own misconduct, deprived herself of all right to claim dower.

The Munsif of Nandurbár, A'pájí Lakshman, holding the claim proved, gave a decree in favour of Náthí. He was of opinion that the ornaments, spoken of by the defendant, were a separate present, and formed no part of the dower; and could not, therefore, be set off against this claim for dower.

This decree was appealed against on two grounds: namely, that the claim for dower was a claim for debt, and, therefore, barred; and that the ornaments ought to have been considered a set-off against the claim for dower.

The following judgment was recorded in appeal:—

"The issues for decision are: (1) Is the suit barred by the Limitation Act; (2) Has Náthí a claim to dower, as sued for; (3) Has Dáud a right to set off the ornaments, value Rs. 132, against dower. No other issue is sought.

My decision on these issues is: (1) The suit is not barred by the Limitation Act; (2) Náthí has a claim to the dower, as sued for; (3) Dáud cannot set off the ornaments, valued at Rs. 132, given at the wedding, against dower.

"The pleader for the appellant, Mr. Shámlál Rámlál, has argued that the limitation in this case is three years, under Act XIV. of 1859, Sec. 1., Cl. 9, the suit being a suit for

'breach of contract.' I do not think that this is a correct view of the case; as there was no specific contract, which can be said to have been broken at any specific time. Dower, under Muhammadan law, is a settlement to which the wife technically is entitled on her wedding day; but which practically is never claimed by her, except she leave her husband, and is usually claimed by her parents if she die young. I do not look on the claim as a suit for the breach of an ordinary contract, under Sec. 1., Cl. 9, of Act XIV. of 1859; but would say that, if the matter be subject to the Limitation Act at all, the case falls under Sec. 1., Cl. 16, among cases not specially provided for, and for which the limitation is six years. I would, however, go further than this, and could, following Macnaghten, think that the case may be held to be out of the scope of the Limitation Act, on the ground that, as the prevailing custom is for dower not to be claimed by wives so long as they live happily with their husbands, the law here will look as tenderly on such a matter as the law of Scotland does, and extend the rule that "Prescription does not run *contra non valentem agere*" to wives who, "*ex reverentiâ maritali*," forbear to pursue actions competent to them against their husbands. (*a*)

"Under this view, a Muhammadan wife would never be barred from asserting her right to dower, if occasion for so doing occurred; but the indulgence would not extend to her heirs or representatives, who would have to meet the Limitation Act in all its rigour.

"I need say but little more in confirming the Munsif's decree. The right to dower is not questioned; the plea of misconduct on the wife's part barring dower having been dropped as indefensible, as it certainly is in Muhammadan law.

"The attempt to set off the ornaments given at the wedding as dower has failed. One witness, No. 31, who is not apparently a Maulaví, has deposed that such gift of ornaments is a set-off against dower; but the learned Ashraf

(*d*) Macn. M. L. 286; and see 1 Mor. Dig. 293.

1866.
NA'THI'
v.
DA'UD.

Alí, late Law Officer of this court, gave evidence directly to the contrary. I have no hesitation in adopting his view of the case, which agrees with my own. For the above reasons, I confirm the decree of the Munsif, with costs on the appellant."

The case came on for hearing before the High Court on the 23rd of November 1865: when the Acting Judge was requested to determine the following issues; and certify the result, with his proceedings, within one month:—"(1) When was the first demand for dower made by the plaintiff; and (2) when did the plaintiff separate from her husband."

The finding returned was as follows:—

"The pleaders on either side assenting, I find (1) the first demand for dower was made by the plaintiff on the 22nd of December 1864, the date on which the suit was filed; and (2) the plaintiff separated from her husband about the 19th of January 1861: the exact date cannot be ascertained. There has been no dispute on these points, either in the original suit or in the regular appeal."

PER CURIAM (WESTROPP and TUCKER, JJ.):—The Court are of opinion, and determine, 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; and that the separation alleged to have occurred in this case did not make it incumbent on the doweress to make any such demand.

The Court, therefore, for these reasons, affirm the decree of the Acting District Judge."

NOTE.—The Judges, before making this decree, referred to S. A. No. 88 of 1865 (last case), and to *Ameeroonissa* v. *Mooradoonissa*, 6 Moo. Ind. App. 211.—ED.