

## **PRIVY COUNCIL**

Mt. Fakrunisa and others

Vs.

Moulvi Izarus Sadik and others

(Lords Buckmaster, CJ. Phillimore, Sir John Edge, Mr. Ameer Ali and Sir Lawrence  
Jenkins. JJ)

24.1.1921

### **JUDGMENT**

#### **Lord Buckmaster CJ.**

1. The decision of this appeal depends entirely upon a simple question of fact, but this question has been so complicated by untrustworthy evidence, both verbal and documentary, that its determination is not easy. The real point is whether the dower fixed on the marriage of Moulvi, Zahur-ul-islam and Mt. Sanai Fatima Begum on the 3rd September, 1881, was Rs. 25,000 or Rs. 1,25,000. The appellants, who represent, the heirs of the husband, claim that it was the former sum; the respondents, who are the representatives of the wife, argue for the larger amount. That a dower was in fact fixed is beyond dispute. Some witnesses say that it was fixed at Rs. 25,000 in terms, others that it was fixed in terms at the higher figure: and between these two accounts there is the evidence of other witnesses who say on the one side that it was fixed at Rs. 25,000 or on the other at Rs. 1,25,000, this being the customary sum. The judgment then dealt with evidence and concluded as follows:-

2. In every appeal it is incumbent upon the appellants to show some reason why the judgment appealed from should be disturbed; there must be some balance in their favor when all the circumstances are considered, to justify the alteration of the judgment that stands. Their Lordships are unable to find that this duty has been discharged. They have not gone into the question of the letters alleged to have passed between the husband and the wife. These documents have been held to be forgeries by the learned District Judge, and this view has been rejected by the Judicial Commissioners. There are suspicious circumstances connected with some of the letters, but suspicion is not proof. The conclusion, however, which their Lordships have reached, is independent of such corroboration as the letters would afford were

they genuine. They, therefore, express no opinion upon the point.

3. Upon the cross-appeal claiming interest on the amount of dower their Lordships think that the representatives of the wife are entitled to an allowance, not strictly as interest, but as the means of preventing her position being adversely prejudiced by the unsuccessful controversy raised by the appellants as to her rights, and they fix the amount at 6 per cent. This is in accordance with what was done in the case of *Hamira Bibi v. Zubaida Bibi*,<sup>1</sup>

4. Their Lordships will humbly advise His Majesty that the main appeal be dismissed and the cross-appeal allowed, and that the appellants do pay to the respondents their costs both in the appeal and the cross-appeal.

Appeal dismissed.

Cases Referred.

1. (1916) 38 All. 581 : 36 I.C. 87 : 43 I.A. 294 (P.C.).