Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Nawab Mahomed Ameenoodeen Khan v. *Mozuffer Hossein Khan, from the High Court of Judicature at Agra, North-Western Provinces, Bengal; delivered 28th June*, 1870.

Present:—

LORD CAIRNS.
SIR JAMES W. COLVILE.
THE JUDGE OF THE HIGH COURT OF ADMIRALTY.
SIR JOSEPH NAPIER.
SIR LAWRENCE PEEL.

IN this case, so long ago as the year 1855, the widow, who has been termed in the proceedings the Begum, was, by a decree of the Court, put into possession of the property of her husband, in order to obtain by that possession payment of her dower, which was fixed by the Decree at a sum of rupees 10,000; and she, during her lifetime, and, after her death, her heir, who is the present Appellant, have continued in possession of the property ever since that time.

Whatever might have been the presumption as to payment by means of possession at the end of a year or two years after possession was taken, certainly at the end of fifteen years there would be a very strong presumption either that payment of rupees 10,000 had been effected by means of the possession, unless (as does not appear to have been the case) the value of the property was extremely inconsiderable, or, at all events, that justice would not have been done unless an account were taken for the purpose of seeing whether, by means of possession, payment had been effected.

Therefore, when the present plaint, out of which this Appeal originates, was brought before the Court, the course to be taken, according to our ideas of what is proper to be done in such a case would have been to have directed an account (which, indeed, was asked by the plaint), for the purpose of seeing what had been the amount of receipts by the Begum and her heir during the time they were in possession, and of finding whether she had, in point of fact, been overpaid her dower, and, in that event, making her heir repay the difference; or, if it was found that she had been underpaid, to order the Plaintiff in the suit to pay the difference as the terms of obtaining possession of the estate.

Now, that has not been done; but the Plaintiff has been ordered to pay the exact sum representing that proportion of the whole of the dower of the Begum, which corresponds to the share of the estate which he claims. If an Appeal had been brought, not by the Appellant, but by the Respondent, complaining that scant justice had been done by that form of Decree, their Lordships would have been under the necessity of considering whether there had not been a miscarriage of the Court, and whether less of justice had been done to the Plaintiff in India than ought to have been done to him.

But no such Appeal has been brought. The form of the Decree abroad has dismissed the whole of the plaint, except that part of it in respect of which relief has been given, and therefore has, in effect, dismissed the plaint so far as it asked for an account of mesne profits.

There has been no appeal against that, and their Lordships, with some regret, find that in disposing of this Appeal, they are unable even to leave open the question of whether in India a Decree could hereafter be made for an account of mesne profits.

But now, turning to the grounds of complaint made by the Appellant with regard to this Decree, their Lordships find them to be these.

The Appellant, in the first place, complains that this second suit was unnecessary, and that the Respondent, resting upon the former decree, the decree of 1855, might, on tendering his share of the dower,

without more, have obtained possession of his share of the estate. It is sufficient on that point to observe, that when brought into Court, the Appellant assumed no such attitude; on the contrary, he contested the whole right of the Respondent; and although if he had, upon being brought into Court, said to the Respondent, that the only complaint he had was that the suit was unnecessary, and that, on receiving his share of the dower, he would be ready to give up possession, such an argument might have been urged now as that the suit was unnecessary: their Lordships think, that after the resistance offered by the Appellant to the suit in India, it is impossible for him now to take an objection, which, after all, is only an objection on the score of costs.

The next objection is of the same kind. The Appellant complains, that before instituting this suit, the Plaintiff in the suit should have settled with the Government, or the agent of the Government, the question whether there had been any confiscation of the property of this Respondent. That, again, is simply a question of costs. It is simply that a plaint with a greater amount of costs has been thrown upon the Appellant than would have been thrown upon him if these preliminary proceedings had been taken. Their Lordships are not prepared to say that the form adopted was an improper form, or that it was by any means inconvenient in proceeding for the recovery of this property in the same suit, to call in the Government collector to clear away any cloud upon the title that might exist by reason of the argument that the confiscation awarded against Hossein Khan might extend to the property of the present Respondent.

The next objection made by the Appellant is that the money—the Rs. 3750—was not tendered before this suit was instituted. Their Lordships think that the decree has done full justice to the Appellant on this score. The decree has ordered payment to be made as the terms of the Respondent obtaining possession of the property. Then as to the claim for some expenditure upon a mosque, that was hardly urged at the Bar before their Lordships; and no right whatever is shown to add that sum

by way of charge upon the estate before the estate is given up. Then as regards the two villages, which, it appears, were given to the present Respondent by the Begum, it is said that those villages ought to have been taken into account in diminution of the share of the property awarded now to the Respondent. Their Lordships are unable to see how that could properly be done. It is scarcely credible to suppose that when those two villages were made over by the Begum to the present Respondent, the Begum intended to make them over simply as liberating them from her claim and security for dower, for that is the result that would arise from the view taken by the Appellant. They were made over by the Begum to the Respondent, apparently, by way of gift, and if so, they must have been made over, not out of the portion in dispute, but out of the other portion of the estate to which the Begum was entitled.

Under these circumstances, their Lordships are of opinion that the Appeal fails on all the grounds urged by the Appellant, and all they can do with it is humbly to recommend Her Majesty to dismiss it with costs.