

(1880) 04 AHC CK 0009

Allahabad High Court

Case No: None

Wilayat Husain

APPELLANT

Vs

Allah Rakhi

RESPONDENT

Date of Decision: April 6, 1880

Citation: (1880) ILR (All) 831

Hon'ble Judges: Straight, J; Spankie, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Straight, J.

The only ground of appeal seriously urged before us was, that the lower Appellate Court had erred in holding that the plaintiff's suit failed by reason of his inability to prove payment of "exigible" dower. It was argued on his behalf that a wife cannot refuse herself to her husband after such consummation or complete retirement as was proved in the present case by the cohabitation of the parties from 1873 to 1878. This contention was supported by a quotation from Baillie's Digest, p. 125; but upon careful consideration of it and a judgment of this Court, which appears directly in point, *Abdool Shukkoar v. Raheem-oon-nissa* H.C.R. N.W.P. 1874 p. 94, we are of opinion that the views propounded by Aboo Haneefa should be followed, and that a woman entitled to dower, that is "maujjil" or "prompt" may, even after consummation or valid retirement, deny her husband access to her person or her society, if it remains unpaid. Dower, it must be remembered, is the woman's right and she may decline him the use of her person in order to enforce the man's pecuniary obligation to her. Of course, where the dower is "muwajjil" or "deferred," other considerations arise, which it is unnecessary to discuss. It may be added, that passages will be found favouring the opinion we have expressed in *Macnaughten's Muhammadan Law*, ed. of 1870, p. 281; *Bailie's Imameea*, p. 73 (the plaintiff being a Shia); and *Grady's Manual of Muhammadan Law of Inheritance and Contract*, p. 246.

2. The lower Appellate Court has found that the amount of dower in the present case was Rs. 5,000, that it was prompt, and that the plaintiff has not paid it. The respondent's plea was therefore established and the plaintiff's claim has been properly disallowed. The appeal is dismissed with costs.