

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Iflikaróonissa Begum v. Nawab Umjid Ally Khan and others, from the Court of the Judicial Commissioner of Oude; delivered 4th February, 1871.*

---

Present:—

SIR JAMES W. COLVILE.

SIR JOSEPH NAPIER.

LORD JUSTICE JAMES.

---

SIR LAWRENCE PEEL.

THIS is an Appeal from the decision of the Judicial Commissioner of Oude, affirming the decision of the Civil Judge of Oude disallowing the claim of the Appellant, the widow of an Oude nobleman of considerable estates, to a sum of five lacs of the old rupees as dower. The lady, beyond all question, was entitled by her marriage contract to that sum as dower. The defence is that the dower has in fact been paid by the transfer—begun partly in the lifetime of the husband, and completed after his death—of government paper to the extent of four lacs and 50,000 Sicca rupees, being substantially the equivalent in point of value of the five lacs of old rupees payable under the contract of dower. The four and a half lacs are alleged by the lady to have been a gift to her, and that they are not to be taken by way of satisfaction of the obligation of debt in respect of dower. Her case is this, that by certain letters written by the Husband in the year 1844, addressed by him to the Government Agent, who had possession of a very large amount of government paper for him, he constituted himself a trustee of a portion of that government paper to the extent of four and a half lacs in her favour; that a complete trust was created, and that the subsequent transfer to her of the instruments them-

selves, or of the instrument itself, after the death, was a mere execution of the trust so created by him by way of gift for her. Whether those letters would or would not amount to a sufficient execution of a trust under the circumstances of the case, their Lordships do not think it necessary to consider. They are of opinion that the case cannot be put higher, at all events, for her, than if the transaction had been completed at the moment by an actual transfer by the husband to the wife (or to a trustee for the wife, if that were requisite), by an actual transfer of the notes for four and a half lacs. Now if that transfer had actually been so completed at the time, it would have resolved itself simply into this. There is a debt to a very large amount. There is a delivery or transfer of something which is substantially in amount and character the equivalent of that which the debtor ought to have provided for the creditor. In that state of things the presumption of law, and the presumption which their Lordships think any Jury would draw from the circumstances is, that the thing given by the debtor to the creditor is given by way of payment and satisfaction, and not by way of additional gift leaving the original debt unsettled. That being the presumption of law, the onus is thrown on the person who alleges that there is a gift, in addition to the debt, to give sufficient and satisfactory evidence, and, in their Lordships' judgment, no such evidence whatever has been given in this case. Therefore, if it were a matter not affected by any previous decision, their Lordships would have come to the same conclusion, nearly upon the same grounds as the Judicial Commissioner of Oude. But they think it right to add, that the case comes within the rule which their Lordships have upon more than one occasion laid down, as to not disturbing decisions on mere questions of fact. The question was a question of fact, or of inference from facts, whether the thing done was done by way of gift or by way of payment, and the two Courts below having decided the question of fact substantially in the same way, though upon somewhat different grounds, their Lordships would not have disturbed the finding of the Judicial Commissioner, unless they were clearly satisfied that he was wrong.

Their Lordships will therefore recommend that this Appeal be dismissed with costs.



