Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Robert Skinner, Major, otherwise known as Sardar Mirza, and others v. *Charlotte Skinner, alias Badshah Begum, from the Chief Court of the Punjab; delivered 8th December* 1897.

Present :

LORD WATSON.
LORD HOBHOUSE.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

Stuart Skinner, otherwise known as Nawab Mirza, was, on the 3rd May 1855, married to the Respondent, who was the daughter of one Martin Blake of the Bengal Civil Service by a Mahomedan woman, Choti Begum. The ceremony was performed in the Protestant church at Meerut, by the Rev. J. E. Wharton Rotton, the resident chaplain. It appears that the spouses were originally adherents of the Mahomedan faith; and that, in order to validate the marriage which they contemplated, they had previously become professing Christians, the Respondent having been baptized at Delhi on the 18th April 1855, and Stuart Skinner, at Meerut, on his marriage day. Sometime after the marriage, but not later than the commencement of the Mutiny in 1857, both spouses reverted to their original creed; and, although they did not cohabit after the year 1859, they both continued

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in the practice and profession of the Mahomedan faith until the death of Stuart Skinner, which took place at Delhi, on the 29th of January 1886.

After their Christian marriage, the spouses went through the form of marriage a second time, according to Mahomedan law. The precise date of the ceremony is not satisfactorily fixed by the evidence; but it must have been shortly after the time when they reverted to Mahomedanism. In the year 1859, in consequence of domestic unpleasantness, occasioned by the circumstance that Stuart Skinner suspected his wife of having illicit intercourse with one Abdul Wahid, it is a fact proved beyond dispute that the Respondent left his house and never returned to it. She stayed at first with her mother, and subsequently went to live with her alleged paramour, Abdul Wahid, to whom she bore several children. Before their separation, two children, a son and a daughter, whose legitimacy is not impeached, had been born of the marriage between her and Stuart Skinner, both of whom survived their father.

In the month of May 1871, Stuart Skinner began to cohabit with Sophia Skinner, daughter of one Thomas Skinner, whom he treated as his wife, and with whom he continued to live on that footing, until his decease in January 1886. He was survived by six children, born of that intercourse, by whom the present appeal has been brought.

This suit was commenced in May 1888, 16 months after the death of Stuart Skinner, by Charlotte Blake, *alias* Badshah Begum. In her plaint, Badshah Begum set forth their Christian marriage, and also alleged that "shortly after the said marriage, the Plaintiff "and Nawab Mirza were again married at Delhi "according to Muhammadan law, as sunnis, and

" the Plaintiff's dower was fixed at Rs. 50,000." She further averred that she and the deceased " lived together as husband and wife according " to Muhammadan creed." Her claim was alternative, being for one-third of the deceased's estate according to the English law of inheritance, or otherwise, for Rs. 50,000 as dower, and one-eighth of the remaining estate according to Mahomedan law. The parties called by her as Defendants were the two children born by her to the deceased during their co-habitation, and the six Appellants, whom she described as being " looked upon " as the heirs of Nawab Mirza, and entitled to " succeed to the estate left by him." The Plaintiff at the beginning of the litigation, disputed that there had been any marriage between the deceased and Sophia Skinner, and the legitimacy of their offspring; but that contention was ultimately abandoned. By order of the District Judge of Delhi, before whom the action depended, Sophia Skinner was added as a Defendant.

None of the Defendants lodged written pleadings; but they appeared by their vakeels before the District Judge, who made a note of the pleas orally stated in defence to the action, with a view to the adjustment of issues. The main pleas stated for the present Appellants were to the effect (1) that the Plaintiff was not, at the time of his decease, the wife of their father Stuart Skinner, she having been divorced by him, according to Mohamedan law, about the year 1859; and (2) that the deceased had left a last will, by the terms of which she was, in any event, excluded from his succession. The Plaintiff, in replication, denied the execution of the will, and also contended that, assuming the will to have been executed with due formality, it was in law inoperative.

The learned Judge having adjusted 13 issues which it is unnecessary to notice in detail, intimated to the parties, at the close of the Plaintiff's evidence, that he would only take evidence from the Defendants as to the *factum* of the will set up in answer to the Plaintiff's claim, and then hear arguments upon the law points, when, if necessary, he would call upon the Defendants to produce their remaining evidence. The effect of that order was to limit the evidence of the Defendants to the 9th issue :—"Did Stuart Skinner execute a will excluding Plaintiff?"

When the evidence of the Defendants bearing upon the *factum* of the will was concluded, the District Judge heard parties, and gave judgment upon the 25th June 1889. He found that the Christian marriage of 1855 was valid and binding upon the parties; and he also held that the subsequent return of the spouses to Mohamedanism did not give the husband any right to dissolve that marriage by a divorce according to Mohamedan law. He found in fact that the will put forward by the Defendants had been duly executed by Stuart Skinner; but he held that it was in law inoperative, because it was admitted on both sides that Stuart Skinner, after the nikah or second marriage ceremony with Badshah Begum, "continued to live as a Muhammadan, and died professing this faith." The learned Judge adds that, in the matter of his will, "Stuart Skinner "was bound by the provisions of the Muham- "madan law, and according to that law it was "clearly invalid." Upon the assumption on which it proceeds, the Mohamedan law laid down by the learned Judge appears to their Lordships to be correct, and no attempt was made by the Appellant's counsel to impugn it. Upon these findings, a decree of partition was given to Badshah Begum, which assigned to her, as one

of the two legal wives of the deceased, one half of the eighth share allotted to the widow, or widows as the case may be, under the Mahomedan law of intestacy.

Against that judgment, cross appeals were taken to the Chief Court of the Punjab; and, on the 1st April 1891, Sir Meredyth Plowden and C. A. Roe, Esquire, remanded the case to the District Judge, under Section 566 of the Civil Procedure Code, directing him to proceed with the trial of the 6th, 7th and 8th issues which he had framed, and to report the evidence and his findings thereon. The issues thus sent back were:—6. Did he (*i.e.* Stuart Skinner) in fact divorce her (*i.e.* Badshah Begum), and when? 7. Subsequently did Plaintiff re-marry, and when? 8. What was Plaintiff's dower on nikah with Stuart Skinner? In obedience to the remand, the District Judge took evidence bearing upon these issues, which he returned to the Court, along with his findings, upon the 22nd June 1892. Upon the 6th issue, his finding was, that Badshah Begum had been divorced, according to the form prescribed by Mohamedan law, some time before 1865; upon the 7th issue, that Badshah Begum lived with Abdul Wahid as his wife, but that there was no evidence to show that they had contracted a Mahomedan or nikah marriage; and, upon the 8th issue, that, on the Plaintiff's nikah marriage with Stuart Skinner, her dower was fixed at Rs. 50,000, such finding being subject to those qualifications, (1) that it was questionable whether the spouses, in going through the ceremony of a nikah marriage, and fixing the dower at Rs. 50,000, considered it more than an empty form, and (2) that it was "subject to the "Plaintiff's right to give secondary evidence of "the contents of the deed of dower, which up to "this date has not been produced."

The case was finally disposed of in the Chief Court of the Punjab, on the 12th July 1893, by the same learned Judges who had made the remand. Their decree simply affirmed the original decree of the District Judge, and ordered the parties to bear their own costs of Appeal. In arriving at that result, the learned Judges expressed no opinion in regard to the finding of law by the District Judge in his original judgment of the 25th June 1889, to the effect that the fact of the spouses having returned to their Mahomedan faith after the Christian marriage of 1855, did not give Stuart Skinner any right to dissolve that marriage by a Mahomedan divorce; but they reversed the later finding of the District Judge to the effect that there had been such a divorce. They agreed with him in holding, first, that, in the absence of secondary evidence of the contents of the deed of dower alleged by her, the Plaintiff's claim for dower must fail; and, secondly, that the Defendants had failed to prove their allegation that Badshah Begum had married Abdul Wahid during the lifetime of Stuart Skinner.

The decree made by the District Judge, and ultimately approved of by the Chief Court, is framed upon the footing that the personal status of Stuart Skinner, at the time of his death in 1886, was that of a Mahomedan, and that the rights of succession to his estate, including the right of his first wife, who had become and was then a Mahomedan, were governed by the rules of Mahomedan law. But the grounds upon which the two Courts came to the conclusion that Badshah Begum continued to possess the status of a wife of the deceased were essentially different. Whilst the District Judge held, as matter of law, that the regular Christian marriage, celebrated between

two persons domiciled in India, could not, upon the spouses subsequently embracing and professing Mahomedanism, be dissolved by a Mahomedan divorce, the learned Judges of the Chief Court were of opinion that, as matter of fact, there had been no Mahomedan divorce, as alleged by the Defendants.

One of the many peculiar features of this suit arises from the circumstance that in the case of spouses resident in India, their personal status, and what is frequently termed the status of the marriage, is not solely dependent upon domicile, but involves the element of religious creed. Whether a change of religion, made honestly after marriage with the assent of both spouses, without any intent to commit a fraud upon the law, will have the effect of altering rights incidental to the marriage, such as that of divorce, is a question of importance, and it may be of nicety. In the present case that question does not arise for decision, unless it is shown that Stuart Skinner did, in fact, divorce Badshah Begum according to Mahomedan form.

On the hearing of this appeal, which was *ex parte*, the Appellants' Counsel did not challenge any finding of the Courts below, with the exception of that of the Chief Court which negatives the fact of divorce. Upon that part of the case, their Lordships, after careful consideration of the evidence, which is not only contradictory, but is marked by peculiarities which are more perplexing than mere contradiction, have come to substantially the same conclusion with the learned Judges of the Chief Court. In these circumstances, and having regard to the fact that the case has come before them in such a shape as to make an exhaustive argument from the bar on both sides of the question impossible, they do not think it expedient to express any opinion as to the effect of a change of

religion by the spouses, their domicile remaining the same, upon the rights of one or other of them which are incidental to marriage.

The bulk, and that not the least important part of the evidence adduced in this case bearing upon the fact of divorce, consists of legal proceedings between the Respondent Badshah Begum and the deceased Stuart Skinner, including depositions of witnesses taken in those proceedings. The difficulty, to say the least of it, of estimating the value of that evidence for the purposes of the present case, is occasioned by the fact that, in all these litigations the Respondent alleged and endeavoured to prove that she had been divorced about the year 1859, whereas the deceased alleged and endeavoured to prove that she had not. Accordingly, in the present suit, the Appellants found upon the statements made and proof led by the Respondent, whilst she herself relies upon the statements made and proof led by Stuart Skinner, which she had controverted. It appears to their Lordships that these proceedings would have been insufficient to raise an estoppel, either against the Respondent or against Stuart Skinner, in any question between them as to their status; and, in the argument upon this appeal, it was (in their Lordships' opinion) rightly conceded by the Appellants' Counsel, that the Respondent was not estopped from maintaining that she never ceased to be the wife of Stuart Skinner, and that the question must now be decided upon the weight of the evidence before the Court.

The first of these proceedings (Suit No. 257 of 1865) was instituted by the Respondent against Stuart Skinner and the official trustee, who held certain funds in which the Respondent and her children were interested. The immediate cause of action was the refusal of Stuart Skinner to sign papers to enable the Respondent to obtain

payment of interest on those funds to which she was entitled. The case was settled by a judgment adjusted with consent of the parties, in which, notwithstanding the Respondent's contention that she had been divorced, Stuart Skinner is described as " her husband."

The second (Suit No. 33 of 1868) was brought against the Respondent and also against Stuart Skinner, by Sophia Skinner, an infant, the legitimate daughter of their Christian marriage, and one John Van Cortland, as her next friend, for the appointment of a guardian to the infant. Stuart Skinner, who, by the consent decree in the previous suit, had become bound to give the custody of the infant to the Respondent, was the real instigator of the action, in which he repeated the allegation that the Respondent was his wife, whilst she denied it. The suit was dismissed, with costs against both parents.

The third of these proceedings was an action brought by Stuart Skinner, in the year 1881, against Mrs. W. Orde and others, for the purpose of establishing his own legitimacy, and so proving his title to the share of an estate. The Respondent was not a party to the suit, but she was examined as a witness on behalf of Stuart Skinner, when she again took the opportunity of stating that she had ceased to be his wife, by reason of his divorce.

There is, in their Lordships' opinion, an entire absence of facts established by reliable evidence, available for the purpose of testing the accuracy of the counter statements made in the course of these proceedings by the Respondent and by Stuart Skinner respectively. The only facts which appear to them to be proved are these :—That, about 1869, there were dissensions between the spouses, in consequence of which the Respondent left her husband's house, and never returned to it; that after, if not before

she left, the Respondent did not lead a chaste life, and gave her husband good cause for divorcing her, if he had chosen to dissolve the marriage tie; but it by no means follows that Stuart Skinner either thought that it would be conducive to his interest, or that he intended to avail himself of that remedy. On the contrary, his repeated judicial assertions that, notwithstanding their actual separation, he still continued to be the husband of the Respondent, strongly point to the inference that his design was to retain the hold over his wife which that relation gave him, in order that he might use it for his own advantage. If he had really been desirous to divorce the lady, he could have done so whenever he chose, according to Mahomedan law. It would, in their Lordships' opinion, be somewhat rash to assume that the counter statements of these two parties were not affected by motives of self-interest, but they see no cause to prefer, as the District Judge did, the statements of the Respondent, who had a clear object in stating that she was divorced in the first and second of these suits, and, so far as they can see, she may have been actuated by the same motive when giving evidence in the year 1881.

The Appellants founded strongly upon evidence which was led by them after the remand, as establishing that, subsequently to their disputes in Court, Stuart Skinner had a meeting with Badshah Begum, in her mother's house at Delhi, at which their controversy as to the fact of the divorce had been settled by Stuart Skinner admitting it. The date of the meeting is not precisely fixed, but it appears to have been about the year 1860 or 1861. Four maulvis, or sages learned in the law, are said to have been present, and to have had submitted to them, for their opinion, a paper containing the precise words which were addressed by Stuart Skinner to his wife in 1859, at the time

when they separated. From the account given by Amanullah, a leading witness for the Defendants, he had suggested to Badshah Begum "a reference to learned men (ulama) to whom "the words used should be stated, and who "should give their opinion whether they "amounted to a divorce or not, she appointing "some and Nawab Mirza some. To this she "agreed. On behalf of Nawab Mirza, I called "Maulvi Sayad Muhammad and Maulvi Kari-"mullah, and she called Maulvi Said-ud-din and "another, whose name I forget. I was present "at their meeting. A friend of hers stated the "words used by Nawab Mirza, Badshah Begum "being behind pardah." The deliberations of the learned conclave, and the result of the meeting, are thus stated by the same witness: "After consultation, Maulvi Sayad Muhammad "said that the divorce was not clear, while the "other learned men said it amounted to a "divorce."—"No written opinion was recorded; "before it could be done, dispute arose, and we "dragged away Nawab Mirza from the house."

Assuming that such a meeting took place, terminating in a conflict which does not appear to have been confined to logic, and from which it was necessary to remove Stuart Skinner, *alias* Nawab Mirza, by force, their Lordships are unable to derive from it any inference that Stuart Skinner then admitted that Badshah Begum had ceased to be his lawful wife. There is, in their opinion, no satisfactory evidence to show that the words, which on that occasion are said to have been represented to the maulvis as having been the precise words used by the husband in 1859, were so in fact, or were admitted by both parties to be so. Nor does it appear that either of the spouses intended or consented to be bound by the opinion of the maulvis. There is really no trustworthy evidence to prove the language

used by the husband in 1859. The version which is said, by witnesses examined in this case, to have been used at the meeting of 1860 or 1861, depends upon the memory of people not altogether neutral, who are speaking after a lapse of thirty years. The District Judge, in his report, relies to some extent upon the depositions of certain witnesses, taken in Badshah Begum's suit of 1865, which have been put in evidence in this case, but the Judges of the High Court make no reference to them. That testimony does not appear to their Lordships to be calculated to dispel the obscurity in which the matter is involved. Ahmed Jan, one of Badshah Begum's witnesses, says that he and three others were present in her mother's house, when Stuart Skinner said to her three times "I have divorced you" and then went away. Another witness, servant of a female relative of Badshah Begum, tells a similar story, but says that, besides himself there were only two persons present, including Ahmed Jan. Both those witnesses state that there were no relations of either spouse present. The evidence of Maulvi Sud-id-udin refers not to what took place in 1859, but at the meeting of 1860 or 1861, which has been already noticed. In these circumstances, their Lordships have come to the conclusion that the Defendants have failed either to establish that Stuart Skinner admitted that he had divorced his wife according to Mahomedan law, or to prove the words which he actually used in 1859, so as to enable a Court of law to determine whether they did or did not amount to a Mohamedan divorce.

Their Lordships will, accordingly, humbly advise Her Majesty to affirm the judgment appealed from and to dismiss the appeal. There will be no order as to costs.