Calcutta High Court
Ahmad Kasim Molla vs Khatun Bibi on 14 August, 1931
Equivalent citations: AIR 1933 Cal 27
Author: Costello
JUDGMENT Costello, J.

1. In this suit the plaintiff, Ahmad Kasim Molla, seeks a declaration that he has validly divorced his wife, Khatun Bibi. He also asks for an injunction restraining her from taking out the sum of Rs. 232-14-0 deposited by him in the Court of the Presidency Magistrate, Calcutta.

2. The plaintiff's case is that he married the defendant on 25th August 1929, at No. 63/1, Sovaram Basak Street, Calcutta, according to the provisions of the Sunni School of Mahomedan law. He then says that on 20th September 1929 he divorced his wife at No. 17, Zakaria Street, in accordance with Mahomedan law and that he duly intimated to the defendant that such divorce had been pronounced by him.

3. The defendant, on 20th March 1930, obtained from the Presidency Magistrate, Calcutta, an order for payment to her of maintenance at the rate of Rs. 50 per month. It was as a result of execution, proceedings under that order that the sum of Rs. 232-14, which I have already mentioned, was paid by the plaintiff into the Court of the Presidency Magistrate. That sum represented maintenance for the defendant up to the month of May 1930.

4. The answer made by the defendant, as contained in her written statement, is to the effect that she admits the marriage, as averred by the plaintiff, but denies that the plaintiff validly divorced her; alternatively she says that if she was divorced she had no knowledge of it. The defendant further sets up the defence that it was not competent, to the plaintiff to divorce her in the manner in which he purported to divorce her. The defendant then goes on to set up what she alleges to be the effect of certain conditions, contained in the marriage contract, namely, the kabinnama and says that, under those condition's, in any event, she is entitled to be maintained by the plaintiff for the duration of her, life. She relies mainly upon a clause which seems to show that, if the plaintiff made any breach of the conditions contained in the marriage contract, the defendant would be justified in living separately from the plaintiff and that, thereupon, the plaintiff would be under the obligation of making suitable provision for her residence and maintenance and also for the maintenance of her grandmother. The defendant then alleges that the plaintiff, without any lawful excuse, assaulted her and wrongfully drove her and her grandmother from the premises No. 63/1, Sovaram Basak Street about a month and eight days after the marriage, and she sets up that she has obtained an order for maintenance from the Presidency Magistrate, that is to say, the order to which I have already referred. The last paragraph of her written statement contains what is, to all intents and purposes, a counter-claim, in which she submits that should the Court hold that she was validly divorced then the plaintiff should be directed to make suitable provision for the maintenance and residence of herself and her grandmother.

5. It was objected by Mr. Ghose on behalf of the plaintiff that, in any event, it was not competent to the defendant to ask for any order in her favour owing to the fact that the Civil Procedure Code

contains no provision for the making of a counter-claim. Mr. Ghose however had to admit, after I had drawn his attention to Section 128, Civil P.C., that contention on his part was not correct. The real position with regard to counterclaims is that, so far, this Court has not thought fit to exercise the powers conferred upon it and other High Courts of India, under Section 128 of making proper rules for the setting up of counter-claims in suits, though there are one or two items in the table of costs which may be allowed on taxation under the rules of this Court, which seems to indicate that, at some time or other, the making of such rules was contemplated. However the position Undoubtedly is that, in the ordinary way, a defendant is not able to set up a counter-claim in answer to the claim of the plaintiff. The one or two items in the table of costs, to which I have referred, provide that an additional court-fee shall be paid in respect of written statements which do in fact contain counter-claims. Mr. Ghose, on behalf of the plaintiff; drew my attention to the fact that in this particular case the additional fee specified in the table had not been paid by the defendant. Mr. Ghose argued further that difficulty could not be overcome by the payment on the part of the defendant of the necessary additional fee at a late stage of the proceedings. Mr. Ghose however has overlooked Section 149, Civil P.C. which provides:

Where the whole of or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees have not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and, upon such payment, the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

6. Under the powers conferred by that section, I thought it right to allow the defendant to put herself in order as regards the payment of the fee by paying the additional court-fee during the progress of the suit and, so far as that matter is concerned, Mr. Ghose's objection is without substance. The position of the defendant is this. She says that, if the plaintiff had validly divorced her, then she ought to be entitled to, rely upon the conditions in the kabinnama and obtain from the Court an order that such sum by way of maintenance, as the Court should think fit, should be paid to her during the rest of her life. Having regard to the fact that the plaintiff is asking for relief of a kind which falls within the equity jurisdiction of this Court, in my opinion, despite the apparent technical difficulties arising on the question whether a counter-claim is strictly admissible or not, in a case of this description, if the terms of the contract between the parties so warranted, it would only be just and equitable that the defendant should receive, at the hands of the Court, proper compensation for the plight into which the action of the plaintiff had put her. I have however to ask myself in the first place whether the defendant was validly divorced and if so whether, under the terms of the marriage contract between the parties, the defendant is entitled to receive anything more than that which a divorced Mahomedan wife is entitled to receive under the general provisions of the Mahomedan law. (His Lordship then briefly stating the circumstances under which the plaintiff married the defendant proceeded as follows): It is necessary, I think, that I should first of all briefly recapitulate the facts of this particular case. I have already said that the first point, which I have to determine, is whether or not the plaintiff validly divorced his wife. Mr. Mazumdar, on behalf of the defendant, argued with his usual ability that there was no valid divorce for two reasons.

7. In the first place, says Mr. Mazumdar, it is not competent under the Mahomedan law for a talak to be given without just cause assigned. It has never been suggested on behalf of the plaintiff indeed it was not part of his casethat he had really any proper or reasonable grounds for getting rid of his wife and the matter must be discussed upon the footing that there was in fact no justification for divorce and that what the plaintiff did was done entirely capriciously and arbitrarily. The question therefore is whether, in the circumstances, the talak given in this case is valid. Upon that point, there are a number of authorities and I have carefully considered this point as dealt with in the very early authorities to see whether I am in agreement with the more recent decisions of the Courts. I regret that I have to come to the conclusion that, as the law stands at present, any Mahomedan may divorce his wife at his mere whim and caprice. I find that there are passages in one ancient authority, quoted by Mr. Ameer Ali in his treatise on Mahomedan Law, Vol. 2, 5th Edn., p. 472, which run as follows:

The Prophet pronounced talak to be a most detestable thing before the Almighty God of all permitted things. If talak is given without any reason it is stupidity and ingratitude to God.

8. On the next page Mr. Ameer Ali puts the matter thus:

The author of the Multeka (Ibrahim Halebi) is more concise. He says "the law gives to the man primarily the power of dissolving the marriage, if the wife, by her indocility or her bad character, renders the married life unhappy; but in the absence of serious reasons, no Musalman can justify a divorce either in the eyes of the religion or the law. If he abandon his wife or put her away from simple caprice, he draws upon himself the divine anger, for 'the curse of God,' said the Prophet, 'rests on him who repudiates his wife capriciously'.

9. Mr. Macnaughten in his well-known book says that there is no occasion for any particular cause for divorce, and mere whim is sufficient. Then he goes on to point out that where conscientious and honourable feelings are insufficient to restrain a man from putting away his wife without cause the temporal impediments are by no means trifling. Dower is demandable upon divorce and with a view to the prevention of such a contingency, it is usual to stipulate for a larger sum than can ever be in the power of the husband to pay.

10. No doubt, in normal cases of Mahomedan marriages, those who are acting on behalf of the bride are careful to see that she is properly protected against capriciousness on the part of the husband in giving talak by adequate provision for the payment of a large sum by way of dower, that is to say, care is taken to ensure that what Mr. Macnaghten calls "the temporal impediments" shall be a real obstacle in the way of a husband acting arbitrarily or unfairly. In the present instance however so far as the provision for dower is concerned, it cannot be said that it is "by no means trifling;" on the contrary, the amount stipulated for, namely, Rs. 201 was extremely trivial. Upon this question of whether talak can be given without any just cause or without assigning any reason the matter can be summed up in the words used by Batchelor, J., in the case of Sarabai v. Rabiabai [1905] 30 Bom 537, with reference to an analogous question, where he said "it is good in law, though bad in theology." I need only make reference to one or two decisions of the Courts on this point. In Asha Bibi v. Kadir Ibrahim Rowther [1909] 33 Mad 22, at p. 25 the Court consisting of Munro and Abdur Rahim, JJ.,

said:

The right to domestic authority is conceded to the husband rather than to the wife in consideration as hinted above of the pecuniary burden imposed upon the husband and also because of the presumed superiority of the male sex in judgment and discretion. For the same reasons the husband is recognized as having an absolute right to put an end to the marriage by his private act. No doubt an arbitrary or unreasonable exercise of the right to dissolve the marriage is strongly condemned in the Koran and in the reported sayings of the Prophet (Hadith) and is treated as a spiritual offence. But the impropriety of the husband's conduct would in no way affect the legal validity of a divorce duly effected by the husband.

11. Then there is a, decision of the Judicial Committee of the Privy Council in the case of Ma Mi v. Kallander Ammal , where Sir John Wallace, in his judgment says:

According to that law' (that is the Mahomedan law), 'a husband can effect a divorce whenever he desires.

12. It is therefore abundantly clear on all the authorities that as tersely stated in Sir Dinshaw Mulla's well-known book:

any Mahomedan of sane mind who has attained puberty can divorce his wife without assigning any cause.

13. The reference given by Sir Dinshaw Mulla in support of this proposition are Macnaghten, p. 59, Hedaya p. 75 and Baillie, pp. 208 and 209.

14. The second point taken by Mr. Mazumdar, on behalf of the defendant, was that, in the present case the talak was not brought to the notice of the defendant. As regards the facts, what happened was: that on 20th September 1929, the plaintiff in the presence of certain relatives had a document written out which was signed by some of those present as witnesses. It appears that the plaintiff pronounced the word "talak" three times in the presence of some five persons, some of whom gave evidence before me I need not go further into detail, as I am satisfied that he did execute the document he had written out and that it was signed as it purported to be signed. An English translation of the document reads as follows:

Ahmad Kasim Molla, son of Kasim Ahmad Molla, deceased, resident of Baryao, at present residing at No. 17 Zakaria Street, Calcutta. This day, the 20th September year 1929 (Eng.), I divorce without any anger, Khatun Bibi, daughter of Ismail Saheb, deceased, who has been my wife up till now. Divorce, divorce, divorce.

15. Then follows the signature of Ahmad Kasim Molla and that of five witnesses. It appears that after the document was executed, it was sent by registered post in an envelope addressed as follows:

Khatun Bibi, daughter of Ismail Saheb, 63 A, Sovaram Basak Lane, Off Sagar Datta Lane, Calcutta."

16. Then in the right hand bottom corner was put these words:

From A.C. Molla, 17, Zakaria Street, Calcutta.

17. Evidence was given on behalf of the plaintiff that the letter came back endorsed by the postal authorities with the word "refused," and I was asked to infer that the letter had duly reached the defendant or some one acting for her (either her grandmother or her uncle) and that the recipient, suspecting the nature of the contents, had declined to accept the letter and had handed it back to the postman. On the other hand on behalf of the defendant it was suggested that the defendant might never have been found by the postman at all and that the letter never came into her hands. I think I am bound to draw the reasonable inference, from the fact that the envelope is endorsed in the way I have described that the letter did reach the defendant or some one acting on her behalf, who had knowledge of the circumstances. The defendant herself gave evidence that just prior to 20th September, the plaintiff had indicated to her that he proposed to have nothing more to do with her. Therefore I think it not unnatural to surmise that when she saw an envelope "franked" as it were with the name of the plaintiff that she may have suspected that it contained some communication to her disadvantage, if not actually a communication divorcing her. However there is no evidence that in fact the defendant at that time was aware of the nature of the document contained in the envelope sent to her by the plaintiff or by his cousin Golam Hossain Molla on his behalf. If it could be shown that the defendant was aware of the nature of the document which was being sent to her, the matter would fall within the ambit of the decision in the case to which I have already referred in another connexion: Sarabai v. Rabiabai [1905] 80 Bom 537.

18. In that case a Mahomedan belonging to the Hanafi Sunni sect, took with him two witnesses and went to the kazi and there pronounced the divorce of his wife the plaintiff in the suit, in her absence. He had a talaknama written out by the kazi, which was signed by him and attested by the witnesses. He then took steps to communicate the fact of the divorce and to make payment of iddat money to the plaintiff, but she evaded both. In answer to the contention that the divorce was not final, as it was never communicated to the plaintiff, it was held that a baintalak, such as the one in that case, which was reduced to manifest and customary writing, took effect immediately on the mere writing. The divorce being absolute, it was effective as soon as the words were written, even without the wife receiving the writing. There is also the decision of this Court in Ful Chand v. Nazab Ali Chowdhry [1909] 36 Cal 184, where it was held that under the Mahomedan law, absence of the wife does not make the pronouncement of talak void and inefficacious. The judgment of the Court was given by Stephen, J. He said:

The first question, which we have to decide is whether the absence of the wife makes the pronouncement of the talak void and inefficacious. In our opinion it does not. The point is dealt with in the book of Mr. Ameer Ali in Section 3, Ch. 12, where he says: 'It is not necessary for the husband himself to pronounce talak in the presence of the wife, but it is necessary that it should come to her knowledge.' The matter is also dealt with in Wilson's Digest at p. 164, but not so decisively. It also seems to be the opinion expressed in Nawab Abdur Rahman's Institutes of Mussalman Law. The matter has twice, as far as we are aware, been dealt with by the Courts; in the first place, in the case of Furzund Hossein v. Janu Bibee [1878] 4 Cal 588 and, secondly in the case of Sarabai v. Rabiabai

[1905] 80 Bom 537. In the second of these cases a distinct opinion is expressed that it is not necessary for the wife to be present, when the talak is pronounced although this is an obiter inasmuch as that case dealt with a written instrument of divorce. In the previous Calcutta case, the matter is also dealt with and the point itself is not directly noticed, but talak was there pronounced in the absence of the wife, and it is significant that the case is not decided on that point, which it would have been, if it had been fatal to the effect of the divorce. We therefore hold that it is not necessary for the wife to be present when the talak is pronounced. It is necessary certainly for the purpose of dower that the fact of the pronouncement of talak should come to her notice.

19. With these observations I entirely agree. Finally, there is a case on this point decided by the Bombay High Court: In re Rajasaheb Rasulsaheb AIR 1920 Bom. 101. In that case, the facts were that a Mahomedan executed a talaknama in the presence of witnesses and caused it to be duly registered under the Indian Registration Act, 1908. Neither the kazi nor the wife was at present at the time the deed was executed. The making of the deed was not immediately communicated to the wife, but it came to her knowledge within a reasonable time. It was held that the talaknama was valid. Now, in this present case, whether or not the defendant by declining to take in the registered letter, as is suggested on behalf of the plaintiff, sought to evade notice that a talaknama had been executed by the plaintiff, really makes no difference, because it is part of the case of the defendant herself that she took proceedings before the Presidency Magistrate, Calcutta, as a result of which she obtained an order for maintenance on 31st March 1930. It seems to be clear that, in the course of those proceedings, the present plaintiff raised, by way of defence, the fact that he had already given a talaknama; so that, at any rate, by 31st March 1930, the defendant was fully aware of the fact that her husband had executed a talaknama on 20th September 1929. The facts of the case to which I have just referred, In re Rajasaheb Rasulsaheb AIR 1920 Bom. 101, were in some respects analogous to the facts of the present case because there also the wife, Khatijabai, had obtained an order from the Magistrate directing her husband to pay her a sum of Rs. 10 per month as maintenance for herself and her child under the provision of Section 488, Criminal P.C. Three weeks after the making of the order, the husband executed a talaknama divorcing Khatijabai.

20. As I have already said, the deed was duly executed in the presence of witnesses and registered under the Registration Act, but at the time of the execution neither the kazi nor the wife was present and it was not brought to the knowledge of the wife immediately. A few months after the wife had obtained the maintenance order the husband applied to the Magistrate for cancellation of the order for maintenance on the ground that he had already divorced his wife and that he was no longer bound to maintain her. It was held that not only was the talaknama valid, but that it put an end to any right on the part of the wife to receive maintenance in respect of herself although, on the facts of that particular case, the order of the Magistrate was not disturbed, because the Court was of opinion that the amount ordered to be paid was no more than sufficient for the maintenance of the child of the marriage. It seems to be clear therefore that not only can a Mahomedan divorce his wife without assigning any reasons, but also that a talak is valid, where it is made by a written instrument, notwithstanding that it is not brought to the knowledge of the wife; and the only question which can arise is with regard to the wife's maintenance during such period as may elapse until the fact of the execution of the talaknama actually comes to the knowledge of the wife. The matter is dealt with in the case of Asha Bibi v. Kadi Ibrahim Rowther [1909] 33 Mad 22 where it is held that it is not

necessary that the talak or words of repudiation should be addressed directly to the wife to constitute a valid divorce, but the words should refer to the wife though if they be not communicated to her at the time a question may possibly arise as to whether she is not entitled until she comes to know of the divorce to bind her husband by certain acts such as pledging his credit for obtaining the means of subsistence.

21. With regard to maintenance proceedings, such as there were in the present case, the husband can, at any time during such proceedings, defeat any attempt on the part of the wife to obtain an order for maintenance by the giving of a talak and further, if any such maintenance order has in fact been made, it ceases to be effective as soon as a talak is validly given. In that connexion, I would refer only to one authority Sha Abu Ilyas v. Ulfat Bibi [1896] 19 All 50, in which it was held that where in answer to an application for enforcement of an order under Section 488, Criminal P.C., for the maintenance of a wife, the party against whom such order is pending pleads that he has lawfully divorced his wife and therefore the order can no longer be enforced, it is the duty of the Court hearing the application to entertain and consider such plea, and, if it find the plea established, to decline to enforce the order for any period subsequent to the date when the marriage ceased to subsist between the parties. In such cases, where the parties are Mahomedans, the marriage will be deemed to subsist until the expiration of the iddat.

22. In view of that authority, I am not at all sure that it was not the duty of the learned Presidency Magistrate to have considered the question whether a talak had been given as soon as it was brought to his attention before the order of 21st March 1930, already referred to was made. I am bound to say that, in my opinion, it does seem harsh that, at any time, a Mahomedan husband can, of his own power, put an end to any proceedings his wife may take under Section 488, Criminal P.C, and it may be that some day this matter will have to be seriously considered by the members of the Mahomedan community and the legislature with a view to determining whether such arbitrary power in the hands of the husband is not now an anachronism inconsistent with present day ideas and incompatible with modern conditions. I have however only to concern myself with the existing law and for the reasons which I have given, I hold that in the present instance there was a valid divorce by means of the talaknama executed by the plaintiff on 20th September 1929. As it has not been established by the plaintiff that the existence of the talaknama came to the knowledge of the defendant prior to the proceedings before the Presidency Magistrate, it cannot be disputed that she is entitled to maintenance up to that time. In regard to that however no question arises, because I understand that maintenance was in fact paid for that period.

23. I now come to what is the more serious and indeed more difficult aspect of this particular case, namely, whether, in the peculiar circumstances of the marriage between these parties, the wife is entitled to receive anything more than she would ordinarily be entitled to upon divorce. The law is that normally upon a husband giving talak the wife becomes entitled to payment of such dower as has been provided for in the marriage contract. If the "prompt" dower has already been paid, she is entitled forthwith to receive the "deferred" dower. If, on the other hand, no part of the dower has already been paid she becomes entitled to payment of the whole of the dower stipulated for in the kabinnama. The wife is also entitled to maintenance during the period of iddat. There again in this case no question arises as to maintenance during iddat, because, as I have already said, maintenance

has already been paid up till 21st July 1930. As regards the dower, the amount provided in the kabinnama was a sum of Rs. 201. That, as I have already said, was such a trifling sum, that it provided no impediment, nor did it act as a deterrent in any way to the husband, who having got all he wanted from his wife after a month's cohabitation, cast her aside.

24. I have no doubt however that the persons, who were acting on behalf of this little girl, the defendant, did intend, as far as they could, to ensure that the plaintiff should treat her kindly and properly and should maintain not only her but the grandmother, under whose care she had been before the marriage, and, accordingly, for the purpose of putting a check upon the "bridegroom," as he is described in the kabinnama, certain special conditions were inserted in that document, which constitutes the marriage contract between the parties. In discussing this matter, it must be borne an mind that, under Mahomedan law, marriage is purely a civil contract and nothing more. Therefore the terms of the kabinnama must be looked at and construed in the same way as the provisions in any other kind of contract.

25. I thought it right that I should have before me the naib kazi, that is to say, the assistant marriage registrar before whom the marriage contract was entered into. In answer to a question by me, he said that he was a moulvi as well as being an assistant marriage registrar. In both those capacities, he may be taken to be an expert witness as regards the necessary ceremonial to be observed on the occasion of a Mahomedan marriage. In the course of his evidence, he gave a very full and complete account of exactly how this particular marriage was effected and the manner in which the special conditions were inserted in the kabinnama. The defendant's maternal uncle, the man to whom I have already referred, acted as what is technically called the "vakil" of the intended bride; that is to say, he was acting as the bride's agent for the purpose of the wedding ceremony, and the making of the contract between the parties. It appears from the evidence of the naib kazi, Hafiz Nur Mahomed, that he satisfied himself that, first of all, the uncle, as the vakil of the bride, had duly ascertained that she was consenting to the conditions which were being put into the contract, and the naib kazi himself was satisfied that the bride's party, that is to say, the defendant's uncle as her vakil, and the two other witnesses acting on her behalf were fully aware of the exact terms which were being embodied by the naib kazi in the kabinnama. Hafiz Nur Mahomed said quite definitely that, in fact the language in which the special conditions were couched was written down by him in the document at the dictation of the parties. I cannot therefore but come to the conclusion that the defendant's agents were fully cognizant of the precise terms of the special conditions. I will repeat that, in my opinion, there is no doubt whatever that the girl's relatives did intend to protect her as far as they were able against any illtreatment or unkindness or even desertion on the part of the husband.

26. The girl's grandmother was fully aware of all the circumstances, and, as I have said earlier in this judgment, she knew, or ought to have known that the plaintiff had two wives already, and she must have realized that all the plaintiff wanted was an opportunity of having sexual relations with her granddaughter under the cloak of marriage. The fact that, under Moslem law, marriage is regarded merely as a civil contract and not a religious sacrament may perhaps make some difference to the moral aspect of the plaintiff's conduct, but one cannot be oblivious of the fact that the plaintiff was to all intents and purposes seducing the defendant under the pretext of entering into what would

normally be a life-long union, and no words of reprobation are too strong in condemnation of the conduct of the plaintiff. It appears therefore that the girl's relatives had ample justification for supposing that the plaintiff was the kind of man against whom it was desirable and indeed necessary to protect the girl whom he was about to marry. Unfortunately however the real question is not what the girl's relatives had in mind, but what the terms of the contract actually are. It was argued very forcibly by Mr. Mazumdar that not only the intention in the minds of the girl's people but the language of the document itself must be taken to mean that the plaintiff was under a legal obligation to support the defendant and her grandmother for the duration of their natural lives. No doubt it is competent for the relations of a Mahomedan girl at the time of her marriage or for a Mahomedan woman herself to take measures for her protection in the event of illtreatment or even divorce on the part of the husband. That was made clear in an Allahabad case Muhammad Muinuddin v. Jamal Fatima AIR 1921 All 152. The headnote of that case runs as follows:

An ante-nuptial agreement entered into between the prospective wife on the one side and the prospective husband and his father on the other (the parties being Mahomedans) with the object of securing the wife against illtreatment and of ensuring her a suitable amount of maintenance in case such treatment was meted out to her, was not void as being against public policy.

27. There the husband, a man named Mehdi Hasan, had married twice before, and on each occasion seems to have illtreated his wife. The father of the prospective bride, in consequence, thought it right that something should be done to protect his daughter and to secure for her a maintenance allowance in case she and Hasan did not continue to live together. To that end an agreement was entered into between the parties which provided that, in case of disunion or dissension, the prospective husband and his father should be bound to pay to his divorced wife for the rest of her life an allowance of Rs. 15 a month in addition to the dower due to the wife and certain properties were hypothecated to ensure payment of that allowance. The husband did eventually divorce his wife and thereupon the question arose as to whether the husband was bound to pay the allowance of Its. 15 a month.

28. Mr. Mazumdar has argued that the present case is covered by the facts and the decision in that case and that the special conditions contained in the kabinnama entered into on 25th August 1929, are wide enough to make it obligatory on the present plaintiff to pay to the defendant whom he has divorced a reasonable amount for the maintenance for herself and grandmother for the rest of their lives. I should mention that the defendant's maternal uncle, when he was in the witness-box seemed to be of opinion that he also, for some reason or other ought to share in the allowance paid by the plaintiff to the defendant. I cannot refrain from remarking that the maternal uncle did not impress me at all favourably. It seemed to me that he was much more concerned with his own comfort and convenience than for the well being and happiness of his unfortunate niece. I have no doubt however that at the time of the marriage, he thought that he was doing his best in the interests of the defendant but it equally appears to be the fact that no one on behalf of the defendant ever had in mind or contemplated the possibility of the plaintiff divorcing the defendant and so bringing about a situation such as now exists. That such an obvious method of cutting adrift from all his obligations (other than the payment of dower) might be resorted to by the husband should not have occurred to the minds of the uncle and grandmother is perhaps a little remarkable, but on the evidence, it must

be taken that they never envisaged the position which would arise if the plaintiff took it into his head capriciously and without warning to exercise his right to divorce the girl whom he was then about to marry. I have to decide therefore whether the special conditions are wide enough to cover the circumstances which have now arisen. Mr. Ghose, on behalf of the plaintiff, very frankly and properly admitted that the plaintiff is bound by those conditions whatever they may mean and therefore the only question I have to determine in this connexion is what is the true meaning and extent of those conditions. The special conditions are contained in Col. 14 of the kabinnama. That document consists of the entries made by the assistant marriage registrar in the register of marriages which is maintained under Sections 12, 15 and 22, Bengal Council Act 1 of 1876. The special conditions read as follows:

I, the bridegroom, promise (or declare) that I shall pot do the bride any hardship regarding maintenance and I shall not beat her or abuse her and I shall not do any acts which shall disgrace her or break her heart (cause her grief). I shall not be competent to take the aforesaid bride to any other place by force. I, the bridegroom, shall never separate the grandmother of the said bride who is the daughter of Syed Abdul Rahim, deceased, who has been responsible for (in charge of) the support and food and clothing of the said bride and who being the guardian of the said bride has now given her in marriage to me. I, the bridegroom, shall be responsible and in charge of her maintenance; also if I, the bridegroom, act against the defendant abovementioned or if I commit any kind of mischief (wickedness) or show any carelessness (unconcern), then the aforesaid bride (putting up) wherever she pleases shall be competent to realize from me month by month according to my means her subsistence money and the rent of the house she dwells in and I, the bridegroom, shall not be competent to raise any objection.

29. Now the main difficulty in trying to arrive at a conclusion as to what precisely is the meaning and effect of these conditions is that, with small exceptions the stipulations amount to very little more than a declaration of the acceptance on the part of the husband of such obligations as would naturally fall upon him in any event as the result of marriage. The condition about not ill-treating the wife, disgracing her or causing her grief and later the provision with regard to her being at liberty to live separate from her husband should he ill-treat her and thereupon receiving maintenance from him, really amount to no more than a declaration of the normal rights of a wife as against her husband. The only extraordinary provision in these conditions is that which seeks to ensure that not only the wife, but also her grandmother should receive subsistence allowance and proper accommodation at the expense of the husband.

30. This it is that makes it fairly plain that this unfortunate little girl's relatives, who were in charge of her, were as much concerned with their own comfort as that of the girl. I cannot help thinking that these conditions were largely designed to ensure that the grandmother should obtain for herself what can only be described as a "consideration" (in the legal sense) for the "sale" by her of her granddaughter to this middle-aged and apparently lustful bridegroom. I regret that I feel bound to come to the conclusion, on the language employed in this contract, that the terms of the special conditions are not sufficiently explicit to bring the matter within the scope of the decision in Muhammad Muinuddin v. Jamal Fatima AIR 1921 All 152. If the conditions had expressly stated that the bridegroom should according to his means pay to his wife subsistence money and the rent

of a house to dwell in for her life, or had contained any expression indicating the period for which this maintenance was to be paid, the case would have been different.

31. In my opinion, it would have been quite competent for those acting on behalf of the wife to have stipulated that, if there were a divorce, the husband should be under an obligation to continue to pay to the wife an adequate subsistence allowance, or if no sum had been mentioned, then a reasonable sum would have been payable during the lifetime of the wife or for any other specified period. But in this case, no period is specified. Nothing whatever is said about divorce. On the contrary, the parties are referred to as the "bride" and "bridegroom" in other words "husband" and "wife" and accordingly, I feel bound to hold that upon a strict construction of the conditions as they stand they can only be made to apply during the existence of the marriage. I come to that conclusion with the greatest possible reluctance and with a sense that this is one of those hard cases which are said to make bad law. I can however only administer the law as I find it and I must interpret this contract as I should have had to interpret any other contract between the parties irrespective of the effect which it may have upon either of them. This Court is not a Court of morals and I cannot concern myself with the religious or ethical aspect of the matter. I have to regard the matter from a strictly legal point of view.

32. Looking at these conditions and considering them solely as the terms of a civil contract entered into between the parties, I feel bound to hold that they are not sufficiently definite to put upon the plaintiff any obligation to pay maintenance to the defendant now that the marriage between the parties has been dissolved. I can only express the hope that irrespective of the legal aspect of the matter, the plaintiff will be brought to some sense of his moral responsibility and that he will realize that whatever the law may say he ought, in the circumstances, to provide for this little girl at any rate until such time as she may marry again. It follows from what I have said that here must be judgment for the plaintiff. The plaintiff will have the declaration which he seeks, but having regard to all the circumstances without costs.