1929.

Present: Dalton J.

PATHUMMA *v.* IDROOS.

214—C. R. Colombo, 49,993.

Muslim law—Divorce of wife by husband—Recovery of "maggar" and "kaikuli"—Maintenance during "iddat."

Under the Muslim law a wife who is divorced by her husband is entitled to recover "maggar" and "kaikuli."

"Maggar" is dowry money which is paid by the husband to the wife and which remains in the husband's hands.

"Kaikuli" is money paid by the parents of the bride to the husband and held in trust by the latter for the benefit of the wife.

After the divorce the husband is bound to provide maintenance for the wife for three months while she observes seclusion.

APPEAL from a judgment of the Commissioner of Requests, Colombo.

Marikar, for appellant.

M. F. S. Pulle, for respondent.

December 6, 1929. DALTON J.—

The parties to this action are Muhammedans and were husband and wife, who have been divorced.

The plaintiff, the wife, is now claiming the sum of Rs. 300 from her former husband, this sum being made up of three items:—

(1) a sum of Rs. 97.50 by way of "maggar,"
(2) a sum of Rs. 211 by way of "kaikuli," and
(3) a sum of Rs. 100, being cost of maintenance for three months after the divorce whilst she observed the "iddat."

These sums amounted to Rs. 408.50, but plaintiff restricted her claim to Rs. 300 to bring the case within the jurisdiction of the Court. She was successful, and obtained judgment in the sum of Rs. 293 and costs, from which judgment defendant appeals.

The facts, shortly, are that the parties did not live happily together; plaintiff left her husband and claimed maintenance from him. It was found that he was guilty of ill-treating his wife, and he was ordered on September 7, 1928, to pay her maintenance. On September 19 following he divorced her by uttering "tollok." The learned Commissioner is inclined to the opinion that the divorce is a "khula" one, uttered by the husband at the instance and consent of the wife. He states that there was a question to be determined as to whether defendant was entitled to double "maggar."

There is however no such claim put forward by defendant in his answer, although the question is raised in the issues. I am not satisfied on the facts that it can be said the divorce was " at the instance of " even if it was " with the consent of " the wife. The wife had good ground for leaving appellant, and he was ordered to pay maintenance. He nevertheless sought to get her to return to him, and he informed the Lebbe at the mosque, who celebrated the marriage, and who was a witness in this case, that, as she refused to come, he would utter " tollok. " It is true that the witness states the wife consented to this being done, but I can see nothing on the record to suggest that the wife was not satisfied to continue as she was with her order for maintenance. It was rather the appellant who wished to change the position in which they were and divorce her if she did not come back. These circumstances in my opinion do not justify a finding that the divorce was at the instance of the wife. A " khula " divorce is defined in *Tyabji's Muhammedan Law*, p. 155, section 162, as one where the wife alone is desirous of having the marriage dissolved. Here both parties were on the evidence so desirous, the husband clearly playing the principal part and the wife offering no objection. I have come to the conclusion, therefore, that it was not a " khula " divorce, and no case for any claim by defendant for double " maggar " can arise.

With regard to the claim for "maggar," a term admitted to be the same as " maskawien " in section 86 of the Code of Muhammadan Law, Vol. 1. of the Ordinances, p. 42, and which was examined and defined by Jayawardene J. in *Beebee v. Pitche*, [1] the argument for appellant has been on the basis that the divorce is a " khula." divorce. Even in the trial Judge's finding, with which, as stated above, I do not agree, the learned Judge has given authority to support his conclusion that on the facts found here the wife was entitled to the payment she claims. On the footing that it was not a " khula " divorce her position is of course much stronger, and it has not been contended for the appellant that in such a case plaintiff is not entitled to the " maggar " she claims.

With reference to the claim for " kaikuli, " it is conceded for the appellant that the authorities are against him, but it is urged that the same authorities have erred in regarding " kaikuli " as the same as " maggar. " " Kaikuli " is stated to be a present received by the bridegroom from the bride's father in consideration of marriage. In the course of his judgment in *Pathumma v. Cassim* [2] de Sampayo J. does appear on more than one occasion to use the two terms as almost synonymous, but when referring to counsel's argument he clearly distinguishes between the two, whilst if the facts in that case, which he sets out, be read, it is clear the " maggar "

[1] *26 N. L. R. 277.*

[2] *21 N. L. R. 221.*

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he refers to is a payment by the husband to the wife on the marriage, which he calls " dowry money " and which remains in the husband's hands, whilst the " kaikuli, " which he calls "dower," is a payment by the parents of the bride to the husband. This he says is held in trust by the husband for the wife, both " maggar " and " kaikuli " being recoverable by the wife in the eventualities set out. Counsel has stated that " kaikuli " is unknown to the Muhammedan law and is not mentioned in the text books. However that may be, it is not suggested it is not recognized by custom in Ceylon, whilst there is no doubt that it has been the subject of judicial decision. Counsel has cited nothing against those decisions to show that " kaikuli " is not recoverable by the wife in case of such a divorce as we have here.

With regard to the third item, maintenance during seclusion, it is provided by section 89 of the Code of Muhammedan Law above referred to, that the husband after the divorce must furnish the wife with a dwelling place for a space of three months. It has been urged for appellant that during that period plaintiff did not observe seclusion and that therefore he is not liable for the sum. I am informed that there is no reported case dealing with this question of " iddat, " but I have been referred to the *Manual of Muhammedan Law, Minhaj et Talibin*, where at p. 372 it is set out how this seclusion must be observed. I can find no evidence here to show that the seclusion has not been observed so far as lay in plaintiff's power. It is true she had to move from one house to another during the period, but that was for the very good reason that the house where she was living was demolished and she had to go to her uncle's house. I see no reason to differ from the Commissioner with regard to his finding on this point.

For these reasons the appeal must be dismissed with costs.

Appeal dismissed.