Ecclesiastical Side.

1862. Sept. 11.

RAMIA', widow..... *Applicant.*
BH'AGI, widow..... *Caveatrix.*

Hindú Law—Widows, Succession of—Joint Administration—Infidelity in Wife—Incontinence—Proof—Suspicion.

Where a Hindú dies intestate leaving no issue and several widows, the widows succeed equally, and are entitled to equal shares in his estate, and the ordinary course would be to grant them a joint administration.

Infidelity in a wife, or incontinence in a widow, in order to constitute a disqualification to inherit, must be positively proved, or at any rate there must be a reasonably well-grounded suspicion of it having taken place. But *quære* as to anything less than positive proof being sufficient.

THIS application to the Ecclesiastical jurisdiction of the Court for grant of administration was heard, Aug. 25th and 26th, before ARNOULD and COUCH, JJ.

White for the applicant.

Westropp for the caveatrix.

The facts sufficiently appear from the judgment of the Court.

Cur. ad. vult.

Sept. 11. ARNOULD, J.:—This is a question between two widows of a deceased Hindú as to which of the two has the right to administer. The admitted facts are—(1) That deceased died intestate and childless on 20th January 1862. (2) That Ramiá, the applicant, is the elder widow, having been married to deceased about thirty years ago; that she left his house some four or five years ago, and did not return to it till after his death. (3) That Bhági, the caveatrix, is the younger widow, having been married to deceased about eight years ago, and that she continued from her marriage to live with him till his death. The property is sworn to be under the value of Rs. 3,200, and to consist of a house in Máhim, household furniture, gold and silver ornaments, and debts. It is alleged by the caveatrix that ever since Ramiá's marriage with deceased there were perpetual disagreements between them: that Ramiá having formed an improper intimacy with one Sitárám (a goldsmith), eloped with him, carrying off jewels worth about Rs. 1,200; that she thereafter remained separate from her husband as a concubine; and that from such separation her connexion with the deceased ceased; that on hearing of

the death of deceased she came down to Bombay, where neither Bhági nor the caste would associate with her or admit her into caste. The caveatrix also swore that she (Bhági) had performed the deceased's funeral ceremonies, and alleged, but did not prove, that, according to the custom of the caste, she, as lawful widow of deceased, was the only and proper person to succeed him. The evidence taken altogether shows this:—that till the second marriage Ramiá and her husband had not been on bad terms; that after the second marriage quarrels arose; that Ramiá left her husband's house secretly with Rakhmi and Sitárám. It is not proved that she took her jewels with her, nor that she lived in concubinage with Sitárám or any one else. On the other hand, I think, it is made out that she lived quietly and decently at her father's house; that her husband went, almost immediately after she was missed, to seek for her; that they corresponded; that he never sought to turn her out of caste; that she steadily refused to return to him, and never did return to Bombay till after his death. Ramiá has not been formally outcasted; the caste is divided; the Bombayites are against her, the up-country party in favour of her. The funeral ceremonies were performed, not by Bhági, but by the nephew of the deceased, and the expenses for these defrayed out of outstandings collected under direction of the deceased. This nephew had, with his mother, lived in the house with Ramiá, and left it after the arrival of the younger widow, with whom he is on bad terms. On the whole I think the evidence fails to prove adultery in Ramiá, fails even to make out a case of suspicion of unchastity, but does show misconduct in her as a wife in absenting herself from her husband's roof without sufficient cause (according to Hindú manners and feelings), and refusing to return at his request.

Against the other widow nothing whatever is alleged. So here we have two widows to choose between, one guilty of misconduct, the other not. If we have a *discretion*, it would not be exercised in favour of the elder widow to the exclusion of the younger. Have we a discretion? That turns a good deal on the question who is entitled to the inheritance, it being a general principle of good sense and ecclesiastical law "that the right to the administration of the effects of an intestate follows the right to the property in them" (1 Wms. on Exors. 365, 5th ed.) Has either of these two widows an exclusive right to the property here? According to Sir T. Strange, Vol. I., pp. 136, 137 (ed. of 1830), "when a man has

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left more widows than one, and no son by any" (which is the present case), "she who was first married, being the one who is considered to have been married from a sense of duty, succeeds in the first instance, the others inheriting in their turn as they survive, entitled in the meantime to be maintained by the first." This appears positively to give the elder widow a first estate for life, subject to the duty of maintenance, leaving to the other widow a remainder also for life as to the immoveable property. But Sir T. Strange refers, in his notes on this passage in his text, to p. 56 of the same volume, where we find this: "it is the elder or first widow that succeeds eventually to her husband as heir, maintaining the others, who inherit in their turn on her death, &c.," thus far agreeing with the former text. But note 7 queries the position, and refers us to the Mayúkha, a work of great authority on this side of India. At p. 59, para. 19, of the Mayúkha (Borradaile's ed.)* we find that "even childless wives of the father are pronounced equal sharers." And again at page 103, para. 9, "The wife if faithful takes the wealth, but if *there be more than one they will divide and take equal shares*;" and this doctrine has been followed by the late Supreme Court in a case of the goods of Chapa Juddoo, decided on the 22nd of June 1861, of which we have been furnished with a note by the Chief Justice, where the Court, after consideration and obtaining answers from the Shástris of the Ṣadr Adálat and at Puṇá, held that "if there be more than one widow, each of them is entitled to an equal share of the property." It appears from those answers that, although the author of the Mayúkha cites no text in support of his opinion, such texts are to be met with in the Virámitrodayá, an authority of the Benáres school, and Macnaghten's Principles of Hindú Law, a work of authority in Bengal. It is also said, p. 19 of the latter work (ed. of 1829), that if there be more than one widow their rights are equal. The case in Morton's Reports, p. 314, handed up to us yesterday by Mr. Westropp, shows that this rule was acted upon by the Supreme Court in Calcutta as early as the year 1791; and in Morley's Digest, Vol. I., New Series, Title "Hindú Widows," p. 180, s. 15, we find an instance of its being acted upon in the North-Western Provinces in 1850. On these authorities we hold that the widows in this case are *primá facie* entitled to equal shares of the property, and it remains to be considered whether either of them is

* Stokes' ed., pp. 52 and 86.

disentitled by misconduct to a share, and if not, then whether we ought to grant administration to them jointly, or to one only, and, if the latter, to which of them. Is the elder widow thus deprived of her right by the misconduct proved? As to the general doctrine, that *proved* infidelity before widowhood disqualifies, and proved incontinence after widowhood divests the inheritance, the authorities seem to clash (see Act XXI. of 1850, and Taylor's Calc. Rep. 300); and as to the nature of the proof of incontinence that disqualifies there is again a discrepancy in the authorities. Sir T. Strange, p. 136, after laying down the principle that "an unchaste wife is excluded from the inheritance," adds "that nothing short of actual infidelity in this respect disqualifies," and the authorities collected in the Appendix to which he refers support this view. In all the cases we have been able to consult, the proof of incontinence or infidelity seems to have been positive. The Mayúkha, on the other hand, p. 102, lays it down "That even a suspicion of incontinence is enough to reduce a widow's rights to that of mere maintenance." This, as it seems to us, can hardly mean vague suspicion; it must mean a reasonably well-grounded suspicion short of actual proof. In this case, for instance, had Ramiá gone off with Sitárám alone, and been proved afterwards to have been in company with him at a distance from her husband's residence, this would probably have constituted a case of suspicion sufficient to deprive her of inheritance on the authority of the Mayúkha. But the proof here falls short of that. It does, however, show such misconduct as would render us reluctant to confer the administration on her to the exclusion of the younger, irreproachable widow: the younger widow, on the other hand, being on bad terms with the nephew, who, as nearest male next of kin to the deceased, would apparently take the immoveable estate as *ultimus hæres*, is on that ground less likely to manage the property satisfactorily, if intrusted with the sole administration. On the whole, we strongly recommend that the Administrator General should be requested to take the administration on himself. If this suggestion is not acted on, we should be driven to grant a joint administration.

Ordered by consent that the Administrator General be appointed administrator to the estate.

NOTE.—Mr. Justice Strange, of the High Court at Madras, in his "Manual of Hindú Law prevailing in the Presidency of Madras" (2nd ed., para. 326), lays it down that in Southern India the law is that the wives are viewed on an equality, and inherit jointly, and cites the Miták. II. i., a clause omitted between clauses 5 and 6 of Colebrooke's translation.