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sions of Ch. VI. of the said Act, and by Sec. 325 decrees on such awards are to be carried into execution as other decrees of court, and appeals lie under Sec. 11 of Act XXIII. of 1861 in the matter of execution of decrees, yet this latter provision does not appear to me to make an appeal legal in the matter of execution of awards on which a decree has not followed."

Against this order the petitioner having presented an application to the High Court, it was heard before Newton and Tucker, JJ.

Shántárám Náráyan for the petitioners.

Vishvanáth Náráyan Mandlik for the opponent.

Per Curiam :—The Court is of opinion that an appeal will lie from an order made in execution of an arbitration award filed under the provisions of Sec. 327 of the Civil Procedure Code. The Judge's order is reversed, and he should hear the appeal. We make no order for costs.

Order reversed.

Sept. 4.

Special Appeal No. 311 *of* 1868.

Timma'ppa' Bhat *et al.* ....*Appellants.*
Parmeshriamma' *et al.* ....*Respondents.*

Maintenance—Brother's Widow—Limitation—Charge—Act XIV. of 1859, Sec. 1., cl. 13—Separate Maintenance.

Held that a Hindú widow is entitled to maintenance from her husband's brother, whether separated or not, notwithstanding the non-receipt by the latter of her husband's assets.

In a suit for maintenance the cause of action ordinarily arises at the time when the maintenance, having become necessary, is refused by the party from whom it is claimed.

Act XIV. of 1859, Sec. 1., cl. 13, does not apply to all suits for the recovery of maintenance brought by a Hindú widow against her husband's family, but only to suits in which the plaintiff seeks to have her maintenance made a charge on a particular estate.

There is nothing in the Hindú Law to prevent the Court, in its discretion, awarding a widow separate maintenance.

Former decisions commented on.

THIS was a special appeal from the decision of R. West, Acting Judge of the District of North Cánará, in Ap-

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peal No. 102 of 1867, reversing the decree of the Munsif of Honore.

The suit was brought in the court of first instance by two Hindú women to recover maintenance, with arrears for five years, one of them being the widow of the defendant's brother, and the other the widow of his son.

The Munsif found that, as the plaintiff Parmeshriammá had been expelled twenty-four years before, and as it was not proved that her son was dead, who had sued ineffectually for a division of property, neither of the plaintiffs had now a right of suit against the defendants. He, therefore, threw out their claim.

The Acting Judge reversed the Munsif's decree, and awarded separate maintenance to each of the plaintiffs.

The defendants thereupon preferred a special appeal, which was heard before WARDEN and GIBBS, JJ.

Shántárám Náráyaṇ, for the special appellants:—A Hindú widow has no right to claim maintenance from her husband's brother if he has not received assets of her husband. In his Manual of Hindú Law, Mr. Justice Strange lays down (p. 54, para. 208) that "whoever takes the estate of the deceased must maintain those whom he was bound to maintain." This shows that the obligation to maintain is on those only who take the estate of the deceased, except such as are mentioned by him in para. 209, where he observes, on the authority of the Mitákshará, that "where there may be no property but what has been self-acquired, the only parties whose maintenance out of such property is imperative are aged parents, wife, and minor children;" and in para. 210 he lays down a distinct proposition exactly bearing on the present case. He says, "thus where there is no ancestral property, a widow is not entitled to look for maintenance from her husband's brother; and cites for his authority the judgment of the Madras Ṣadr Adálat in Special Appeal No. 142 of 1859.* *Virbhadráchri* v. *Kuppammal* † is to the same effect. [WARDEN, J.:—The Madras cases only

* Mad. S. D. Rep. for 1859, p. 272.
† *Ibid.*, p. 265.

go to the length of holding that the widow is not entitled to a *separate* maintenance. I remark that the Madras Judges have not quoted any authority for their decision.] [GIBBS, J.:—Every Hindú widow whether her husband was divided from the family or not, is entitled, when in needy circumstances, to claim from her husband's relatives.] I am not aware of a single case where it was held that the widow of a divided brother was entitled to maintenance. [GIBBS, J.:—*Chandrabhágábái* v. *Káshináth* (*a*) lays down that doctrine distinctly. *Bái Lakhmí* v. *Lakhmidás* (*b*) is also to the point. The whole policy of the Hindú Law is not to allow even a distantly related widow to starve.]

I now go to the point of limitation. The theory of the Hindú Law is that maintenance is a *charge* on ancestral property. The word "charge," used in cl. 13, Sec. I. of Act XIV. of 1859, is taken from the Hindú Law. The plaint states that the estate of Parmeshriammá's husband is in the hands of the defendants; and it is upon this basis that she asks for maintenance. She evidently seeks to *charge* her maintenance on that estate. The limitation of twelve years, therefore, applies, under cl. 13. [GIBBS, J.:—I do not think so. In *Gangábái* v. *Sadáshiv* (*c*) it was held that in a suit for maintenance the cause of action would ordinarily arise at the time when maintenance, having become necessary, was refused by the party from whom it was claimed; Act XIV. of 1859, Sec. I., cl. 13, does not apply to every suit for the recovery of maintenance brought by a Hindú widow against her deceased husband's family, but only to suits in which the plaintiff sought to have her maintenance made a charge on a particular estate. The consequence of holding the present action barred would be to compel every widow, whatever her present means, to file a suit within twelve years from her husband's death to meet the future contingency of her becoming poor.]

My third point is that separate maintenance should not

(*a*) 2 Bom. H. C. Rep. 341. (*b*) 1 Bom. H. C. Rep. 13.
(*c*) S. A. No. 1041 of 1864, decided on 28th June 1865 by Forbes and Warden, JJ.

be awarded. [GIBBS, J.:—It was ruled (d) so far back as 1858 that there was nothing in the Hindú Law to prevent the court, at its discretion, awarding a widow a separate maintenance.

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There was no appearance for the respondents.

PER CURIAM :—The Court confirms the decree of the Court below with costs.

Decree confirmed.

(d) *Mulá* v. *Girdharlal*, S. A. No. 3937, decided on 6th July 1858 by *Frere*, *Larken*, and *Harrison*, JJ.

Sep. 8.

Special Appeal No. 305 *of* 1868.

GOVIND RA'MCHANDRA GOKHLE ....*Appellant.*
SHEK AHMED *et al.* ....*Respondents.*

Variance between Plaint and Proof—Admission of Evidence—Discretion of Judge—Special Appeal.

The plaintiff sued upon a written agreement to recover rent from an alleged tenant and his two sureties.

The lower appellate court, holding the agreement not proved, threw out the claim, declining to consider, in proof of the alleged tenancy, payment of rent &c. in previous years.

Held that this was a matter in the discretion of the Judge; and, as there was no error of law in his proceedings, the High Court in special appeal refused to interfere.

THIS was a special appeal from the decision of J. R. Naylor, Acting Senior Assistant Judge at Ratnágirí, in Cross Appeals Nos. 486 and 487 of 1867, reversing the decree of Dáji Govind, the Ṣadr Amín of Ratnágirí.

The plaintiff, Govind Rámchandra, sued Shek Ahmed and his sureties, Báláji Máhadev and Abdul Rahimán, to recover Rs. 29-12-0 as rent due for a piece of land and trees under a written agreement.

Shek Ahmed and Abdul Rahimán answered that the agreement was false, and had never been passed by them.

Báláji Mahádev did not defend the suit.

Bhikáji Rámchandra was joined by the Court as a defendant, as he alleged that he was the owner of the land, and alone was entitled to rent.