

[APPELLATE CIVIL JURISDICTION.]

*Civil Petition.*1873.
July 29.KHEMKOR, WIDOW OF RANCHHOR*Plaintiff.*UMLA'SHANKAR RANCHHOR*Defendant.**Hindu law—Nátrá—Maintenance—Concubine.*

Among the Sompurá Brahmins a widow who has remarried in the lifetime of her first husband without his consent, cannot be regarded as the lawful wife of her second husband, but is entitled to maintenance, as his concubine, from his property.

Quere—Whether consent of her first husband would have rendered the second marriage valid ?

GOPA'LRA'V Hari Deshmukh, Judge of the Court of Small Causes at Ahmedabad, submitted, for the consideration of the High Court, the question—

“ Whether a Brahmin woman who has contracted a marriage with a man of that caste during the lifetime of her first husband, and without his consent, is entitled to maintenance ? ”

The Judge remarked : “ The parties are Sompurá Brahmins who now follow the trade of stone-cutters. It appears from the evidence that *nátrás* or remarriages are allowed among them. The plaintiff, Khemkor, was married to Ranchhor, while her former husband was alive, and without obtaining his consent * * *

“ The defendant is the deceased Ranchhor's son by another wife. He argues that as she is not a legal wife of his father she cannot claim maintenance.

“ The plaintiff states that she has a right to maintenance, even if she be not a legal wife. In support of this, the following authorities are quoted :—West and Bühler's Digest, Book I., page 108, question III. ; also page 93, remarks on question 41.

“ I think the plaintiff cannot be considered a legal wife, as her marriage was not celebrated in accordance with the custom of her caste. But she must be viewed in the light of a concubine, and as such she is entitled to maintenance from the property of the deceased.”

1873. The question was considered by WESTROPP, C.J., and
 KHEMKOR NĀ'NĀ'BHĀ'I HARIDA'S, J.
 v. WESTROPP, C. J. :—We concur in the opinion of the Judge
 UMIA'SHAN- of the Court of Small Causes at Ahmedabad, that the plaintiff
 KAR. of the Court of Small Causes at Ahmedabad, that the plaintiff
 Khemkor, cannot be regarded as the lawful wife of Ranchhor
 Pánáchand, she having married him in the lifetime of her
 first husband without the consent of that husband. We re-
 serve our opinion as to whether, even if he had given his con-
 sent to her marriage to Ranchhor, such a circumstance would
 have validated that marriage : see *Reg. v. Karsan Gojá (a)*.

We also agree with the Judge in thinking that as the
 mother of the illegitimate children of Ranchhor, *i.e.*, as his
 concubine, she is entitled to maintenance. (1 Stra. H. L.
 174; 1 West and Bühler, pp. 92, 93.)

[APPELLATE CIVIL JURISDICTION.]

July 29.

Referred Case.

PAVA' NA'GA'JI..... *Plaintiff and Appellant.*
 GOVIND RA'MJI *et al.*..... *Defendants and Respondents.*

Interest—Promissory Note—Penalty—Act XXVIII. of 1855.

Where a promissory note stipulated that, in default of payment of
 principal within three months after date, interest should run at the rate
 of 75 per cent, per annum, the increased rate was held to be a penalty and
 relieved against on payment of interest at 9 per cent. per annum notwith-
 standing Act XXVIII. of 1855.

Motoji Ratnáji v. Shekh Husen, 6 Bom. H. C. Rep., A. C. J. 8., follow-
 ed; and *Arulu Mastry v. Wakuthu*, 2 Mad. H. C. Rep. 205, and *Brojo*
Kishore Roy v. Madhub, 17 Calc. W. R. Civ. R. 373, dissented from.

THIS was a reference from W. M. P. Coghlan, District
 Judge of Tanna. The facts fully appear from the follow-
 ing judgment of the District Judge :—

“ The issue for decision is whether the plaintiff is entitled
 to the full amount of interest claimed ?

“ My finding on the issue is, the plaintiff is entitled only to
 interest at 9 per cent. per annum from the date on which in-
 terest commences to run under the bond.

(a) 2 Bom. H. C. Rep. 124.