

[APPELLATE CIVIL JURISDICTION.]

*Special Appeal No. 334 of 1873.*1873
September 22.UDARA'M SITA'RA'M *Defendant and Appellant.*SONKA'BA'I', WIDOW OF NA'NA'. *Plaintiff and Respondent.**Hindu Law—Son's Widow—Ill-treatment—Separate maintenance by Father-in-law.*

A Hindu father-in-law is legally bound to maintain his deceased son's widow, notwithstanding that no property left by the son may have come into his hands.

Where a father-in-law performs this duty in an imperfect manner—as by ill-treating the widow and turning her out of his house, the Civil Courts will award her separate maintenance.

THIS was a special appeal from the decision of A. Bosanquet, Judge of Ahmadnagar, confirming the decree of Purushottamráv Shiddheshwar Biniválé, First Class Subordinate Judge of that district.

The plaintiff, a Hindu widow, sued her father-in-law for separate maintenance. The defendant, *inter alia*, pleaded that he was not liable, as no property belonging to his son had come into his hands. The Courts below, finding that the defendant had ill-treated his daughter-in-law and turned her out of the house, awarded her separate maintenance.

The special appeal was heard by WEST and NA'NA'BHA'I HARIDA'S, JJ.

Bahiravnáth Mangesh appeared for the special appellant. His arguments and cases cited by him appear in the Court's judgment.

Shivashankar Govindrám, for the respondent, was not called upon to reply.

WEST, J.:—The District Judge has found in this case that the plaintiff was ill-used by the family of her father-in-law, and that the father-in-law himself turned her out of his house. On these grounds he has awarded her a residence in the family house, and a separate maintenance of Rs. 10 a month with two years' arrears. It is now contended that as

1873.
 UDARA'M SI-
 TA'RA'M.
 v
 SONKA'BA'I'.

the plaintiff's husband left no property that has come into his father's hands, the father is not legally bound to maintain his son's widow. But, at any rate, it is urged all that she can claim is a subsistence as a member of the father-in-law's family. The Hindu law no doubt contemplates that on the death of a married son his widow shall continue a member of the father's family, but while it imposes on her this necessity and the duty of attendance to the father-in-law's needs and commands, it exacts from the father-in-law and those over whom he has control reasonably kind and considerate treatment. The father-in-law, who is subject to the duty of maintaining his daughter-in-law, cannot shake it off by treatment which will hasten her death or force her to quit his family. If there is a legal duty at all, it is one for the imperfect performance of which our Courts will, and must, find a remedy in the award of a separate maintenance.

Is it then a legal duty or one of moral obligation only? In support of the latter view, the case of *Khetramani Dasi v. Kashinath Dass* (a) has been cited, and there are no doubt opinions expressed by some of the learned Judges in that case which would make the father-in-law's obligation to support his daughter-in-law a merely moral one. But that case was one of a simple election by a widow of a son, who had died without property, to reside with her own family instead of his. It is quite consistent that in such a case—she failing to perform the part assigned to her by the Hindu law—she should not be entitled to any separate maintenance, and yet that when she had been turned out of the house of her father-in-law, she should have such a claim. That such a claim is in accordance with the Hindu law of this side of India may be considered an established doctrine of this Court. In the case of *Chandrabhagabai v. Kashinath* (b), the decision of the Joint Judge that the plaintiff had no claim for maintenance on her husband's father (they having been separate in estate) was reversed, and the Court below was directed to ascertain her present circumstances. This case was cited and followed

(a) 2 Beng. L. Rep. A. C. J. 15.

(b) 2 Bom. H. C. Rep. 323.

in *Timáppá v. Parmeshriámmá* (c), and there are other decisions to the same effect. The result is that the Hindu law, which still, notwithstanding separation, leaves to the other members of the family an interest in the property of the separated member to be realized on his widow's death, conversely gives to him and to his widow a claim to maintenance if, through destitution, they should come to need it. In the case of *Bái Lakshmi v Lakshmidás* (d), the right of a step-mother was recognized, though, on the partition of the property, she had received a share in lieu of maintenance, and had thus in a manner contracted herself out of her original right. The right is in truth inalienable according to the dominant principles of the Hindu law, and if the corresponding duty is not voluntarily rendered, it must be enforced.

1873.

UDAPA'M SI-
TA'RA'M
v
SONKA'BA'T.

We must therefore, confirm the decree of the District Judge with costs.

NA'NA'BHA'I HARIDA'S, J. :—I entirely concur in the judgment just delivered. It is clearly found in this case by the District Judge that “the defendant's people ill-treated the plaintiff and that he turned her out of his house.” This is a finding which must be accepted by us as final. According to Hindu law, among the duties of the head of a family, that of maintenance by him of all the dependent members of that family is considered “a primary duty”: 1 Str. H. L. 67. “Who leaves his family naked and unfed,” says Brihaspati, “may taste honey at first, but shall afterwards find it poison:” 1 Str. H. L. 68.

There can be no question but that the widow of a son is a dependent member of her father-in-law's family. She is, therefore, entitled to claim maintenance from the head of that family—her father-in-law. It is true that the Hindu law supposes that as such dependent member she will live with, and under the protection of, her father-in-law, rendering to him, in return for such maintenance, obedience and domestic services which the same law enjoins upon her. But

(c) 5 Ibid. A. C. J. 130. (d) 1 Ibid. 13.

1873.
 UDARA'M SI-
 TA'RA'M
 V
 SONKA'BA'I'.

where he chooses of his own accord to dispense with that obedience and those services, and compels her by ill-treatment to live separate, she does not thereby become less entitled to claim her maintenance from him; nay, it would seem to have been held by Her Majesty's Privy Council that even where she leaves her husband's house without any ill-treatment or expulsion, she does not lose her right to maintenance, unless she does so for purposes of unchastity or for any other improper purpose: *Rajah Pirthee Singh v. Ranee Raj Kower* (e). And this right of hers would seem to be quite independent of any property acquired by her father-in-law from his deceased son as well as of any ancestral property in which such son had a joint interest with him. She is entitled to claim maintenance from her husband's relatives *whenever she is in need*: 1 Str. H. L. 172, 175, 245, 246. Such is the view of Hindu law taken on this side of India: *Bái Lakshmi v. Lakmidás* (supra); *Chandrabhágábái v. Káshináth* (supra); *Timáppá v. Parmeshriámmá* (supra).

The Calcutta case cited by Mr. Bahiravnáth differs somewhat from the present one, inasmuch as there the widow, who claimed separate maintenance, had elected to live separate from her father-in-law. There was not even an allegation of any ill-treatment; whereas here ill-treatment of the plaintiff by her father-in-law is distinctly held proved. Her living separate then is not by her own election, but by her father-in-law's expulsion of her from his house. She surely does not forfeit her right to be maintained by the surviving member of the joint family, of which her husband was a co-parcener, by the fact of that member forgetting his own position and responsibilities. If it were otherwise, heads of families, so inclined, might easily render their houses too warm for widowed relatives to live in with the object of getting rid of their liability to maintain them.

(e) 20 Calc. W. R. Civ. R. 21.