1875.

RA'HI AND OTHERS v. GOVIND VALAD TEJA.

decree to that effect, and we have not been invited by the parties so to do.

We shall, therefore, simply reverse the decree of the Joint Judge, and dismiss the claim of the plaintiff as heir of Tejá Kurad to his estate; but we declare that the plaintiff is entitled to maintenance out of that estate, and we direct the Court of first instance to fix a liberal and suitable maintenance for him, having due regard to the extent and value of the estate of Tejá Kurad.

Looking at the conduct of the family, we think that the fairest direction which we can make as to costs, is that the parties respectively should bear their own costs of the suit and of both appeals.

We are indebted to Mr. Justice Nánábhái Haridás and to the Honourable Ráv Sáheb V. N. Mandlik for valuable assistance as to the original Sanskrit of the texts of Hindu law to which we have referred.

Note.—Compare *Narain Dhara* v. *Rakhal Gain*, 1 Ind. L. R. (Calc.) 1.

[ORIGINAL CIVIL JURISDICTION.]

Ecclesiastical.

1876. January 29.

IN THE MATTER OF THE LAST WILL AND TESTAMENT OF RA'MCHANDRA LAKSHMANJI.

VINA'YAKRA'V RA'MCHANDRA LAKSHMANJI .....APPLICANT.

Will—Probate—Annuity— "Value"—Court Fees Act (VII. of 1870), Schedule I., Clause 11.

For the purpose of determining the probate fee to be paid in respect of an annuity the word "value" in the Court Fees Act (VII. of 1870), Schedule I., Clause 11, must be taken to mean the market value of the annuity, and not ten times the amount of a yearly payment.

Where the property, in respect of which probate is sought, is mortgaged, the amount of the mortgage incumbrance must be deducted from the market value of the property, and the probate fee charged on the balance.

THE applicant in this case applied to J. W. Orr, Ecclesiastical Registrar, for probate of the will of Rámchandra Lakshmanji, which was dated the 16th May 1874, and made in Bombay, and, therefore, came under the provisions of the Hindu Wills Act (XXI. of 1870).

1876.

IN THE MATTER OF THE LAST WILL AND TESTAMENT OF RA'MCHANDRA LAKSHMANJI.

By the will the testator's widow, Anapurnabai, and his son the applicant were appointed executors, and they and his daughter Manikbai were his only next of kin. The testator died possessed of both moveable and immoveable property within the jurisdiction of the High Court of Bombay, and among the moveable property was an annuity of Rs. 50,000, granted by the Secretary of State for India in Council to the testator, his heirs, executors, administrators, and assigns, to commence from the 23rd October 1877. This annuity was mortgaged, and the applicant, in his affidavit on which he applied for probate, alleged that the amount then due at the foot of the mortgage was Rs. 6,67,194, that the annuity was of the value of Rs. 8,00,000, and that the other property of the testator was of the value of Rs. 2,90,000.

The applicant contended before the Ecclesiastical Registrar, 1st, that no probate fee could be charged at all on the annuity, because it was not yet payable, and, moreover, even if it had been payable, it would, under the terms of the grant, have been taken by him as the testator's heir; 2nd, that if a probate fee were to be charged on the annuity, it must be calculated, not on the market value of the annuity, but, following the analogy of the Court Fees Act (VII. of 1870) and of the General Stamp Act (XVIII. of 1869), on ten times the annual payment, viz. Rs. 5,00,000, and that from this amount must be deducted the amount of the incumbrances, and as these exceeded Rs. 5,00,000, there would still be no probate fee to be paid.

The Ecclesiastical Registrar was of opinion, 1st, that the applicant being a Hindu and the heir of the testator, and there being no debts due to the estate, it was not incumbent on the applicant to take out probate, but, if he took *qua* executor or devisee, he must take out probate, and then the probate fee would rightly be charged; 2nd, that as neither the Court Fees Act nor the General Stamp Act contain any provision for computing the value of an annuity for the purpose of determining the probate fee, and there being no analogy between a probate and a suit, whatever analogy there might be between the application for probate and a suit, and it being the probate and not the application that required a stamp, no argument in support of the applicant's contention

1876.

IN THE MATTER OF THE LAST WILL AND TESTAMENT OF RA'MCHANDRA LAKSHMANJI.

could be drawn from the provisions of those two Acts, and the probate fee must be calculated on the value of the annuity as provided by the Court Fees Act (VII. of 1870), Schedule I., Clause 11; 3rd, that, in the absence of special directions to the contrary, the value should be taken to mean the market value, and the probate fee should be charged on Rs. 10,09,000 less the amount of the incumbrances.

The question was then referred by the applicant, under Section 5 of the Court Fees Act (VII. of 1870), to C. E. Fox, Taxing Master, who under the same section referred it to the Chief Justice, with a certificate that the question was one of general importance and proper to be referred to the final decision of the Chief Justice, before whom and Sargent, J., on 29th January 1876,

Latham on behalf of the applicant submitted that, following the analogy of the Court Fees Act (VII. of 1870), Section 7, and of the General Stamp Act (XVIII. of 1869), Section 12, the value of the annuity for the purpose of charging the probate fee should be taken to be ten times the annual payment.

Scoble (Advocate General) for the Crown.—There is no analogy between the fees to be paid on the institution of suits and the fees to be paid on the taking out of probates, and the valuation of annuities in the Stamp Act is made only for the purposes of that Act. The Court Fees Act (VII. of 1870), Schedule I., Clause 11, enacts that 2 per cent. is to be charged on the amount or value of the property in respect of which probate is granted, if such amount or value exceeds Rs. 1,000, which is the case here. The word "value" must be taken to mean market value. *Nanhoon Lingh* v. *Tofanee Lingh* (1) shows the principle to be followed.

WESTROPP, C. J.:—We must uphold the finding of the Ecclesiastical Registrar. The annuity, although not payable until October 1877, is an item of property capable of present valuation. The provision in Section 12 of Act XVIII. of 1869, that the whole amount secured for the payment of an annuity shall be taken to be ten times the annual payment, is in that

(1) 12 Beng. L. R. 113; see p. 118.

1876.

IN THE MATTER OF THE LAST WILL AND TESTAMENT OF RA'MCHANDRA LAKSHMANJI.

same section expressly stated to be made for the purposes of that Act, and we do not see how we can extend it. It also seems to us that the provisions of Chapter III. of Act VII. of 1870 must be limited to suits, and cannot be held to apply to probates. The fee payable in respect of the probate of a will is fixed by Act VII. of 1870, Schedule I., Clause 11, at 2 per cent. on the value of the property, and we consider that the value of this annuity for the purpose of determining the amount of probate fees must be taken to be the market value. In the present case, the annuity being mortgaged, the only interest in it passing under the probate is the equity of redemption; therefore the amount of the mortgage incumbrances must be deducted from the market value of the annuity, and the probate fee be charged at the rate of 2 per cent. on the balance (1).

[APPELLATE CIVIL JURISDICTION.]

NATHUBHA'I BHA'ILA'L (PLAINTIFF) *v.* JAVHER RA'IJI AND ANOTHER (DEFENDANTS). February 16.

Hindu Law—Contract—Married woman—Capacity of a Hindu female to enter into a contract without her husband's consent—When such contract is binding on the husband—Stridhan.

Under the Hindu law a wife who has voluntarily separated from her husband, without any circumstances justifying her separation, is liable for debts contracted by her (even for necessaries), although without her husband's consent; but her liability is limited to the extent of any *stridhan* she may have.

S. A. No. 261 of 1861 decided by Sausse, C.J., and Hebbert and Forbes, JJ., 2nd February 1863, and S. A. No. 461 of 1869, decided by Sargent and Melvill, JJ., 17th January 1870, approved and followed.

THIS case was referred for the opinion of the High Court by Gopalráv Hari Deshmukh, Judge of the Court of Small Causes at Ahmedabad.

The facts of the case are briefly these:—The plaintiff Nathubhái sued Javher and Bai Hettá, brother and sister, on a promissory note, and alleged that it had been executed by both of them. Javher admitted the execution of the note, but Bai Hettá denied it, and pleaded that she was not liable, because her husband was alive. The Judge of the Small Cause Court found on the evidence that

(1) See *In the goods of Innes*, 8 Beng. L. R. 43, Appx.