

band has, by his cruelty or misconduct, forfeited his marital rights, or has turned his wife out of doors, or has, by some insult or ill-treatment, compelled her to leave him (1). The present plaintiff asks, not for damages, but for an injunction; and he is entitled to an injunction if he has proved his case, and if the conduct of the second defendant still continues to show a necessity for it. The Assistant Judge has found that the second defendant did harbour the first defendant after notice from her husband; and, looking to the conduct of the second defendant throughout the proceedings in the suit, we cannot entertain any doubt that he has been, and is, actively, aiding and abetting the first defendant in her opposition to her husband's wishes.

Our decree must be that the plaintiff is entitled to his conjugal rights, and that the first defendant, Yamunábái, be ordered to return to his protection, and that the second defendant, Náráyan Bhide, do abstain from harbouring the first defendant, and from offering any obstruction to the return of the first defendant to her husband's protection.

Having regard to the conduct of the parties, and to all the circumstances of the case, we think that each party should bear his and her costs throughout.

We amend the decree of the Court below accordingly.

1876.

YAMUNA'BA'I
AND
NA'RA'YAN
JAGANATH
BHIDE
v.
NA'RA'YAN
MORESHVAR
PENDSE.

[APPELLATE CRIMINAL JURISDICTION.]

Criminal Review No. 7 of 1876.

IN RE KESHAV LAKSHMAN.

*Award of Compensation—The Code of Criminal Procedure (Act X. of 1872),
Section 209—Complainant.*

1876.
March 23.

A *karkun* on the establishment of a Civil Court, entrusted with the execution of a writ, reported to the Court that a particular person obstructed him in attaching property as commanded by the writ; and a report was thereupon made by the Court to a Magistrate, with a view to proceedings being taken against the obstructor. The Magistrate acquitted the accused and ordered the *karkun* to pay the accused compensation under Section 209 of the Criminal Procedure Code.

(1) Addison, on Torts 802.

1876.

In re KESHAV
LAKSHMAN.

Held that such last-mentioned order was wrong, the *kárkun* not being a complainant within the meaning of Section 209 of the Code of Criminal Procedure. In such a case as the above the Subordinate Judge should be regarded as the complainant, and he, having acted judicially, was not liable to the penalty provided in Section 209 of the Criminal Procedure Code.

THIS was an application to the High Court for review of an order passed by F. L. Charles, Magistrate, 1st Class, in the Tanna District, under Section 209 of the Criminal Procedure Code.

The facts of the case were shortly these :—The petitioner, Keshav Lakshman, was a *kárkun* on the establishment of the Subordinate Judge at Pimpalgaon in the Tanna District, and was, as such, entrusted with the execution of a writ of attachment of certain property in execution of a decree against one Abá valad Krishna. The petitioner made a report to the Subordinate Judge that the said Abá offered obstruction to the attachment levied by the petitioner in the said execution; and the Subordinate Judge, on the strength of this report, forwarded the matter to the 1st Class Magistrate in order that it might be dealt with as a criminal case. The Magistrate, after taking the evidence of the *kárkun* and other witnesses, found that no obstruction to the attachment had been offered by the said Abá, accordingly acquitted him, and directed the *kárkun* to pay Rs. 5 to the said Abá as compensation under Section 209 of the Criminal Procedure Code.

The matter was brought to the notice of the Session Judge of Tanna, who refused to interfere.

The petition was heard by MELVILL and WEST, JJ.

Pándurang Balibhadrá for the petitioner :—The petitioner was a Court *kárkun*, and he acted under the orders of the Subordinate Judge. He was in no sense a complainant. He could not have disobeyed the order of the Subordinate Judge to proceed against the obstructor Abá. The order of compensation is, therefore, illegal, and should be reversed.

PER CURIAM :—The Court thinks that the Subordinate Judge, and not the *kárkun*, Keshav, must be regarded as the complainant in the proceedings before the Magistrate. The Subordinate Judge acted judicially, and, on that ground, would not be subject to the penalty provided in Section 209 of the Criminal Procedure Code.

The *kárkún*, if he made a false report to the Subordinate Judge, or gave false evidence before the Magistrate, is punishable otherwise; but, not being the complainant, he also is not liable to have the payment of compensation awarded against him under Section 209 of the Criminal Procedure Code.

The Court reverses the order of the Magistrate, which directed that Keshav Lakshman should pay Rs. 5 to Abá valad Krishná as compensation.

Order accordingly.

[ORIGINAL CIVIL JURISDICTION.]

Suit No. 829 of 1873.

Appeal No. 288.

MURA'RJI GOKULDÁ'S AND OTHERS (ORIGINAL DEFENDANTS, APPELLANTS) March 25.
v. PA'RVATIBÁ'I (ORIGINAL PLAINTIFF, RESPONDENT).

Hindu Law—Inheritance—Blindness—Disqualification to inherit.

According to the Hindu law, as prevailing in the Bombay Presidency,* blindness, to cause exclusion from inheritance, must be congenital.

Therefore where the widow of a childless intestate, though proved to have been totally blind for some years before the death of her husband, was admitted not to have been born blind,

Held that such blindness did not prevent her from inheriting the property of her husband on his decease.

GOKULDÁ'S VITHALDÁ'S died intestate and without issue in the year 1873, leaving him surviving his widow Sakerbái, who, though not born blind, had been totally blind for some years before his death, and his sister Párvatibái, the plaintiff. Sakerbái died some two or three months after her husband, having, about a week previously, made a will, whereby she bequeathed certain Government promissory notes and money, which had been the property of her husband, to the defendants, as trustees and executors, to be applied in the trusts of her will. After the death of Sakerbái, Párvatibái, claiming as the heir of Gokuldás Vithaldás, sued the defendants for possession of the Government promissory notes

* *Note.*—In *Mohesh Chunder Roy v. Chunder Mohun Roy* (14 Beng. L. R. 273) it was held that the Hindu Law as prevailing in the Bengal Presidency is similar.