1878.

CASSUM JOOMA' v. THUCKER LILLA'DHUR KISSOWJEE.

Reverse the judgment of the Small Cause Court, and let a non-suit be entered.

The plaintiffs must pay the cost of the suit and of this reference.

Order accordingly.

Attorneys for the plaintiff:—*Messrs. Balcrishna and Bhugwandás.*

Attorneys for the defendant:—*Messrs. Lynch and Tobin.*

[ORIGINAL CIVIL.]

(FULL BENCH.)

Before Sir M. R. Westropp, Knt., Chief Justice, Mr. Justice Bayley, Mr. Justice Kemball, and Mr. Justice Green.

May 1.

SAVITRIBA'I, WIDOW OF DHA'KJI BA'LCRUSTNA (ORIGINAL PLAINTIFF), APPELLANT, *v.* LUXIMIBA'I, WIDOW OF GANOBA' ANANTA, AND SADA'SIV GANOBA' (ORIGINAL DEFENDANTS), RESPONDENTS.*

Hindu law—Maintenance—Nephew's widow.

In the Island or Presidency of Bombay, a Hindu widow, voluntarily living apart from her husband's relatives, is not entitled to a money allowance as maintenance from them if they were separated in estate from him at the time of his death, nor is she entitled to such maintenance from them whether they were separated or unseparated from him at the time of his death, if they have not any ancestral estate or estate belonging to him in their hands.

The doctrine, that in certain relationships, and independently of the possession of ancestral estate, maintenance is a legal and imperative duty, while in other relationships it is only a moral and optional duty, discussed.

Semble—A Hindu widow, who has received a full share as and for her maintenance, cannot, when she has exhausted it, enforce from the relatives of her husband, or from the family estate, a further allotment, or a money allowance for maintenance.

Semble—The *stridhan* of a Hindu widow should be taken into account in determining whether and to what extent she should have maintenance assigned to her.

S, a Hindu widow voluntarily living apart from her husband's family, sued his paternal uncle, the nearest surviving male relative of her husband, for a money allowance as maintenance. *Held* that such suit was unsustainable for either of the two following reasons, viz.: 1. That the defendant was separated in estate from the plaintiff's husband at the time of his death. 2. That at the institution of the suit the defendant had not in his hands any ancestral estate, or any estate which had belonged to the plaintiff's husband.

* Suit No. 325 of 1873; Appeal No. 261.

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADA'SIV GANOBA'.

Decisions of the Bombay Sadr Adálat on the right to maintenance reviewed.

Bái Lakshmi v. *Lakhmidás Gopaldás* (1 Bom. H. C. Rep. 13), *Chandrábhágábái* v. *Kashináth* (2 Bom. H. C. Rep. 323), and *Timmáppá* v. *Parmeshriámmá* (5 Bom. H. C. Rep. 130 A.C.J.) disapproved.

Udarám Sitárám v. *Sonkábái* (10 Bom. H. C. Rep. 483) considered.

Rujjomoney Dossee v. *Shibchander Mullick* (2 Hyde. 103), *Khetramani Dási* v. *Káshináth Dás* (2 Beng. L. R. 15 A. J.), and *Gangábái* v. *Sitárám* (Ind. L. R. 1 All. 170) approved and followed.

THIS was an appeal from a decree of Marriott, J., for the defendants in a suit for maintenance brought by a widow against her deceased husband's grandmother and uncle. It was proved that, many years previously to the suit, and previously to the death of the plaintiff's husband, his uncle (*i.e.*, the second defendant Sadásiv) had sued for and obtained a partition of the family property, and that he had not subsequently become reunited in estate with any member of the family. After the death of the plaintiff's husband, his uncle (the defendant Sadásiv) took the plaintiff to his house for the purpose of performing the requisite funeral ceremonies in honour of the deceased, and he offered to maintain her and her infant daughter if they continued to reside with him; but the plaintiff, after remaining thirteen days in his family, departed with her child, and went to reside with her own father. She alleged that Sadásiv and his wife did not treat her well; but the Court was of opinion that she had no cause of complaint against Sadásiv, nor any excuse for leaving his house, but that she desired to obtain from him a separate maintenance. The facts of the case are fully set forth in the judgment of the Full Bench.

B. Tyabji (with him *Telang*) for appellants:—We admit that the appellant failed at the trial to establish her right to maintenance out of the Fanaswádi property, purchased by the defendant Luximibái. But we contend that the defendant Sadásiv, although he may have spent his share of the family property, continues to be liable to maintain the plaintiff as being the widow of his nephew Dhákji. "Females of the family" have a right to maintenance: Manu, ch. III, pl. 55 to 60; Cole. Dig., bk. IV, ch. I, sec. 2, pl. 39 to 43. As to the persons included in this class: Cole. Dig., bk. V, ch. VIII, sec. I, pl. 399, cl. 6; *Ibid.*, bk. II, ch. IV,

sec. I, pl. 11, 12. Men are prohibited from alienating the whole of their property, in order to prevent their being incapacitated from maintaining their families: Cole. Dig., bk. II, ch. IV, sec. 2, pl. 18.

As to the right to maintenance, 2 *West and Bühler*, Intro., p. 30; *Bái Lakshmi* v. *Lakhmidás Gopáldás*,(1) *Chandrábhágábái* v. *Kashináth Vithal*,(2) *Timmáppá* v. *Parmeshriámmá*,(3) *Udarám Sitárám* v. *Sonkábái*,(4) *Visalatchi Ammal* v. *Annasamy Sastri*,(5) *Rájá Pirthee Singh* v. *Rání Rajkooer*.(6) These cases show that residence with her husband's family is not essential to the widow's right. Family property, after the partition, retains its ancestral character (per Couch, C. J., in *Lakshmibái* v. *Ganpat Morobá*(7)) and, therefore, we contend, continues liable to maintain the females of the family.

The case of *Khetrámáni Dási* v. *Kashináth Dás*(8) should not be followed in Bombay. It proceeds on a distinction between moral and legal precepts not recognized here: per Sausse, C.J., in *Pránjivandás* v. *Devkuvarbái*.(9) The husband's nearest kinsman is bound to support the widow (Cole. Dig., bk. IV, ch. I, sec. I, pl. 13), and if his family be extinct or destitute of means, her father's family must do so: *Ibid.* The plaintiff left the family house in consequence of proper food not having been provided for her child. This fully justified the step.

Latham (with him *Inverarity*) for the respondents:—Although partition leaves the property ancestral as between the divided parcener and his issue, it is by partition discharged of general family burdens, including maintenance of the widows of other parceners. The term ancestral property has no meaning except as between a man and his descendants. The son of a brother can only claim through his father. If the property be discharged as regards the latter, it is so as regards the former. The observa-

(1) 1 Bom. H. C. Rep. 13.
(2) 2 Bom. H. C. Rep. 323, A.C.J.
(3) 5 Bom. H. C. Rep. 130, A.C. J.
(4) 10 Bom. H. C. Rep. 483.
(5) 5 Mad. H. C. Rep. 150.
(6) 12 Beng. L. Rep. 238; see 20 Calc. W. R. 21 Civ. Rul.
(7) 5 Bom. H. C. Rep. 128, 135, O.C.J.
(8) 2 Beng. L. R. 15, A. J. S. C. 9 Calc. W. R. 413 and 10 *Ibid.* (F.B.) 89.
(9) 1 Bom. H. C. Rep. 130; see p. 133.

1878.

SAVITRIBA'I v. LUXIMIBA'I AND S.VDA'SIV GANOBA'.

tions of Couch, C.J., in *Lakshmibai* v. *Ganpat Morobá*,[1] which have been relied on, are not inconsistent with that view.

A man may possibly be bound to maintain his widowed daughter-in-law; but where is the Court to stop if it holds him bound to maintain his separated nephew, or that nephew's widow, or the widow of any *sapinda*, separated or unseparated, however remote? The cases of *Bái Lakhshmi* v. *Lakhmidás Gopáldás*,[2] *Chandrábhágábái* v. *Kashináth Vithal*,[3] and *Timmáppá* v. *Parmeshriámmá*,[4] which have been cited in support of the plaintiff's right, do not rest upon any quoted authority. The case of *Udarám Sitárám* v. *Sonkábái*[5] does not, so far as its facts go, support the plaintiff's claim, and the *dicta* relied on were extra-judicial, and not sustainable by the treatises in Hindu law. The case of *Visalatchi Ammal* v. *Annasamy Sastri*,[6] so far as decided by the High Court, is not in point. The texts quoted from Manu sound in morality and not in law: *Khetrámáni Dási* v. *Káshináth Dás*,[7] *Rujjomoney Dossee* v. *Shibchandar*.[8] The duty of maintenance is as much inculcated in the text books of Bengal as in those of Bombay. If there be an obligation to maintain, it extends only to aged parents, wife, and children who are minors. See Strange's Manual, pl. 208, 209, quoting the Mitakshara.

From the Mayukha, ch. IV, sec. XI., pl. 9, it is to be inferred that the burden of maintaining other persons is imposed merely upon him or her who takes the family estate. The distinction as to separation, taken in *Rámábai* v. *Trimbak Ganesh Desái*,[9] is important. There is no difference in principle between a deserted wife (the plaintiff in that case) and a widow. The evidence here shows that the plaintiff left the family house with her child at her own pleasure, and was not ill-treated.

Lakshman Rámchandra v. *Sarasvatibái*[10] was also cited on behalf of respondents.

(1) 5 Bom. 128, O.C.J.
(2) 1 Bom. H. C. Rep. 13.
(3) 2 Bom. H. C. Rep. 323.
(4) 5 Bom. H. C. Rep. 130, A.C.J.
(5) 10 Bom. H. C. Rep. 483.
(6) 5 Mad. H. C. Rep. 150.
(7) 2 Beng. L. R. 15, A. J.
(8) 2 Hyde. 103.
(9) 9 Bom. H. C. Rep. 283.
(10) Sp. ap. 169 of 1874. Printed Judgments for 1875, pp. 84 and 87, since reported in 12 Bom. H. C. Rep. 69.

WESTROPP, C.J. :—Ganobá Anantá, the husband of the first defendant Luximibái, died, leaving, by her, two sons, Sadásiv (the second defendant) and Bálcrustna, and one daughter Anantibái. Bálcrustna was transported to the Straits' Settlements, whence he returned in 1850 or 1851, and died in 1867 or 1868, leaving one son Dhákji, of whom counsel stated on the argument of this appeal that he (Dhákji) was born in 1839, before the partition which we shall presently mention, but of this there is no proof. It was not asserted that he was married until after the partition. He has died, leaving, surviving him, his widow, the plaintiff Savitribái, and an infant daughter who died during the pendency of this suit and before the present appeal. In 1852 Sadásiv Ganobá instituted a suit against his cousins, the sons of Shivshanker, brother of Ganobá Anantá, and his (Sadásiv's) brother, Bálcrustna, and a Parsi mortgagee, at the Equity Side of the late Supreme Court, in which suit a decree for sale and partition was made by Sir Erskine Perry on the 25th September 1852. The family property, the subject of that suit, consisting of a house in the Kalbádevi Road and a chawl, with an appurtenant bungalow, situated in Fanaswádi or Agiary Lane, was sold in the year 1853, pursuant to that decree. By the plaint in the present suit the plaintiff has claimed a moiety of the chawl and premises in Fanaswádi, or, in the alternative, an award of maintenance generally, without referring to any particular property. At the sale in 1853, the chawl and bungalow in Fanaswádi Lane were purchased for Rs. 4,400 by one Dámodhar Rámchander in his own name, but, in fact, for the first defendant Luximibái, to whom he conveyed them by deed on the 7th August 1854. The Rs. 4,400 are satisfactorily proved to have been part of the proceeds of her personal ornaments (constituting her *stridhan*) sold for her by Crustnáth Rámchander, a clerk in the office of Messrs. Craigie, Lynch, and Owen, who deposes that he has known the defendant's family for thirty years, and has, during twenty-eight years of that time, managed the pecuniary affairs of the defendant Luximibái, in which statement, and especially as to the sale of the jewels for her, he is, in his evidence, supported by Dámodhar Rámchander as well as by the defendant Sadásiv. About Rs. 5,200 or 5,300 were realized by

1878.

SAVITRIBA'I v. LUXIMIBA'I D SADA'SIV GANOBA'.

the sale of those jewels. Returning to the partition suit, it appears to have been concluded by the distribution, by the Master in Equity, of the proceeds of the sale of the immoveable property in Kalbádevi Road and Fanaswádi, already mentioned; one moiety of which proceeds was made over, in accordance with Sir E. Perry's decree, to the sons of Shivshanker, and the other moiety to Sadásiv and Bálcrustna in the form of a cheque for Rs. 5,506-1-0 on the Oriental Bank, which cheque was, in August 1853, given to them by the Master in Equity. Sadásiv deposes that he and Bálcrustna went together to the bank, and, having obtained the amount of the cheque, returned home, and then and there divided that amount equally between them, and as to this division of the money, Sadásiv is corroborated by Crustnáth Rámchander, who has sworn that it was made in his presence. Sadásiv, who is a clerk in the service of the G. I. P. Railway Company, and has been so for several years, said that he expended the whole of his share of the Rs. 5,506-1-0 in paying debts and in purchasing about Rs. 500 or Rs. 600 worth of ornaments for his wife, and that he did not know how Bálcrustna expended his share of the Rs. 5,506-1-0. An attempt was made by the plaintiff, in the course of her case, to prove that the chawl at Fanaswádi was, in fact, bought by Sadásiv and Bálcrustna jointly, and that Dámodhar Rámchander was their trustee for that purpose. Her witnesses to establish that state of facts were Náráyan Luxuman and Vishnu Máhádev. The former was a clerk in the office of Mr. Hancock, a solicitor, and, as such, conducted the partition suit on behalf of Sadásiv, the plaintiff, in it, and also the case of Bálcrustna as one of the defendants in the same suit. He deposed that, at the time of the sale in it, Sadásiv said to him that "the property to be sold was ancestral property, and that he should keep one portion of it for himself and his family." He also said that "Sadásiv purchased the chawl in the name of his mother," but he admitted that he (the witness) did not know whence the purchase-money for it came. He said that Bálcrustna, from the time of his return from Singapore to his death, lived in the bungalow appurtenant to the chawl, but his memory of transactions to which he deposed, seemed to be very imperfect; he admitted that he had only seen

Bálcrustna in the chawl three or four times, and that he knew very little either of Sadásiv or Bálcrustna since the suit of 1852. The alleged conversation as to Sadásiv purchasing a portion of the family property, was denied by Sadásiv on solemn affirmation. The other witness, Vishnu Máhádev, had, as a tenant, occupied a part of the Fanaswádi chawl, and swore that he paid rent during Bálcrustna's life to him for it, but he admitted that he did not obtain from him any receipt for that rent, and that his tenancy concluded by his being ejected by Sadásiv (on behalf of his mother Luximibái) who had to sue the witness Vishnu Máhádev in the Court of Small Causes for the last three months' rent, for which he obtained a decree, although the witness admitted that only one month's rent was due. This same witness denied, in the presence of Dr. Dallas, the Attorney for Paupers, that any such suit was brought against him; and his evidence as to the payment of rent to Bálcrustna, (which was fully contradicted by the defendant Sadásiv, who assisted his mother, the defendant Luximibái, in managing the Fanaswádi property,) seems to have been undeserving of credit, and to have been inspired by his resentment against Sadásiv. Purshotam Khandushet was also examined on behalf of the plaintiff; but he evidently knew little of the parties, and established nothing of importance. Under these circumstances, we were not surprised to find that Mr. Tyabji, as counsel for the plaintiff, admitted, at the conclusion of the case for the defendants in the Division Court, that the plaintiff had "made out no case for a charge on the chawl" of her maintenance. An attempt, by the witnesses for the plaintiff, was made to show that Bálcrustna, after his return from transportation until his death, lived in union with Sadásiv, but that attempt was completely defeated by the evidence for the defence, which showed that, at the time of the partition, already mentioned, Bálcrustna had lived in the same house with Sadásiv and Luximibái at Vittulwádi, but almost immediately afterwards left them and lived separately (until within six months of his death) at Máhim, only occasionally visiting Sadásiv and Luximibái, who had, about one year after Bálcrustna left them, gone to live at Fanaswádi. On Bálcrustna's being seized by his last illness, he was, on medical advice, brought,

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADA'SIV GANOBA'.

about six months before his death, by Sadásiv to Bombay, where, in 1867 or 1868, Bálcrustna died. The plaintiff was examined on her own behalf, and admitted that she and her husband Dhákji lived in the house of his maternal uncle Bhagvantráv Rámchander, and that Dhákji (who, if his father Bálcrustna had left any property on his death in 1867-1868, would have taken it) died in 1872 without leaving any property: on which event, his uncle, the defendant Sadásiv, took her to the house in which he lived, for the purpose of performing the requisite funeral ceremonies in honour of Dhákji, and offered to maintain her and her infant daughter if they continued to reside with him; but she, after a sojourn of thirteen days in his family, departed with her child, and went to reside with her own father. She alleged that Sadásiv and his wife and the tenants at Fanaswádi did not treat her well. She admitted, however, that no personal violence was used to her, and eventually her complaint did not go beyond an assertion that the comfort of herself and her child was not sufficiently considered by Sadásiv and his wife, a woman of about the same age as the plaintiff; and that the child was not supplied by them with milk. The plaintiff did not offer any testimony, except her own, to prove ill-treatment, and the impression which her evidence left on our minds is that she had not any serious cause for complaining against Sadásiv or leaving his house, but merely that she desired to obtain from him a separate maintenance. She had originally presented a petition for the aid of the attorney for paupers, Dr. Dallas, which was, in the usual course, referred to him. On inquiry into her case, he declined to institute a suit for her as a pauper, and advised her to reside with her husband's uncle, the defendant Sadásiv, and she admits that her father gave her similar advice, but she declined to act upon it. Afterwards, with the pecuniary assistance of her father or some other relative, she brought the present suit against Luximibái (the mother of Sadásiv and Bálcrustna and paternal grandmother of Dhákji) and Sadásiv. The Court of first instance (Marriott, J.,) dismissed the suit with costs.

The plaintiff subsequently was granted the aid of the attorney for paupers, Mr. Fletcher, to bring this appeal against the decree of the Division Court, and the appeal was very well argued by

Mr. Badrudin Tyabji and Mr. Telang on her behalf, and Mr. Latham and Mr. Inverarity on behalf of the defendants.

The result of the above-stated facts is, that there has been a complete partition of the family property, not only between Shivshanker's branch on the one side, and Ganobá's branch on the other, but also between Sadásiv and Bálcrustna, the sons of Ganobá, both as regards residence and property. So far as appears, none of Bálcrustna's share is forthcoming, and he had probably expended the whole of it before his death. Sadásiv's share has also been expended, and he, at the time of the institution and hearing of this cause, appeared to be dependent on his salary as a clerk for his livelihood. The Fanaswádi property cannot, since the partition, and since the sale to Luximibái, be deemed to constitute any part of the paternal family estate. When purchased by her, with the proceeds of her jewels, it became her *stridhan*, and is not, in anywise, liable to the maintenance of the plaintiff Savitribái. Independently of Fanaswádi, it was not contended that this suit could be sustained against Luximibái, or that she was personally liable to maintain the plaintiff. The suit, therefore, is thus reduced to one against Sadásiv personally, as uncle of the husband of the plaintiff. The question is—can the plaintiff, not finding it agreeable to live in the house of her husband's uncle, sustain this suit for a money allowance, by way of maintenance, against him who has separated in estate, so far back as 1853, from the branch of the family to which her husband and his father (Sadásiv's brother) belonged, who had no paternal estate in his hands at the institution of this suit, and who did not, and could not, so long as the plaintiff lived, inherit any property from her husband, upon whom the estate (if any) of his father Bálcrustna would have devolved.

We think that we may assume it to be well-settled Hindu law in this Presidency, that the widow whose husband was, at his death, undivided in estate from his father, or the widow of one undivided, at his death, in estate from his brothers, or nephews, or other relative, would, in the first case, if there be sufficient ancestral estate in the hands of the surviving father, or, in the second case, if there be sufficient ancestral estate in the hands of

1878.

SAVITRIBA'I v. LUXMIBA'I AAD SADA'SIV GANOBA'.

the surviving brothers, nephews, or other relative, be entitled to a reasonable maintenance out of such estate: Mayukha, ch. IV, sec. VIII, pl. 7; Narada, XIII, pl. 25, 26, 27, 28;[1] *Jethee* v. *Sheobái*,[2] *Vishnu* v. *Gangábái*,[3] *Bhagvant Govind* v. *Goozábái*,[4] *Ahilábái* v. *Mohunji*,[5] *Bái Amrit* v. *Bái Mánik*.[6] The same law has been laid down, by a Full Bench in the N. W. Provinces, in the case of a widow against her father-in-law in the possession of ancestral estate: *Lalti Kuar* v. *Gangá Bishnu*.[7]

On the question whether such a widow can claim maintenance against her husband's father, brother, or other relatives not in the possession of any ancestral estate, or separated in estate from her husband, there have been conflicting decisions. We proceed to examine them and the grounds on which they rest.

In *Bái Lakshmi* v. *Lakhmidás Gopáldás*,[8] which was cited for the plaintiff, a widow sued her step-son for maintenance. The Sadr Amin and the Assistant Judge made decrees against her—the latter on the ground that, having obtained a share of her deceased husband's estate and having lived by money-lending for thirty years, she was not entitled to maintenance as against the defendant, or, after his death, which occurred during the suit, against his sons. A Division Bench of the High Court (consisting of Newton and Warden, JJ.,) in 1863 reversed that decree on the ground that, notwithstanding the above facts, the obligation of maintaining her would still attach to her husband's relatives, should she then be destitute of the means of living, and the case was remanded in order that the question of her destitution should be enquired into. Those learned Judges cited no authority for their opinion, and the report does not show that any was mentioned by the pleaders. The Mayukha (ch. IV, sec. 4, pl. 19) recognizes the right of a step-mother or step-grandmother to a share of the family-estate, *i. e.*, in substance to maintenance out of it as against her step-son or step-grandson

(1) Dr. Jolly's Trans., pp. 97, 98; 3 Dig., bk. V, ch VIII, pl 405, p. 474.
(2) 2 Borr. 640, 643, 644.
(3) 1 Morr. S. D. A. Rep., 162.
(4) 8 Harr. 120.
(5) 9 Harr. 397.
(6) 12 Bom. H. C. Rep., 79.
(7) 7 N. W. P. Rep., 261.
(8) 1 Bom. H. C. Rep. 13.

in whose possession it may be; but we find no Hindu authority for saying that, after she has received and spent her full share given to her as maintenance, she is entitled again to charge the estate, or her step-son or step-grandson, for another share or further maintenance. It seems against reason, and a premium upon extravagance, to hold that she would be so entitled. We are not aware that there is any Hindu authority for saying that the text of Manu, ch. VIII, pl. 389, and 3 Dig., p. 400, to which we shall presently advert, have been so applied to step-sons or their issue.

This *(Bái Lakshmi* v. *Lakhmidás Gopáldás)* is the first reported case in this Presidency in which there has been a ruling that, after a widow has received a share of the family estate for her maintenance (and she does not appear to have alleged that it was not as full a share as she could lawfully claim), she has been permitted, after she has exhausted that share, to maintain a suit, for further maintenance, either against the estate, or the defendants personally.

In the absence of any authority quoted for such a decision, it is impossible to regard it as satisfactory. Even if it be sustainable, it would not support the present suit, which is not against a step-son or his issue, but against an uncle of the plaintiff's husband.

Chandrábhágábái v. *Kashináth Vithal* (1) has also been cited for the plaintiff. There, a widow whose husband had been separated in estate from his father, and who herself was residing in the house of her own father, sued her father-in-law for an annual money allowance to provide maintenance, clothing, &c., for her. The Munsif made a decree in her favour, which, however, the District Court reversed on two grounds: 1st, her husband's separation in estate from his father, the defendant; and, 2nd, that she had inherited property, and, therefore, was not in such indigent circumstances as to need maintenance from the defendant. She specially appealed to the High Court on three grounds: 1, that the circumstance of her succession to her mother's money did not deprive her of the right to maintenance against her late husband's family; 2, that her mother's money had been all expended by the plaintiff in funeral ceremonies for the benefit of

(1) 2 Bom. H. C. Rep. 323.

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADA'SIV GANOBA'.

her mother; and, 3, that the District Court omitted to raise an issue as to her then present circumstances. Newton and Warden, JJ., who had decided *Bái Lakshmi* v. *Lakhmidás Gopáldás*, reversed the decree of the District Court, and remanded the cause for the determination of the following points:—"1. Are the widow's present circumstances such as to give her a claim to maintenance? 2. If she is possessed of any property, what portion of it is her *stridhan?*" That case, as reported, is most unsatisfactory; neither the authorities (if any) cited to, or relied upon by, the High Court, for reversing the decision of the District Court, being specified. There is, moreover, an omission in the portion of the judgment at the top of page 325 of 2 Bom. II. C. Rep. On reference to the Court Minute Book we find that the passage should run thus:—"In accordance with previous decisions of this Court such part of the property in the plaintiff's hands (if any) as may be held to be her peculiar property should not be taken into account if she is in need of support." I cannot find any previous decision of the High Court to that effect. The case cited in 1 Norton's Leading Cases, 35, from 1 West and Bühler, p. 63, sec. 6, as being so, is a case of inheritance by the widow of a man who died separate and without issue, and not a case of maintenance. There is, indeed in 1st Morris S. D. A. Rep. 162, a case *(Vishnu Dinkur* v. *Gangabai)* which may countenance that doctrine. It, however, not only seems in itself highly unreasonable, as a widow might have *stridhan* to an amount equal to or greatly exceeding the ancestral estate in the hands of her husband's family, but also opposed to the Mayukha. (Ch. IV, sec. IV, pl. 18; sec. IX, pl. 3; see also Mitak., ch. I, sec. II, pl. 9; Daya Bhaga, ch. III., sec. II, pl. 31; 1 Stra. H. L. 171; 2 Yajnyavalkya, pl. 115.(1)) As the question whether *stridhan* should be taken into account, does not arise here, we shall not dwell any longer upon the point.

The next case cited to us, on behalf of the plaintiff, is *Timmáppá* v. *Parmeshriámmá*,(2) decided by Warden and Gibbs, JJ. The statement of facts in the report being meagre, I have examined the record of that case. The plaintiffs were Parmesh-

(1) Roer and Montriou's Trans., p. 37.

(2) 5 Bom. H. C. Rep. 130, A.C.J.

riámmá, the widow of Soobbhát, (a brother of the defendant Timmáppá), and Honnámmá, the alleged widow of Manjá Bhat, son of Soobbhát and Parmeshriámmá, but of Manjá Bhat's death there was no proof. The plaintiffs sued for an allotment of maintenance and five years' arrears of it. The defendant Timmáppá pleaded *(inter alia)* that Soobbhát, the husband of Parmeshriámmá, had, by execution of a deed of partition, renounced all right to or interest in the family property. Keshá Bhat, the second defendant, did not appear. Devá, the widow of another brother, having stated that she was entitled to one moiety of the family property sought to be charged, was also made a defendant. The Munsif found that as Parmeshriámmá had been, twenty-four years previously, expelled from the family house, and as it was not proved that her son Manjá Bhat was dead, who had, in the year 1850, after the death of his father Soobbhat, brought and failed in a suit for a partition of the family property, neither of the plaintiffs had any right to sue the defendants for maintenance. The plaintiffs appealed against that decision to the District Court, on the following grounds:—(1) "That the claim for a division of property, unsuccessfully set up by Manjá Bhat, constituted no obstacle to their suit for maintenance;" (2) "that the family being undivided, the defendants, who were in possession of the patrimony, were responsible for the plaintiffs' maintenance;" (3) "that their right to sustenance was not affected by Manjá's life or death;" (4) "that the evidence proved that the plaintiffs had been maintained from 1854 to 1860." The Acting District Judge held that the plaintiffs were entitled to maintenance. He admitted that they ought to have sued separately, as their rights were separate, but he gave no effect to that admission. Probably his reason for not doing so, was that he was unwilling to put the parties to the expense of two new suits, or one new suit and an amendment of the other suit. He proceeded to say: "Manjá Bhat having sued in 1850, as is admitted, for an allotment of a share of the family property, and failed in that suit, no claim can, indeed, now be set up on the ground of his having been entitled or of his father's having been entitled to such a share; but, independently of that, the Hindu law, which gives the divided members of a family the reversion of a widow's estate, entitles

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADA'SIV GANOBA'.

the widow, on the other hand when destitute, to sustenance at the hands of her husband's family, even though her husband could not have succeeded in a claim for an apportionment of a separate share of the patrimony. On this ground the widow Parmeshriámmá is entitled to support, and the principle extends to the case of Honnámmá. If she is destitute through the desertion of her husband, she is entitled to support at the hands of his family." The learned Judge did not cite any authority in support of the above proposition as to the liability of the defendants, as members of the family of the widows' husbands, to maintain those widows, although the husbands themselves could not by suit have obtained from the defendants any portion of the family estate remaining in their hands; that is to say, although those husbands, having already obtained their own share of the family estate, and thus being separate in estate from the defendants, could not, even though such share had been consumed, have compelled the more prudent defendants to share with them the residue of the family estate which had been assigned to them as their due proportion of that estate. It would need very strong and distinct authority, in the ancient treatises of Hindu law, to convince us that the widows of such separated husbands stand, as to maintenance out of such portion of the family estate as remains in the hands of the other ex-parceners, in a better position than the husbands themselves occupy with regard to any right to resort to that residue for a further share, albeit under the name and guise of maintenance. That the widow should have such a right, is not by any means a *sequitur* of the rule which gives to the heirs of the husband, when divided from him, the reversion of his estate on the death of the widow.

Another circumstance in that case was that the defendant Timmáppá had offered to receive Parmeshriámmá into his house, and to support her there. Other decisions, to which we shall refer, show that, at the utmost, Parmeshriámmá had not any right to more than this, if to so much. The learned District Judge, however, said that "it would not be right to force her, against her will, to reside with Timmáppá," and mentioned the circumstance of Timmáppá's offer and her refusal as one amongst other reasons for only decreeing to the widows a bare subsistence.

He also refused to give to them any arrears, it not appearing that they had incurred any debts to provide sustenance for themselves. On special appeal to a Division Bench of the High Court (Warden and Gibbs, JJ.) the decree of the District Judge was affirmed. Gibbs, J., there said that every Hindu widow, whether her husband was divided from the family or not, is entitled, when in needy circumstances, to claim (*sic.* in original) from her husband's relatives; but he referred to no other authority for that doctrine than *Bai Lakshmi* v. *Lakhmidás*[1] and *Chandrábhágábái* v. *Kashináth*.[2] Of these the first, being against a step-son and his issue and not against a brother-in-law or father-in-law, was not in point, and both, as we have already said, are unsatisfactory, as not having any basis of cited authority. Gibbs, J., indeed, added that "the whole policy of the Hindu law is not to allow even a distantly related widow to starve," but for that proposition no other authority than the above cases was mentioned by the Court.

An unreported case, (*Ningangavda* v. *Baslingavda*,[3] decided on the 20th July 1870 by Lloyd and Kemball, JJ., and Westropp, C.J., and in which maintenance was decreed, was cited on behalf of the plaintiff. I have examined the record and my own notes, and find that the case is not in point. It was a suit by a daughter-in-law against her father-in-law, and the latter did not plead that he was not in possession of any family property. The Assistant Judge noticed the fact that there was not any evidence as to the worldly circumstances of the parties. The father-in-law, in defence, would certainly have alleged that he had not any such property if the fact were so, but he did not; and in the argument before this Court it seems to have been assumed that there was ancestral property in his hands. His main ground of defence was that his deceased son, the husband of the plaintiff, had been adopted into another family, and, therefore, had ceased to belong to that of the defendant. The Assistant Judge as well as the Munsif found that there had not been any such adoption. With the exception of the asserted adoption, which failed in

(1) 1 Bom. H. C. Rep. 13. (2) 2 *Ibid.* 323.

(3) Sp. Ap. No. 101 of 1870, unreported.

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADA'SIV GANOBA'.

proof, there was neither allegation nor evidence to show any separation between the defendant and his deceased son. Both, therefore, of the facts which are established in evidence here, viz., absence of family property and separation, were wanting in proof there. A question as to the jurisdiction of the Court of Small Causes arose, and was decided there, but is not material in the present case.

Rámâbái v. *Trimbak Ganesh*,[1] decided by Sargent, C.J., (Acting) and Melvill, J., in September 1872, was a suit for maintenance and the means to pay rent for a residence, brought by a wife whose husband had deserted her and her minor son about six years previously, and not been subsequently heard of. She averred in her plaint that her husband and the defendants, his cousin and cousin once removed, were an undivided family owning ancestral property in which her husband was entitled to a share. The defendants alleged separation thirty years previously to the suit, and denied their liability to maintain the plaintiff. The Subordinate Judge found the family to be undivided, and decreed maintenance. The Assistant Judge, although of opinion that the defendants had behaved disgracefully, reversed the Subordinate Judge's decree, on the ground that "the plaintiff could not be presumed to be a widow, and that a wife could not claim maintenance from her husband's relations." On special appeal, the previous decision, *Bái Lakshmi* v. *Lakhmidás Gopáldas*[2] and *Timmáppá Bhat* v. *Parmeshriámmá*[3] were cited. The High Court reversed the Assistant Judge's decree, and remanded the cause for re-trial, saying:—"No doubt, the authorities do not show that the relations of a deserted wife are under a personal liability to maintain her; but they do show that she is entitled to be maintained out of her husband's property to the extent of one-third of the proceeds of that property.[4] The appellant's allegation is that her husband's property is in the hands of the respondents, and available for her maintenance. *If the plaintiff's husband and the respondents are separate, and the former has taken his share*

(1) 9 Bom. H. C. Rep. 283. (2) 1 Bom. H. C. Rep. 13.

(3) 5 Bom. H. C. Rep. 130, A.C.J.

(4) *Vide* 3 Dig, bk. IV, sec. II, pl. 72, p. 420; 2 Stra. H, L. 45, 48, 51; *secus autem* 2 Macn. H. L. 110.

of the property, the appellant has no claim upon the respondents; but if they are undivided, and the husband's share is available in the hands of the respondents, and the proceeds thereof are not accounted for by them, the appellant is entitled to receive maintenance from those proceeds to an extent not exceeding one-third of the amount." The effect here attributed to separation is important, and is inconsistent with the three cases cited for the plaintiff from the 1st, 2nd, and 5th volumes of the Bombay H. C. Reports, as there does not appear to be any sound reason for taking a distinction in this respect between a deserted wife and a widow.

The last Bombay case cited for the plaintiff was *Udárám Sitárám* v. *Sonkábái*.(1) The plaintiff Sonkábái, the widow of Náná *alias* Dhondu, sued her father-in-law, Udárám Sitárám, for a separate maintenance. He "pleaded that he was not liable, as no property belonging to his son had come into his hands." He did not allege that there was not any ancestral property in his hands, or that he was separate from his son in estate. The facts narrated in another case, in which he and Sonkábái were co-defendants, reported in 11 Bom. H. C. Rep., pp. 76, 78, show that neither of those allegations could have been made with truth, as Udárám Sitárám was in possession of some ancestral property, and his son was, at the time of his death, undivided from him. We observe, too, that Mr. Justice Nánábhái Haridás described the defendant as "the surviving member of the joint family, of which her (the plaintiff's) husband was a co-parcener," and partly rested his judgment on that fact.(2) The Courts below, which heard the maintenance suit, concurred in finding that Udárám had mal-treated his daughter-in-law, and expelled her from the family house. Those Courts awarded to her a residence in that house, and a separate maintenance of Rs. 10 *per mensem*, with two years' arrears. Having regard to her mal-treatment and her expulsion, and to the absence of either allegation or proof by the defendant that there was not any ancestral property in his hands available for her maintenance, or that his son was, at the time of his death, separate in estate from him, we should probably have concurred with the Division Court in its affirmance of the decrees of the

(1) 10 Bom. H. C. Rep. 483. (2) 10 Bom. H. C. Rep. 486.

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADA'SIV GANOBA'.

Courts below. In the absence of allegation or proof to the contrary, we think that we should have felt ourselves bound to assume the father and son to be undivided in estate, and on that assumption the widow of the latter would have been entitled, at the least, to have food, raiment, and residence provided for her by her father-in-law out of the ancestral estate in his hands; and, if he ill-treated her and expelled her from the family house, the civil Court would, we think, have been warranted in awarding to her a residence and a separate maintenance out of the family estate in his hands. But from some of the reasons given by the Division Court for its decision, and which reasons do not seem to have been actually necessary for the disposal of the case, we would express a respectful dissent, and we cannot regard such unsatisfactory cases as *Chandrábhágábái* v. *Kashináth*,(1) *Timmáppá* v. *Parmeshriámmá*,(2) and *Bái Lakshmi* v. *Lakhmidás Gopáldás*,(3) which were there relied on by the Court, as affording any sufficient basis for those reasons. Our examination of the Hindu law has not led us to the conclusion that while it, "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;" that law "conversely gives to him and to his widow a claim to maintenance, if, through destitution, they should come to need it." Nor have we discovered in that law any ground for supposing that an adult Hindu, separated in estate from his father (4) and uncles, can, if he fall into destitution, enforce a claim for maintenance either against any one or more of them personally, or against the residue of the family estate left in their hands after he has received his share on partition; or that his widow, even though destitute, can enforce such a claim on her own behalf after his decease.

We think that such of the above decisions as have favoured the claim of the widow, notwithstanding that the persons whom she sought to charge with her maintenance were separated in

(1) 2 Bom. H. C. Rep. 323.

(2) 5 Bom. H. C. Rep. 130, A.C.J. (3) 1 Bom. H. C. Rep. 13.

(4) *Vide Premchand Pepárah* v. *Hulaschand Pepárah*, 4 Beng. L.R. 23 Appx. S. C.; 12 Calc. W. R. 494. That case may have turned upon Bengal law. Where there has not been a partition, see *Ayyavu Muppanar* v. *Niládatchi Ammal*, 1 Mad. H. C. Rep. 45.

estate from her husband, or held neither ancestral estate nor estate which had belonged to him, do not stand, either in point of antiquity or of cited authority, so high as to place the doctrine, there laid down, beyond the review of a Full Bench of this Court.

It has been admitted, in the course of the argument, that there is not any instance known, either in the late Supreme Court of Bombay or at the Original Jurisdiction Side of this Court, in which a widow has obtained a decree for maintenance against the father, the brothers, nephews, or more remote kinsmen of her husband where there has not been family estate in their hands, or where they were separate in estate from her husband, and have not inherited property from him, as they might do if the widow were personally disqualified from taking it. We are not, however, to be understood as resting our decision upon any distinction between the law of maintenance in the island of Bombay and that of the Presidency at large. We see no good ground for making any such distinction.

We now proceed to examine the cases in the Sadr Adálat :—

In *Pránkoonwar and another* v. *Deokoonwar*,[1] a successful suit for residence and maintenance by a widow against her daughter-in-law and grandson, the family appeared to be undivided, and there was family property. In *Dái* v. *Purshotum*[2] the plaintiff's husband had been separated in estate from his nephew, and died, leaving the plaintiff, his widow, surviving: she, being blind, was held to be disqualified from inheriting from her husband, and his nephew was decreed to be entitled to take the estate, but, most properly, *cum onere* of maintaining the widow of him to whose property he thus succeeded.[3]

Sheo Bái v. *Gowreenund Huránund*[4] is an instance, not of a suit for maintenance, but of a widow claiming a share of the family estate and of being held bound by a partition which was made in the life-time of her husband between him and his brother and nephews whom she sued. She was held not to have any claim on the residue of the family estate.

(1) 1 Borr. 404 (2nd edn.) (2) *Ibid.* 453.

(3) Mitak. ch. II, sec. 10, pl. 12, 13, 14, 15, : Mayukha, ch. IV, sec. 11, pl, 12; 3 Dig. bk. V, ch. 8, pl. 412, page 483 Comm.

(4) 2 Borr. 328, (2nd edn.)

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADA'SIV GANOBA'.

Upon a question put to the sástri in *Gun Joshi* v. *Sagoonâ Bái* (1)—"Whether, after a widow had received a share of property as devised to her by will *(mhrit-patra)*, she would be entitled to a further maintenance besides from her son"—the answer was that, "if the widow have received the share allotted to her in the *mhrit-patra*, the son is not obliged to provide her with food, raiment, &c. However, if a stipulation be made in the deed (will ?), he must give it."

In *Thakoobái* v. *Rumábái* (2) a daughter-in-law (Rumábái) obtained maintenance from her mother-in-law (Thákoobái). There was not any allegation that the deceased husband (who was the adopted son of the mother-in-law) had separated from the latter. In fact, he appears to have died a minor and before consummation of his marriage.(3) The mother-in-law (Thákoobái) was in possession of the family estate. Subsequently, the daughter-in-law (Rumábái) having adopted a son for her deceased husband, which son recovered a moiety of the family property from Thákoobái (his adoptive grandmother), the burden of maintaining Rumábái was transferred to her adopted son.(4)

In *Jethee* v. *Sheo Bái* (5) the plaintiff sued for a share, but was held entitled to maintenance only. The family was undivided, and there was ancestral property.

Walubhrám v. *Bijlee*,(6) *Ládbái* v. *Amthá Shivábhái*,(7) and *Bujábá* v. *Anundee* (8) were all suits by the wife against the husband, and are, therefore, irrelevant.

Kumlá Buhoo v. *Muneeshankar* (9) deserves notice, as there the Sadr Adálat, in A.D. 1824, affirmed the decree of the Zillah Court at Surat, dissolving a contract of marriage between her infant daughter and another infant, entered into by the widow of one of two united brothers (without the sanction or knowledge of her deceased husband's brother, and after she had deserted the family

(1) 2 Borr. 440, at p. 446.
(2) *Ibid.* 488, 491.
(3) *Ibid.* 487, 489.
(4) *Ibid.* 485, 497, 498, 500 (2nd edn.)
(5) *Ibid.* 640, 642, 643, 644.
(6) *Ibid.* 481.
(7) 7 Harr. 166.
(8) 9 Harr. 383.
(9) 2 Borr. 746, (2nd edn.)

house and repaired to that of her own father, carrying away the daughter with her), and ordering that the widow should return to the family house and live there with her mother-in-law and brother-in-law, which latter was to maintain her. "Should they not agree to live together," he was directed "to give her some rooms in the family house for her accommodation, where she was to maintain herself at" his expense. That decree was made in conformity with the concurrent opinions of the sástris of the local Court and the Sadr Adálat. The brother-in-law was the plaintiff in that suit. The defendants were the widow and the father of the boy with whom the widow had, on behalf of her infant daughter, entered into the contract. The plaintiff was willing to maintain his sister-in-law, and prayed that she should be compelled to reside in the family house. In that case there was family property, and the brothers were undivided with respect to it at the time of the death of the husband of the defendant Kumlá, the widow.

Vishnu v. *Gangábái*[1] was a suit by a widow against her husband's younger brother in whose hands the family property was, and who was not shown to be separated from the plaintiff's husband; in which suit a money allowance was decreed to her as maintenance. It was held that she was not bound to reside with the defendant, and to accept of food and raiment only, and that, although an elder brother had not been made a party to the suit, it was duly constituted, inasmuch as he had been a wanderer for twenty-five years, and the whole of the family property was in the hands of the younger brother, and it was not shown that the elder brother was in any way liable. So far, therefore, as this case is concerned, it does not favour the liability of a separated member of the family not in possession of any of the family property.

It does not appear what was the relationship of the defendants to the husband of the widowed plaintiff in *Chimnábái* v. *Dádá and Govind*[2] in which maintenance was decreed. There was family property in their hands, viz., a *vatan*; and the suit was based upon an agreement. In *Soobámá* v. *Nánáráv*[3] the case

(1) 1 Morr. S. D. A. 162. (2) 1 Morr. S. D. A. 85. (3) 2 Morr. S. D. A. 170.

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADA'SIV GANOBA'.

of a widow against her husband's nephew, the suit was brought upon a bond given to the widow to secure her allowance for maintenance.

In *Manowá* v. *Ningápá*,(1) a widow sued three of her husband's brothers for maintenance, alleging that they had "the family *vatan* and the whole of her deceased husband's property." Ningápá, one of the defendants, alleged separation from his brothers thirty-five years previously. Chandápá, another defendant, pleaded that Mánowá, the plaintiff, had adopted one of his sons, and had agreed to live in his (Chandápá's) house, but afterwards quitted it, and, therefore, he was not bound to maintain her. So far as we can judge from the report, he neither alleged separation from the plaintiff's deceased husband, nor denied the possession of family property. Narsápá, the third defendant, did not appear or defend the suit. The case seems, so far as the report enables us to form an opinion, to have been unsatisfactorily dealt with in all three Courts. In none of them does there appear to have been any finding upon the question whether or not Ningápá's plea of separation from his deceased brother, was true; yet, if it were true, it is clear that, at the very least, the unseparated brothers, holding any portion of the family property, would have been primarily liable to maintain the plaintiff.(2) There was, apparently, no denial on record, by Chandápá or Narsápá, of the plaintiff's allegation that they were in possession of family property, and no plea, by them, of separation from her husband. The Munsif, at the original hearing and again on retrial (upon remand by the Assistant Judge), decreed in favour of the plaintiff apparently against all of the defendants. On a second regular appeal to the Assistant Judge, he reversed the decree of the Munsif, and dismissed the suit without prejudice to the plaintiff's bringing another, but duly constituted, suit against the proper parties. The main reason of this decree would appear to have been that, inasmuch as the plaintiff had not proved that another branch (not parties to the suit) of the same family as the three brothers of the deceased, which branch were at one time owners, with them, of the *vatan*, had been separated from them, the suit was defective

(1) 4 Morr. S. D. A. 56.

(2) See *Vishnu* v. *Gangábái*, *supra*.

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADA'SIV GANOBA'.

for want of the presence of that branch as parties. In his judgment the Assistant Judge did express an opinion that one field, at least, of the *vatan* property was in the possession of Ningápá; but he spoke *incertâ voce* as to Ningápá's possession of other family property, and was silent as to his separation in estate from his brothers. The Assistant Judge, also, after observing that he inferred from Chandápá's defence that he was willing to support the widow in his house, said that the widow had not proved that it was not her fault that she left it. Upon a special appeal to the Sadr Adálat, Mr. Larken, in admitting the appeal, said:—"It is urged that the persons who ought to be sued, are her husband's brothers, and that, therefore, the special appellant in suing them has done all that she is called upon to do; and whether they have the family property or not, they are bound to maintain their brother's widow. It is also contended that good reasons were shown to justify the special appellant leaving Chandápá's house; and as I am of opinion that the Assistant Judge has decreed contrary to usage in disallowing maintenance for the reasons he has recorded, I refer the appeal for hearing by a Full Court." It is true that Mr. Larken here observed that it was argued that the brothers were bound to maintain the widow, whether or not they had family property,—a question which does not seem to have been raised in the lower Courts, or in the plaint, which, as we have seen, proceeded upon the ground that the three defendants had the family *vatan* and the whole of the property of her deceased husband; but, putting aside, for the present, the question whether brothers who have not got any family property or inherited aught from their deceased brother, are bound to make a pecuniary allowance to his widow who refuses to reside with them, it is clear that he, like the Assistant Judge, overlooked Ningápá's plea of separation, and failed to perceive that, if the other surviving brothers were undivided from the deceased and held family property, they, and not Ningápá, would be primarily liable to maintain the widow. The Full Court (Harrison, Hebbert, and Loughnan) appear to have abstained from giving any opinion on those questions. They reversed the Assistant Judge's decree, and remanded the cause for re-trial on the merits, as they found that there was "a manifest error in the Assistant Judge's decree, in his

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADA'SIV GANOBA'.

having held that, because there were other persons who might be jointly liable with the defendants for the plaintiff's maintenance, she could not recover in her present action against those she sued; whereas her claim against them should have been decided upon the merits in a just proportion to the liability established." It is unnecessary to express any opinion upon the validity of the ground upon which the Full Court decided that case, which ground is irrelevant here. Suffice it to say that (notwithstanding the *dictum* in *Rámchandra Dikshit* v. *Sávitribái*[1]) we should take time to consider before following it as a precedent. The case, as decided, is, at all events, no authority for the soundness of the argument urged upon Mr. Larken (and towards which he would seem to have inclined on admitting the appeal) that the brothers, whether or not they had family property, were bound to maintain the widow. Neither Mr. Larken nor the Full Court referred to any authority in support of their respective opinions.

The decree for food and raiment *(unwustra)* obtained by Guzábái, the widow of Bájiráv, against Narsingráv, the elder brother of Bájiráv, appears to have been so obtained previously to Narsingráv's sale to Bhagvant of the family property mentioned in *Bhagvant Govind* v. *Guzábái*.[2] It does not appear that the brothers were separated in estate. We infer, too, that the sale, which was there upheld against Guzábái, must have been for the purpose of payment of family debts, and, therefore, had precedence over the maintenance of herself and her mother-in-law.

In *Ahilábái* v. *Mohunji*[3] a widow obtained, against the undivided brother of her husband, a decree for maintenance. Although the defendant there denied the possession of any hereditary *vatan*, he appears to have admitted that there was other family property; inasmuch as he alleged that the widow had executed to him "a release of all claim upon the property belonging to her husband's family." The Court appears to have held that the defendant did not prove the execution of the release.

This completes our examination of all of the reported decisions of the Sadr Adálat on the question of maintenance, and leads us

(1) 4 Bom. H.C. Rep. 73, A. C. J. (2) 8 Harr. 120. (3) 9 Harr. 397.

to conclude that those decisions do not support the contention of the plaintiff, or the cases in 1 Bom. H. C. Rep. 13; 2 *Ibid.* 323, and 5 *Ibid.* 130, A.C.J.

We next purpose to inquire into the doctrine of maintenance as it appears in the Smritis and in the principal Hindu commentaries upon them, none of which have been cited in the three cases just mentioned.

We have no need, in this case, to decide positively upon the right to maintenance, under such circumstances as we have here, of a wife against her husband, or of a mother against her son. It is, however, incumbent upon us to notice, in the language of Manu and other Hindu jurists, an important distinction when, without reference to the existence of family property, they especially treat of the maintenance and support of the wife or of parents, or of an infant son, and when they speak of the maintenance and support of the females of the family at large. In the former cases their tone is mandatory, in the latter only preceptive. Amongst the texts relating to the wife or the parents are the following:—Manu, ch. VIII (Of Judicature), placitum 389, "A mother, a father, a wife, and a son shall not be forsaken; he who forsakes either of them, unless guilty of a deadly sin, shall pay 600 *panas* to the king.[1] The meaning of the word "forsakes" is by another text of the same sage shown to be "does not maintain:" thus "Manu declared that a mother and a father in their old age, a virtuous wife, and an infant son, must be maintained, even though doing a hundred times that which ought not to be done."[2] Narada[3] says:—"A husband who abandons an affectionate wife, or her who speaks not harshly, who is sensible, constant, and fruitful, shall be brought to his duty by the king with a severe chastisement;" and Vishnu[4]:—"The man, who deserts a faultless wife, *shall suffer the same punishment.*" And

(1) *Vide* per Norman, J., 2 Beng. L. R. 45, A. J.; 1 Morley's Dig., Tit. Maintenance, pl. 38, p. 442.

(2) 3 Dig., bk. V, ch. VI, at end of sec. II, art. I, p. 400. And see Manu, chap. IX, pl. 74, 75, 98, 100, 103; 2 Macn. H. L., pp. 109, 110 (Cases 1, 2, 3) and pp. 113 to 115 (Case 6 and note).

(3) 2 Dig., bk. IV, ch. I, sec. 2, pl. 59, p. 413, and see pl. 63, page 415.

(4) 2 Dig., bk. IV, ch. I, sec. II, pl. 60, p. 414. See also per Devala, *Ibid*, pl. 61.

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADA'SIV GANOBA'.

Yajnyavalkya[1] :—"He who forsakes a wife, though obedient to his commands, diligent in household management, mother of an excellent son, and speaking kindly, shall be compelled to pay the third part of *his wealth; or, if* poor, to provide a maintenance for that wife." That text is adopted by Nilakantha in the Mayukha, ch. XX (On the duties of man and wife), pl. 1. Yajnyavalkya further says: "A superseded wife must be maintained, else a great offence is committed."[2] Vrihaspati says that the son, who gives not support to his mother, is "criminal, and shall be punished according to law."[3]

The injunction contained in these texts is not rendered dependent upon or in anywise qualified by a reference to the possession of family property, and purports to impose a personal legal obligation enforceable by the sovereign or the state. That obligation, too, is not asserted to be merely occasional, but permanent and continuous.[4]

Upon the text of Manu, secondly above cited, from 3 Digest, page 40 (bk. V, ch. VI, sec. II, art. I), Mr. Colebrooke, at the foot of that page, notes:—"The text is quoted in ch. VIII as inculcating the necessity of maintaining these relatives, even by the commission of offences: I have endeavoured to preserve the ambiguity of the original." The remark of Jagannatha, to which Mr. Colebrooke here refers, is at page 460 of the same volume, where the commentator discusses the text of Vrihaspati relating to the duties of a widow succeeding to the estate of her husband dying without leaving male issue, especially with regard to the maintenance of 'females of the family' (other than herself) and her husband's 'maternal uncles,' 'learned men,' 'unprotected persons,' and 'guests.' What Jagannatha there (3 Dig., bk. V, ch. VIII, pl. 399, p. 458) says is:—"It is not necessary that she should deprive herself of the means of subsistence to support the uncles and other relations of her husband; nor should she, for that purpose, do what is unauthorized by the law.

(1) 2 Dig., bk. IV, ch. I, sec. II, pl. 72, p. 420.

(2) 2 Dig., bk. IV, ch. I, sec. II, pl. 74, p. 421.

(3) 2 Dig., bk. IV, ch. I, sec. I, pl. 15, p. 386 and pl. 14, pp. 385, 386, per Manu.

(4) For other texts specially relating to the wife, see 2 Dig., bk. IV, ch. I., pl. 45, pp. 403, 404, pl. 116, p. 446; 3 Dig., bk. V, ch. V, pl. 340, p. 329; ch. IX., pl. 481, p. 581; Daya Bhaga, ch. IV, sec. I, pl. 25.

But her husband's father and mother, being old, must be maintained, even though the utmost distress ensue: for her husband was authorized by a text of Manu (ch. VI, sec. II, art. I) to use irregular means for the support of his father and mother and the rest." The virtuous wife and the infant son are 'the rest' here signified, as the text of Manu, referred to, shows; and, so far as they are concerned, that text would not be applicable in the case of the widow, of a husband dying without leaving issue male, taking the inheritance. To the text of Vrihaspati, in commenting on which Jagannatha incidentally made his remark (just quoted) on the text of Manu last mentioned, we shall presently have again occasion to advert.

Looking next to the texts which would include females of the family at large, and do not refer to the possession of family property, we find the following in Manu, ch. III[1]:—

"55. Married women must be honored and adorned by their fathers and brethren, by their husbands, and by the brethren of their husbands, if they seek abundant prosperity."

"56. Where females are honoured, there the deities are pleased; but where they are dishonoured, there all religious acts become fruitless."

"57. Where female relations are made miserable, the family of him who makes them so, very soon wholly perishes; but where they are not unhappy, the family always increases."

"58. On whatever houses the women of a family, not being duly honoured, pronounce an imprecation, those houses, with all that belong to them, utterly perish, as if destroyed by a sacrifice for the death of an enemy."

"59. Let these women, therefore, be continually supplied with ornaments, apparel, and food, at festivals and at jubilees, by men desirous of wealth."

"60. In whatever family the husband is contented with his wife and the wife with her husband, in this house will fortune be assuredly permanent."

(1) And see 2 Dig., bk. IV, ch. I, pl. 39, 40, 42, pp. 401, 402 and the Texts from the Mahabharata, *Ibid.* pl. 37, 38, 41, pp. 400, 401, 402.

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADA'SIV GANOBA'.

"61. Certainly, if the wife be not elegantly attired, she will not exhilarate her husband; and if her lord want hilarity, offspring will not be produced."

"62. A wife being gaily adorned, her whole house is embellished; but, if she be destitute of ornament, all will be deprived of decoration."

And in ch. XI we find:—

"7. He alone is worthy to drink the juice of the moon-plant who keeps a provision of grain sufficient to supply those whom the law commands him to nourish, for the term of three years or more;"

"8. But a twice-born man, who keeps a less provision of grain, yet presumes to taste the juice of the moon-plant, shall gather no fruit from that sacrament, even though he taste it at the first, *or solemn, much less at any occasional,* ceremony."

"9. He who bestows gifts on strangers, *with a view to worldly fame,* while he suffers his family to live in distress, though he has power to support them, touches his lips with honey, but swallows poison; such virtue is counterfeit."

"10. Even what he does for the sake of his future spiritual body, to the injury of those whom he is bound to maintain, shall bring him ultimate misery both in this life and in the next."

And in 2 Digest, bk. II, ch. IV, pl. xi, p. 112, is this text from Manu: "The ample support of those who are entitled to maintenance, is rewarded with *bliss in* heaven; but hell is the portion of that man whose family is afflicted with pain by his neglect: therefore, let him maintain his family with the utmost care."

And in the same volume (bk. IV, ch. I, sec. II, pl. 43, pp. 402, 403) are the following from Yajnyavalkya:—"Females must be honored by their husbands, brothers, fathers and paternal kinsmen; by the fathers, mothers, and brethren of their husbands; and by *all* kinsmen; with gifts of ornaments, apparel and food;" and pl. xliv—"By not gratifying the longings of a pregnant woman, the embryo suffers injury, becomes deformed, or even p[illegible]; therefore, should women be treated with affection."

The incentives held out to obedience in these texts are prosperity, offspring, and happiness in this life, and the consequences of disobedience are stated to be extinction of family, and misery in this world and in the next. Compulsion of a civil or penal character is not prescribed as proper to be exercised by the sovereign or the state. Although the word 'continually' is used in pl. 59, ch. 3, of Manu, above extracted, it is followed by the words "at festivals and jubilees," which afford an inference that he here enjoined the display of hospitality and generosity to the females of the family on special occasions, and as a moral duty, rather than treated of a permanent provision for their clothing and support as a legal obligation. "Ornaments" placed in pl. 59 in the same category with "food and apparel," elegant attirement in pl. 61, and gay adornment in pl. 62, all tend to the like conclusion. Commenting on these texts (43 and 44) of Yajnyavalkya and pl. 56, 57, 58, 59, 60, ch. 3, in Manu and those in 2 Dig. p. 402 already mentioned, Jagannatha (2 Dig., bk. IV, ch. I, sec. II, pl. 44, Comm. p. 403) says :—"From what has been stated, it appears that reverence must necessarily be shown to a wife, sister, and the rest, by gifts of food and clothes, and of ornaments, bestowed according to his ability by her husband, her brother, or some wealthy relation, as the case may be : this is a settled rule. If it be not done, the omission is punished with misfortune, for texts[1] show that the family perishes : therefore, women shall not, *in such cases,* apply to the king ; but he being privately informed, must compel their relations to supply them with food and the like ; and the rule must be settled as in the supplementary chapter *of the code of law.*" The meaning of this prohibition of an application by women to the king and relegation of the matter to his private action, is not very clear. It probably may be that the commentator did not regard the women of the family at large as at liberty to resort to Courts of Justice in the case of claims to maintenance irrespective of family property. Other portions of his work favour the supposition that his opinion was that, in certain cases, at least, the injunction of the Rishis as to the supply of food and clothes of the women of the family at large, when

(1) Manu, ch. III., pl, 57, 58, ch. IX., pl 202, ch. XI, pl. 7 to 10 ; 2 Dig., bk. II, ch. IV, pl. 18, cl. 1 ; bk. IV, ch. II, pl. 38, cl. 1 and 2, pl 39, cl. 2, 3.

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADA'SIV GANOBA'.

there was no property belonging to the united family, or to the deceased person whose widow needed support, in the possession of the members of the family sought to be charged, is of ethical rather than of legal obligation. For instance, in 2 Dig., bk. II, ch. IV, pl. 18, cl. 1, p. 131, where, in discussing alienable property, he quotes Vrihaspati thus:—"A man may give what remains after the food and clothing of his family; the giver of more, who leaves his family naked and unfed, may taste honey at first, but shall afterwards find it poison."(1) Here no civil obligation is prescribed, but merely a moral duty; and, further, in cl. 3 of the same placitum, Jagannatha gives this extract from the same Smriti writer:—"At his pleasure he may give what himself acquired, &c." Vrihaspati thus asserting that the head of the family had complete control over his personal acquisitions, and so restricting what he had said in clause 1 to family property. And, subsequently, in 3 Dig., bk. V (On Inheritance), ch. II (On Distribution by a father in his life-time), page 1, Jagannatha says that a father "may distribute, at his pleasure, immoveable and other property acquired by himself." At page 2 he continues thus:—"A father has dominion over property acquired by himself; should he give no share to any one son, though guilty of no offence, and give a share to one guilty of offences, who shall punish him? It cannot be affirmed that, under the authority of the texts cited from Katyayana and Baudhayana, the king may punish such a father. The law propounds the moral offence committed by a father slighting such precepts, but ordains no fine; like the giver of gold to an improper object, *thereby committing an offence, but incurring no civil penalty.*" And at the foot of page 31 he says:—"When partition of property, which he himself acquired, is made by a father, the share of his wife and the rest seems to be incidentally discussed. A father may divide, at his pleasure, property which he himself acquired, *giving more to some and less to others;* or he may give the first born the portion of an eldest son; or make all the shares equal." These passages, it may, no doubt, be said, refer to partition; but, on reverting to the foot of page 4 of the same volume, we find that their applicability to maintenance also becomes apparent, for Jagannatha there says:

(1) See also Manu, ch. XI, pl. 9.

"Equal partition may be *considered as* preceptive, like the maintenance of the family out of a man's own wealth. Thus, the support of a married daughter residing in her father's house (for so the term is explained by Vijnyanesvara) is approved by Yajnyavalkya (LXXVII), although she have no title to the estate; and there is no difference, so far as proof of property is concerned, between the enjoyment *of a maintenance* and the receipt of a share." The text of Yajnyavalkya, to which he refers, is that which follows the last above-quoted remark of Jagannatha, and is:—"After assigning a sufficient support to infants, to a married daughter residing in the house of her father, to aged persons, pregnant women, persons afflicted with disease, damsels *yet unmarried*, guests and servants, the husband and wife may enjoy the residue."(1) The inclusion of guests and servants indicates that Yajnyavalkya was in that text speaking in a directory and not a mandatory sense.(2)

Of the text of Vrihaspati, already mentioned,(3) in which are recorded the duties of the widow who has inherited the estate of a husband dying without issue male, the 6th clause is: "With food consecrated to the gods and the manes, let her honour paternal uncles, spiritual parents, daughters' sons, the offspring of her husband's sisters and his maternal uncles, learned men, unprotected persons, guests and females of the family." Here we have an extraordinary assortment of persons. Jagannatha explains(4) that "learned men" is an expression signifying persons versed in science;—that "females of the family" are "the widows of her husband's sons and the rest;"—that "daughters of the husband's sisters, if destitute of protectors, are included under the expression 'unprotected persons';" and that "the support of them is only necessary if they be so circumstanced. Consequently, all this should, if possible, be done at the charge of her husband's estate; otherwise *(if the funds be inadequate)* it must be done in words only." He then proceeds with his commentary, in the manner already above quoted, as to it not being necessary to deprive herself of the means of subsistence in order to support the uncles

(1) 3 Dig., bk. V, ch. II, pl. 77, p. 5.
(2) See also 3 Dig., bk. V, ch. VIII, pl. 399, cl. 6, p. 458.
(3) 3 Dig., bk. V, ch. VIII, pl. 399, p. 458.
(4) 3 Dig., bk. V, ch. VIII, pl. 399, p, 460.

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADA'SIV GANOBA'.

and other relatives of her husband, excepting his father and mother whom when old she must support, even though the utmost distress ensue. After referring to the practice in certain Brahmanical and noble families as to maintenance of daughters-in-law and grand-daughters, which practice is "not found in codes of law," and saying that it is not absolutely incumbent on the widow to support Brahmans resident in the same town, he proceeds thus :—"Others deduce from the expression 'honour with food consecrated to the gods and manes,' that pious offerings are alone positively directed; hence occasional presents of food and apparel and the like are suggested, not a *settled* maintenance;[1] and this is reasonable, for sages have not, by anticipation, composed books in conformity with the present practice."[2] Speaking, as he does, thus in the supposed case of a widow who has inherited property from her husband, it is not an unfair inference to make that he would have deemed it highly unreasonable to countenance claims for maintenance, made against a relative separated from the family or without family property, by persons other than his parents (when old or in distress), his wife, or his infant son, or possibly, by analogy to the latter, unmarried daughters.

In the present case, where the defendants do not hold any family property, we cannot regard the claim of the plaintiff as supported by texts, which, although they may enjoin maintenance, do so in express connexion with the inheritance of property and the liabilities of or charges upon that property in the hands of the heir. Such texts are numerous: for instance, that from Vrihaspati last quoted; those of Yajnyavalkya at page 46 of Roer and Montriou's Translation, pl. 140, 141, 142; those of Narada, rendered thus by Dr. Jolly[3] :—

"25. Amongst brothers, if any one die without issue, or enter a religious order, let the rest of the brothers divide his wealth, except the wife's separate property."

"26. Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord. But if they behave otherwise, the brethren may resume that allowance."

(1) Acc. Daya Bhaga, ch. XI, sec. I, pl. 63.

(2) 3 Dig., bk. V, ch. VIII, pl. 399, p. 461.

(3) Narada XIII, pl. 25, 26, 27, 28; Dr. Jolly's Trans., pp. 97, 98; 3 Dig., bk. V, ch. VIII, pl. 305, p. 474; 1 West and Bühler, p. 355, pl. 25, 26, 27, 28.

"27. As regards the daughter of a deceased co-parcener, her maintenance shall be made out of her father's share; let them support her until her marriage; afterwards her husband shall keep her."

"28. After the death of the husband, his kin are the guardians of a childless widow; in disposing of her, and in the case of her, as well in her maintenance, they have full power."

And there is another text of Narada which shows that the wives of a deceased proprietor are entitled to maintenance out of his property, when, for want of nearer heirs, it escheats to the king. (1) The next text is that of Sancha:—"To the childless wives of brothers and of sons, strictly observing the conduct prescribed, their spiritual parent must allot mere food and old garments which are not tattered." (2) Upon this the Commentary of Jagannatha is: "But some add, by way of supplement to the opinion of Chandesvara, that food and apparel must be given, under the text of Sancha, to the childless widow of a son or brother by her father-in-law, her brother-in-law, and the rest who take the estate of her deceased lord, and such nearly is the practice as observed by certain persons. Thus, he who takes the estate of another, must give food to his widow and the rest, whether she be daughter-in-law or sister-in-law *of the heir*. If he cannot supply her maintenance, he must not take the estate of the deceased so long as a widow survive. But the allotment of food and raiment to both these widows is not always indispensable; for they are not enumerated in the text of Manu among persons who must be maintained at all events. However, they should, if possible, be supported; for since Vrihaspati, treating of the succession of widows (3 Dig., bk. V, ch. VIII, pl. 399), directs that she who is first, by the text of Manu, in the order of succession to the estate of him who leaves no male issue, shall honour learned and unprotected persons and the rest, the same ought likewise to be established in the case of another heir." Assum-

(1) Narada XIII, pl. 51, 52; 3 Dig., bk. V, ch. VIII, pl. 448, p. 540; Dr. Jolly, p. 101; 1 West and Bühler 358; Mitak., ch. II, sec. I, pl. 27, 28; Mayukha, ch. IV, sec. 8, pl. 5; *Mussumat Golab* v. *The Collector of Benares*, 4 Moo. Ind. Ap. 246.

(2) 3 Dig., bk. V, ch. VIII, pl. 412, pp. 482, 483; Mayukha, ch. IV, sec. IX, pl. 22.

(3) These persons are the father, mother, virtuous wife, and infant son, 3 Dig., p. 406, bk. V, ch. VI, sec. II, art. I (at the end).

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADA'SIV GANOBA'.

ing the text of Harita (3 Dig., bk. V, ch. VIII, pl. 409, p. 479) to apply to maintenance (1) it is too vague to be of much value. It neither states the person nor the property liable to give the maintenance. In ch. IV, sec. VIII, pl. 2 and 9 of the Mayukha, that text is referred to as entitling a woman suspected of incontinence to a maintenance; but the section of the Mayukha, which contains those placita, treats of obstructed heritage; and the author is there clearly dealing with the inheritance and its liabilities, amongst the latter of which is, under certain circumstances, maintenance. The same text of Harita is noticed in the Mitakshara, ch. II, sec. I, pl. 37, as a denial of the right of a widow suspected of incontinency to take the whole estate, and, therefore, as implying that a widow not suspected of incontinency has a right to take the whole property of a husband separated from his family and dying without leaving issue male. Vijnyanesvara is there regarding such maintenance of a headstrong woman as one of the liabilities of the inheritance, the descent of which was his main topic.

The treatises of Hindu law of chief authority in this Presidency are, as has often been stated in this Court, Manu, the Mitakshara, and the Mayukha. Of these we have already mentioned and commented upon Manu. We now proceed to advert to the texts in the two other works.

In the Mitakshara the injunction to maintenance when given will be found to be so with reference to the succession to or exclusion from the succession to the family property. Thus in ch. I, sec. I, pl. 27, Vijnyanesvara is laying down the proposition that the right of property in ancestral immoveable estate is by birth, and incidentally to that doctrine quotes the ordinance of Vyasa to show that sons may prevent the father from alienating immoveable estate :—" Though immoveables or bipeds have been acquired by a man himself, a gift or sale of them should not be made without convening all the sons. They who are born, and they who are yet unbegotten, and they who are still in the womb,

(1) It will be observed that this passage is by Mr. Colebrooke in 3 Dig., p. 479, rendered somewhat differently from the versions of it given in the Mayukha and Mitakshara. In the Digest the word 'maintenance' is not used, but "separate property."

require the means of support; no gift or sale should, therefore, be made." In ch. I, sec. II, pl. 8, 9, 10, the same author is dealing with the wife's share in the family property on a partition in her husband's life-time. (1) Section VII is conversant of the shares of widows and unmarried daughters in the same property on a separation after the death of the husband of the widow. This right of the wife or widow to a share in the case of undivided estate, is in the nature rather of maintenance than of co-parcenery in the ordinary sense of that term—2 Stran. H. L., 295, 305, 307 per Mr. Ellis—and see the observations of West, J., in *Lakshman Rámchandra* v. *Satyábhámabai*.(2) Section XI, pl. 25, 26, in the case of the *aurasa* son taking the family inheritance, confers upon inferior sons the right to food and raiment out of it. Section XII, while denying to the son of a man of a regenerate tribe by a female slave the right of a co-parcener in the family estate, admits that if he be docile he is entitled to simple maintenance out of it. Ch. II. *(On the right of the widow to inherit the estate of one dying separated*(3) *and leaving no issue)*, sec. I, pl. 7, in referring to texts of the Rishis supposed to be adverse to the widow's claim to inherit, mentions the texts of Narada (4) last above quoted and already disposed of. Pl. 10, 12 and 13 also point to the maintenance of the widow out of the estate when it descends upon her son raised up to her deceased husband by his brother. Pl. 30 (and see Balambhat's note to sec. IX, pl. 4) applies to her maintenance out of the estate where there has been reunion of the parceners, and pl. 21 to maintenance out of the estate of the wives of persons excluded by personal disqualification from inheriting that estate. Pl. 27 and 28 quote a text of Katyayana (in accordance with Narada XIII, pl. 51, 52 above referred to) imposing on property escheating to the sovereign the liability to maintain the females of the family (including concubines) of the deceased proprietor. (5)

(1) In the last line of pl. 8 the words "like portions" are in Mr. Stokes' reprint of the Mitakshara misprinted 'life portions.'

(2) *Supra*, p. 494; see, also, Dáya Krama Sangraha, ch. II, sec. II, pl, 35.

(3) See sec. I, pl. 30, 39. (4) Narada XIII, pl. 25, 26, 27, 28.

(5) The widow is entitled to maintenance out of the ancestral property formerly of her husband, but forfeited for his treason to the Crown; *Mussumat Golab* v. *The Collector of Benares*, 4 Moo. Ind. App. 246.

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADA'SIV GANOBA'.

The subject of maintenance is further mentioned in pl. 31, 32, 33, 35, 37, but is so in these (as well as the other placita of the same section which have been named), for the mere purpose of showing that the texts of the Rishis, awarding maintenance, do not militate against the right of the wife of one dying separated from his brethren, and without leaving issue male, from succeeding to his property as heir. Section X (of the same chapter), which relates to exclusion from inheritance, by its 1st and 5th placita states that persons excluded from inheritance owing to some personal defect, such as blindness, deafness, dumbness, idiotcy, &c., shall be maintained, and pl. 12, 13, 14 and 15 declare that the unmarried daughters and wives of such persons shall also be maintained. The duty of so maintaining them, falls upon the persons who succeed to the estate from which those first mentioned are excluded. This concludes the examination of the Mitakshara. We find nothing in it to support the case of the plaintiff.

Turning now to the passages in the Mayukha on the subject of maintenance, it appears that in ch. IV, sec. IV, pl. 18, [1] 19,[2] on a division of the estate by the heirs after the death of a father, a share, that is to say, maintenance, is contemplated for the wives and mother of the deceased and also for his step-mother, and in pl. 30 for certain illegitimate sons. Placitum 15 relates to the shares of wives on a partition in the father's life-time. In referring to a text of Harita we have already mentioned placita 2 and 9 in sec. VIII of the same chapter. Placitum 5 of that section relates to the liability of property, which has escheated to the king, to maintenance for females of the family of the late owner. Placitum 6 (quoting the text of Narada (XIII, 25, 26) which declares the women of the deceased proprietor entitled on a partition to maintenance upon the death, civil or natural, of one of several brothers) says that it relates to the case of a man dying unseparated or reunited. Placitum 7 of this section is especially important as being the only passage in which the father-in-law is expressly named as an allotter of maintenance. It commences by quoting this text from Katyayana: 'But if her husband have departed for heaven, the wife obtains food and raiment: or (too), if unseparated, she will receive a share of the wealth so long as she lives. Nilakan-

(1) Quoting Yajnavalkya. (2) Quoting Vyasa

tha explains the term 'unseparated' as including also a reunited family. He also treats the first branch of the text as referring to a wife lawfully married and the second branch to a concubine (a woman set apart.) [1] In further explanation of the same text, he quotes another text of Katyayana :—'She, who is intent upon her service to her venerable Guru, is fit to enjoy the share assigned : should she not perform her proper duty, he shall order her (only) clothes (already worn) and a morsel of food.' Nilakantha's gloss. on the phrase '*Guru*' is : "*Her Guru*, her father-in-law, and other (venerable relatives). At his pleasure she may receive a share; otherwise merely food and raiment. This is the meaning." It must be recollected, first, that this passage (pl. 7) occurs in a section devoted to the subject of obstructed heritage or succession ; 2ndly, that it is in immediate sequence to pl. 5 quoting from Narada as to the liability of the inheritance in the hands of the king to the maintenance of the females of the family, and pl. 6 also quoting Narada as to providing maintenance for them, when chaste, upon a partition of the family wealth amongst the brethren ; 3rdly, that pl. 7 itself opens with a text of Katyayana conversant of the wealth of the deceased proprietor ; and, lastly, that the word 'unseparated' is employed, which must mean unseparated by reason of her husband being unseparated from his brethren or kinsfolk. Hence, it may be inferred that if her husband were divided in estate from his father, the wife of the former would have no claim upon the estate of the latter. The whole of pl. 7 seems to us to relate to the liability of the property to yield to her a share or maintenance, and not to any claim by a woman against her father-in-law personally. And pl. 8 expressly limits to a living husband the direction, contained in the text secondly there quoted, to furnish clothes and grain to a female degraded by misconduct. The main subject of section VIII is the succession to the estate of a Hindu who has died without leaving issue male, and not the maintenance of women ; but that subject is treated incidentally in so far as it affects the estate. Section IX of ch. IV is a discourse upon reunion after partition. Its 22nd placitum referring

[1] See *Khemkor* v. *Umidshankar*, 10 Bom. H. C. Rep. 381 ; *Vrandávandás* v. *Yamunábdi*, 12 *Ibid.* 229 ; and *Rábi* v. *Govind Teja*, Ind. L. R. 1 Bom. 79.

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADA'SIV GANOBA'.

to passages already quoted by us from Sancha[1] and Narada[2] lays down that the reunited brethren divide the estate, and that maintenance only is reserved for the widow and daughter of the deceased. Section X, pl. 10, discusses the power of a woman over her own property, including what is allotted to her for subsistence; and pl. 11 asserts her right to insist upon its restoration, if withheld from her by her husband. By sec. XI. *(On exclusion from inheritance)* pl. 1, 3, 7, 9, maintenance is prescribed for persons disqualified for succession as heirs by certain mental or physical personal defects or by illegitimacy. Of these texts pl. 9 is as follows:—"But all those excluded from participation must be maintained, during the rest of their lives, by those who get the estate, from this text of Manu, 'But it is fit that a wise man should give all of them food and raiment, without stint, to the best of his power: for he, who gives it not, shall be deemed an outcast'—(*Without stint* signifies 'as long as they live,')—as well as from the foregoing one of Yajnyavalkya (para. 1) 'those excluded from inheritance' must still be maintained." [3] The text of Manu, there referred to by Nilakantha, runs in the original, as translated by Sir William Jones, thus:—"But it is just, that the heir, who knows his duty, should give all of them food and raiment *for life* without stint, according to the best of his power: he, who gives them nothing, sinks assuredly *to a region of punishment.*[4] The word "heir" shows that this duty is cast by Manu upon the person who takes the inheritance. Continuing the Mayukha, ch. IV, sec. XI, we find that pl. 12 lays down the like rule of maintenance for wives and unmarried daughters of disqualified persons, and for this doctrine quotes the text of Yajnyavalkya, relied upon in the Mitakshara, for the same purpose.[5] Chapter IX, (pl. 2, 3, 4, 5) prohibits and treats as penal the alienation of property until the maintenance of the family is provided for. But the extent of "the family" is not there defined; the text, attributed

(1) 3 Dig., bk. V, ch. VIII, sec. I, pl. 412, page 482.

(2) Narada, XIII, pl. 25, 26, 27; 3 Dig., bk. V, ch. VIII, sec. I, pl. 405, page 474.

(3) 3 Dig., bk. V, ch. V, pl. 331, p. 321.

(4) Manu, ch. IX, pl. 202; 3 Dig., bk. V, ch. V, pl. 329, cl. 2, p. 318; *et vide ibid.*, pl. 320, cl. 2, pl. 321, cl. 2, pp. 303, 304, quoting texts of Narada and Devala.

(5) Mitak., ch. II, sec. X, pl. 1, 5, 12, 13, 14, 15.

to Vyasa in pl. 5 (but in 2 Dig., bk. II, ch. IV, sec. I, pl. 12, to Narada,[1]) only points to the issue of the owner. Chapter IX, too, treats of subtraction of gift and not of the personal liability of the male members of a family to furnish maintenance. Chapter XX, sec. I, has been already mentioned as prescribing, independently of the possession of wealth, the necessity of the maintenance of *the wife by her husband*. This examination of the Mayukha lends no support to a widow seeking a pecuniary allowance by way of maintenance from the separated brother of her husband, whether possessed or unpossessed of family estate.

The passages in the Daya Bhaga relating to maintenance are ch. II, pl. 23 (prohibiting total alienation of immoveable property as being essential for the maintenance of the family); ch. III, sec. II, pl. 29, *et seq.*; ch. V, pl. 10, 11, 12, 16, 19; ch. IX, pl. 28; ch. XI, sec. I, pl. 48, 49, and 52. All of these are connected with property or the succession to or partition thereof and its liabilities in the hands of the heir. So are the passages in Datt. Chand, sec. VI, pl. 15; sec. I, pl. 1, 2; in the Daya-Krama-Sangraha, ch. II, pl. 16, 26, 35; and ch. VII, pl. 3, and in the Vivada Chintamani, pp. 75, 243 to 245, 285, 286, 291.[2]

In the Smriti Chandrika, ch. XI, sec. 1, pl. 34, it is laid down that "when the father-in-law and the like are qualified to maintain the widow and take themselves the property of the deceased undivided member of the family, they alone are to maintain the widow from the property so taken. Accordingly, Narada says:—'Whichever wife (patni) becomes a widow and continues virtuous, she is entitled to be provided with food and raiment by the elder brother of the deceased, or by her father-in-law, or by a gotraja or any other person.' In order to maintain the widow, the elder brother, or any of the others above mentioned, must have taken the property of the deceased; the duty of maintaining the widow being dependent on taking the property." Devanda Bhatta, the author of the Smriti Chandrika, had previously in ch. V, pl. 25, when treating of kinsmen excluded from inherit-

(1) See, however, Dr. Jolly's Narada, Pt. II, ch. IV, pl. 6, page 60. And, as to the effect of separation, see the same work, Pt. II, ch. XIII, pl. 37, 38, 42, and, especially as to the right of alienation, pl. 43.

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADA'SIV GANOBA'.

ance by reason of their personal infirmities, in relation to the texts of Manu and of Yajnyavalkya ordaining that to such persons "food and raiment without stint" shall be supplied by their kinsmen, said :—"24.—The meaning is, that Manu and others consider that food and raiment are to be supplied to him, who is excluded from inheritance, by those who take his father's wealth. The meaning of the last sentence[1] of the text is, that when kinsmen have not taken the estate of the father of one excluded from inheritance, they are not to be compelled by the king to pay him maintenance. 25.—The rule hence settled is, that it is not necessary for kinsmen, who have not taken the patrimony of one excluded from inheritance, to maintain such person." And, as to the unmarried (while so continuing) daughters and the wives of persons so excluded, the same author observes that they "are to be maintained by those who take the estate of the disqualified persons in the same manner as the disqualified persons themselves are maintained." [2]

In 1 Stra. H. L., p. 172, it is, however, said : "Where her husband's property proves deficient, the duty of providing for her is cast upon his relations, and, failing them, upon her own,—an obligation that attaches, though she should have wasted what was assigned to her for that purpose ; giving colour to the law, requiring her to live with them that they may watch and control her conduct." Even assuming the authorities cited by the learned author for that doctrine to support it, he does not there countenance a claim for a pecuniary allowance to a widow so circumstanced, and, (without the excuse of ill-treatment by her husband's relatives, who are willing to receive and support her,) voluntarily residing apart from them. The authorities to which he refers are Mitakshara on Inheritance, ch. II, sec. I, pl. 7, 37, and sec. X, pl. 14, 15 ; Jim. Vah. (Daya Bhaga), ch. V, pl. 19 ; 3 Dig. 324, 479, (all of which we have already mentioned), and page 247 of the first volume of his own work (which seems to be a mistake for p. 244), apparently referred to chiefly for the purpose of showing the obligation imposed upon the widow to reside with the sons of her

(1) "The kinsmen shall not be compelled to give the wealth received by them not being his patrimony," Katyayana, Sm. Chand., ch. V, pl. 23.

(2) Ch. V, pl. 43.

husband, if any, and if not, with his other relatives. In none of the texts in the Mitakshara, the Daya Bhaga, or the Digest, referred to by Sir T. Strange, is it stated that, if the widow have wasted what has been assigned to her for maintenance, she is again entitled to resort either to the family estate or her relatives for a further assignment of that nature. Nor is there in those texts a single word as to the husband's property proving deficient. In fact, Vijnyanesvara, in ch. II, sec. I of the Mitakshara on Inheritance, was not discussing the question of maintenance, but the right of the widow of one separated from his brethren and dying without leaving issue male, to succeed as heir to his estate, and in pl. 7 and 37 (relied on by Sir T. Strange for his propositions) mentioned certain texts of Narada (1) and Harita (2) relating to maintenance, not so much for the purpose of inculcating the duty of maintenance, but with the object of explaining that those texts could not prevent a virtuous widow so circumstanced from taking the estate of her husband as his heir. Placita 14 and 15 of sec. X, of the same chapter, also relied upon by Sir T. Strange, do not apply to the widow of a man whose estate proves to be deficient, but to the widows of persons altogether excluded from inheritance by reason of personal disqualification. In so far as Vijnyanesvara in that chapter treats of maintenance, he regards it as a liability of the estate in the hands of whomsoever may be the heir (3) and not as a personal liability. So, too, ch. V of the Daya Bhaga is conversant of exclusion from inheritance on the ground of personal defect or illegitimacy; and its 19th placitum, relied on by Sir T. Strange, provides, as the context shows, that the unmarried daughters and wives of such persons shall be maintained by the heir out of the estate, as is manifest on a perusal of the whole chapter. The texts of Narada and Harita, mentioned in the passages of the Mitakshara and that of Yajnavalkya quoted in the passage of the Daya Bhaga and also given in 3 Dig., p. 324, relied on by Sir T. Strange, as well as that of Harita in 3 Dig., 479, also relied on by him, have been already fully discussed.

(1) Narada, XIII, pl. 25, 26, 27. Jolly's Trans., pp. 97, 98; 3 Dig., bk. V, ch. VIII, sec. I, pl. 405, page 474.

(2) 3 Dig., bk. V, ch. VIII, sec. I, pl. 409, page, 479.

(3) Mitak., ch. II, sec. 1, pl. 7, 10, 27, 28, 35, 38.

1878.

SAVITRIBA'I v. LAXMIBA'I AND SADA'SIV GANOBA'.

The cases contained in the 2nd volume of Sir T. Strange's treatise, and relating to the maintenance of widows, do not support the propositions in the 1st volume, p. 172, which we have ventured to question. These cases extend from p. 290 to p. 310 of the 2nd volume. In all of them there appears to have been family estate in the hands of the person compelled to maintain the widow. In one of those cases, at p. 291, the pundit is represented as saying that "if there be undivided brothers, and one die, leaving a widow and son, they succeed to his share of the joint property." Mr. Colebrooke's remark upon this is missing, but that of Mr. Ellis is forthcoming and valuable. He said:—"As long as the family continues undivided, all the parceners, their wives and families, are entitled to a joint maintenance; on division, widows, wives, and children can claim only on the portion of their respective husbands and fathers. In the present case, if the son were alive at the time of division, his mother would have to look to him alone for maintenance; if he were dead, she could be entitled, in right at once both of her husband and son, to succeed to a full share of the estate,—that is to say, a full share should be the *maximum* allowed her." At page 309 of 2 Strange H. L. similar questions arose in the case of *Vencummy* v. *Govindoo Chitty*. The case, as submitted to the Court pundit, was this:—"The plaintiff's husband, deceased, and the defendants were undivided brothers. The deceased having left a son by the plaintiff, aged four years, she demands a share out of the common estate for herself, and another for her child. To her claim, as regards herself, is opposed—1, the general Law of Inheritance and Partition; 2, her conduct, to which adultery is imputed. Under these circumstances what are her rights?" The pundit's answer was: "There is no ground for the claim of separate shares for herself and her son. *The share that is given to the son, must maintain his mother.* Though she should not conduct herself to the entire satisfaction of her caste people, still she must be subsisted out of the share allotted to her son, who in the meantime is to continue under her care till he attain his age; nor, though she should prove an adulteress, can he refuse to supply her with the necessaries of life." Mr. Colebrooke's comment, so far as here relevant, was: "The son is entitled to the share of his father who was one of

four brothers (Mitak. On Inh., ch. I, sec. V, pl. 2,) *and his mother must be maintained out of his allotment.*" The remark of Mr. Ellis, so far as relevant, on the pandit's opinion, was: "Correct as to the exclusive right and consequent obligation of the son."

The dissertation in Macnaghten's Hindu Law, vol. I, pp. 47, 48, and 49, as to the share of a wife on partition, does not, so far as it goes, favour her right to resort, after partition, to ancestral property in the hands of a separated kinsman of her husband. And in Case IV, at page 111 of vol. 2, Macnaghten's Hindu Law, which was a suit by a daughter-in-law (a widow) against her mother-in-law (a widow in possession of the family property), the right of the daughter-in-law to alimony was negatived, and her residence with her mother-in-law pronounced to be obligatory as the condition of her obtaining food and raiment. Again, in *Kumalmáni Dási* v. *Bodhnarain Mujmooadar and another*, reported as Case XI in the same volume, pp. 118, 119, it was held that a widow, whose husband had separated from his father and full brother, and had obtained his share of the ancestral estate, could not sustain a suit for maintenance against her father-in-law and brother-in-law.

In all of the other cases as to widow's maintenance in the same volume, extending from p. 111 to p. 117, there would seem to have been family property available to meet her claim.

Mr. Strange in his Manual of Hindu Law (2nd edn.), p. 54, pl. 209, says: "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." For this he refers to the Mitakshara on the subtraction of gift.(1)

In pl. 210 he continues: "Thus, where there is no ancestral property, a widow is not entitled to look for maintenance from her husband's brother. For this he vouches a judgment in sp. app. 142 of 1859 of the Madras Sadr Adálat. See also William's Digest of Madras Decisions, p. 22, pl. 7.

In 1 Morley's Dig. N. S., Tit. Maintenance, p. 249, pl. 5, there is a note of a Madras case in which a widow sued her husband's brothers for a money allowance as maintenance, but failed to

(1) See ch. X, fol. 69, p. 1, l. 1.

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADASIV GANOBA'.

prove that they were in possession of any ancestral estate, or, as I infer from the note, any property of her late husband. The Court held that she was not entitled to a money allowance from them, and that they could only be required to support her if she resided with them. It does not appear whether her husband was separated from them; but, in the absence of evidence that he was so, the presumption would be otherwise.

The late Mr. Justice Norman, when acting as Chief Justice of Bengal, held that a widow could not support a suit for a money allowance as maintenance against her father-in-law, who had separated in estate, though not in food and worship, from his son, her husband, in the life-time of the lattter—*Rájjomoney Dossee* v. *Shibchunder Mullick*.(1) Her father-in-law was, as the defendants here were, willing to maintain her in his house; but she, who was very young, left his house, alleging that two of the females of his family ill-treated her. Her chief cause for leaving, she said, was that she had only one meal a day, that she wanted *pán*, but got none, and that widows of her caste ate *pán*. Norman, C.J., however, held that no real cruelty had been proved, and said:—"According to Hindu law, probably the plaintiff should be maintained in the house of her father-in-law, who ought to find her in food and raiment. But when the father and son are not joint in estate, the maintenance of the son's widow appears to be a mere moral duty in her father-in-law, to the performance of which he is not compellable by law." After referring to the absolute power of a Hindu over his self-acquired property, and, on that point, to Colebrooke's Digest, vol. 2, bk. V, ch. I., pl. xxiii, xxiv, xxv, and xxvi, relating to the distribution, by a father, of self-acquired estate and to ch. II of the same book (vol. III), already cited, where Jagannatha treats the disherison of a son, with respect to such property, as a moral offence only, Norman, C.J., said: "A son's widow cannot have larger legal rights against her father-in-law than her husband would have had, if alive, and such husband could not have compelled his father to give him any share of his property." Mr. Justice Norman was there apparently continuing to speak of self-acquired property. He further said: "The

(1) 2 Hyde 103.

present case is wholly distinguishable from those where an heir takes property, subject to the obligation of maintaining persons excluded from inheritance out of the estate of the deceased proprietor, or whom the deceased proprietor was morally bound to maintain. In such cases the Hindu law seems to annex the duty as a burden on the inheritance in the hands of the heir, and the right of the party claiming maintenance appears to be a legal right analogous to a right of property." He then referred to Manu, ch. IX, pl, 201, 202; Daya Bhaga, ch. V, pl. 11; ch. XI, sec. 1, pl. 49, and other authorities for instances of this latter right.

A Full Bench case—*Khetrámáni Dási* v. *Kashináth Dás*,[1] of great importance, decided in Calcutta in 1868, has been cited on behalf of the defendant. It arose in the twenty-four Parganas, and, therefore, were it dependent on any particular school of Hindu law, would have been regulated by the Bengal or Gaurya School. We think, however, that the reasoning on which the judgment mainly rested, was quite as applicable in this Presidency as in Lower Bengal. It was a suit by a widow against her father-in-law claiming a monthly allowance in money for maintenance, and the expenses of religious rites. She was married, when five years old, to the defendant's youngest son in 1853. He died in 1859. She alleged that after his death she was ill-treated by the defendant and his wife and daughters, and, thus being unable to stay in his house any longer, went to reside with her father. She did not assert that there was any ancestral property or any property belonging to her late husband in the possession of the defendant. The latter denied his legal liability to her in any respect, and that he or his family had ever ill-treated her, and said that she had been to his house only on two occasions, and then for the performance of religious ceremonies for the benefit of her deceased husband; that she had, against the defendant's consent and orders, refused to render the service due to him in his old age, and had chosen to reside with her father; that the defendant was not a wealthy person, and had received no heritage, "and that it was only from the earnings of a laborious service that he was able to give a somewhat decent support to his family,

(1) 2 Beng. L. R. 15 A. J.; S. C. 9 Calc. W. R. 413 and 10 *Ibid.* (F. B) 89.

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADA'SIV GANOBA'.

but that being incapacitated for further service, he was compelled to place his sole dependence upon a pension of Rs. 63-4-0 *per mensem*." It is not so stated in the case, but it is to be inferred that the defendant and his deceased son were undivided—there being no averment to the contrary, and the latter having apparently died very young. The Court of first instance made a decree in favour of the plaintiff. The defendant appealed to the High Court. The Division Court (Norman and Seton Karr, JJ.,) were disposed to think the suit unsustainable, but there being conflicting decisions [1] on the point in Bengal, referred to a Full Court this question—"Can the widow of a Hindu, refusing to live in the house of her father-in-law, maintain a suit against him for a pecuniary allowance by way of maintenance." Peacock, C.J., and Macpherson, J., were of opinion in the negative, and Loch and Kemp, JJ., in the affirmative. The decision was in accordance with the opinion of the Chief Justice. After noticing the absence of any allegation that the defendant had any ancestral property, or any property upon which the plaintiff's maintenance was a charge, he said that "two questions arose out of the point submitted for the opinion of the Full Bench, viz.: 1st, whether the widow of the Hindu, refusing to live in the house of her father-in-law, can sue him for a pecuniary allowance by way of maintenance, if she leave his house without reasonable cause; and, 2ndly, is she entitled to maintenance if she leave on account of ill-usage or other reasonable cause"—and expressed his opinion "that, according to the law as administered in Lower Bengal, a daughter-in-law has not, in either case, a legal ground of action to recover maintenance against her father-in-law. The rights of a wife or of a widow and those of the son's widow to maintenance appear to me to be governed by very different principles. A son's widow has not the same legal rights against her father-in-law as a wife has against her husband, or as a widow has against the heirs of her husband who take his estate by inheritance. The father is not heir to his son in preference to the son's widow." After expressing his approval of the rule laid down by Norman, J., in the case above cited from 2 Hyde, 103, the Chief Justice pro-

[1] 2 Hyde 103; S. D. R. (1852) 796: 2 Calc. W. R. 134; 6 *Ibid.* 37.

ceeded :—"The obligation of an heir to provide, out of the estate which descends to him, maintenance for certain persons whom the ancestor was legally or morally bound to maintain, is a legal as well as a moral obligation, for the estate is inherited, subject to the obligation of providing such maintenance. A son who takes his father's estate by inheritance is bound to provide maintenance for his father's widow. The obligation is a charge upon the estate, which continues as long as the widow remains chaste, whether she continue to live in the family of the heirs or not." That co-residence with the heirs is, under such circumstances, non-essential, has been decided frequently (*Rájá Pirthi Singh* v. *Rání Rajcoovar*,(1) *Subosundiri Dosi* v. *Kistokissore Neoghy*,(2) *Visalatchi* v. *Annasamy*,(3) *Jádumani Dási* v. *Kheytramohini Shil*,(4)) contrary to the opinion, apparently, of Sir T. Strange,(5) but those were all cases in which there was family property from which the widow was entitled to maintenance, and it does not thence, by any means, ensue that if there be no family property, and she be notwithstanding, entitled to food and raiment from her husband's family, she can insist upon it on any other condition than that of co-residence with that family and co-operation in their domestic labours. The extent to which maintenance is a charge upon ancestral estate, or the estate of her husband, has been recently considered in *Lakshman Rámchundra* v. *Sarasvatibái*(6) and *Lakshman Rámchandra* v. *Satyábhámábái*,(7) and calls for no remark here. Peacock, C.J., continued :—"I apprehend that a son's widow has no greater right to sue her father-in-law for maintenance, after her husband's death, than she would have in her husband's lifetime, if he were unable to maintain her; if there is a legal obligation, does it extend to every widow whom every son (however numerous the family) may leave without a sufficient provision for her maintenance? If not, to what extent is the rule limited by the Hindu law? I have looked carefully into the authorities, and cannot find anything to satisfy me that a son's widow is entitled

(1) 12 Beng. L. R. 238 P.C.; S. C. 20 Calc. W. R. 21. (2) 2 Taylor and Bell 190.
(3) 5 Mad. H. C. Rep. 150. (4) Vyavastha Darpana 384, 2nd edn.
(5) 1 Stra. H. L. 172, 244. (6) 12 Bom. H. C. Rep. 69.
(7) *Supra*, p. 494.

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADA'SIV GANOBA'.

to sue to compel her father-in-law to maintain her where he has no ancestral property, and nothing beyond his separate estate which has been acquired by himself. Some of the books speak of the husband's relations generally; but I apprehend that a brother or other distant relation cannot be legally, although he may be morally, bound to support all the widows of his brothers, or other near relations, who have no means of subsistence, unless he takes some property which renders him liable to the charge;" and again, "If the father-in-law is legally responsible for the maintenance of his daughter-in-law, where is the legal obligation to stop, if he dies without having property?" and, again, "This is not a question of a charge upon the inheritance, for the father-in-law is not stated to have inherited anything. He states that he is a pensioner of Government, with a small pension not more than sufficient to maintain himself and his own family. It is not necessary to determine that he is so; but, for the sake of argument, it may be asked, is such a pensioner bound to maintain all the widows of all his deceased sons? Is he to save nothing for his own widow lest he should die before her, when his pension would cease?" And, again, "If a son and a father, joint in food and estate, should separate, and each take his own share of the estate, and the son after partition should enter into business, and lose all that he has taken, would the father, after the death of the son, be bound to support his widow? We must not convert all the moral obligations enjoined by the Hindu law into legal liabilities. We should do much mischief by want of care in this respect." The decree of the Court of first instance having been reversed by the Full Bench, the plaintiff appealed under section 15 of the Letters Patent, and another Full Bench, consisting of Bayley, Norman, L. Jackson, Phear, E. Jackson, Glover, and Hobhouse, JJ., unanimously affirmed the decision of the first Full Bench. Looking at the question submitted to the Full Benches and at all of the judgments delivered by the second Full Bench, that case cannot, we think, be deemed to have decided more than that a widow, voluntarily and without any ill-treatment on the part of her father-in-law and his family residing elsewhere than in his house, cannot sustain a suit against him for a pecuniary allowance by way of maintenance,

if he be not in possession either of ancestral estate or estate derived from his deceased son, her husband. It leaves the question open whether she would have any remedy against her father-in-law, for food and raiment, or pecuniary allowance for maintenance, if the misconduct of himself or his family towards the widow justified her in residiug apart from him.

That case is a stronger authority for the defendant Sadásiv even than he needs, for he is not the father-in-law of the plaintiff, but a more remote kinsman of her husband Dhákji, namely the paternal uncle of the latter, and, unquestionably, long before the death either of Dhákji or his father Bálcrustna, duly separated in estate from them. There was a strong effort made in the argument, addressed to the second Full Bench, to blend, inseparably, the moral precepts of the Smritis with the legal obligations laid down by them, but it failed to convince any one member of that Bench.

In the introduction to vol. 2, West and Bühler,[1] the authors, speaking of that case, observe that "Sir B. Peacock, C.J., in a judgment concurred in by Macpherson, J., says that 'a daughter-in-law has no legal right to a maintenance whether she live with her father-in-law or not'," and they remark that "Sir B. Peacock's view may, perhaps, be defended under the Daya Bhaga, which assigns no ownership to the son until the death of his father. But under the law of the Mitakshara, the son's position is essentially different, inasmuch as his joint right arises on his birth; and the widow's right to maintenance has always been recognized in this Presidency." We, however, have seen that Sir B. Peacock prefaced his remark by saying that "there is no allegation in the plaint that the defendant has any ancestral property, or any property upon which the plaintiff's maintenance is a charge," and his remark must, we think, be understood as made with reference to that state of facts. And, further, we may observe that, although Dhákji may, at his birth, if it occurred before the partition, have had, under the Mitakshara law, through his father, an interest in the family estate, his interest in the portion allotted to Sadásiv ceased on the partition, and Sadásiv then became absolute owner (so far

(1) Page xxxi.

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADA'SIV GANOBA'.

as Dhákji and his father were concerned) of that portion. It was not pretended that Dhákji's marriage took place until after the partition,—not, indeed, that such a circumstance could have made any difference in the plaintiff's rights. A woman, who marries a member of a joint Hindu family, does so subject to the contingency of their separation in estate. In so speaking, we are not to be understood as impeaching the case of *Comulmoney Dossee* v. *Rámnanáth Bysack*,(1) where the widow of the late proprietor was declared entitled to maintenance out of his estate after there had been a partition of the whole made without regard to her claim. A wife or mother occupies in this respect a different position from the widow of a son or other parcener, in which latter case the claim for maintenance is solely against the share allotted to him on partition made in his life-time, as shown by the cases quoted above from 2 Stra. H. L.

A Full Bench of the High Court, N. W. P., has lately (1876) held in *Gangábái* v. *Sitárám* (2) that a Hindu widow is not entitled, in a province where the Mitakshara is the predominant authority, to be maintained by her father-in-law if he have not ancestral property in his possession. The question as actually framed, and put to the Full Bench, and ruled in the negative, was—whether a widow, whose husband predeceased his father, has a right to be maintained by her husband's relations irrespectively and independently of the existence, in their hands, of ancestral funds or properties under the law obtaining in the North-West Provinces? The widow had resided with Sitárám, her father-in-law, and was maintained by him for about fifteen years after her husband's death, and, at the expiration of that time, without alleging any ill-treatment by Sitárám, went to live with her own brother. A moiety of the house, in which she had resided with Sitárám and his family, was Sitárám's ancestral property. The other moiety he had acquired by purchase. He sold the house in 1874 to Kailash Náth, in order to pay his (Sitárám's) debts. Gangábái, by her plaint filed against Sitárám and Kailash Náth, prayed that the sale should be set aside, and that she should be declared entitled to reside in a portion of the ancestral moiety of the house; also that

(1) Fulton's Rep. 189. (2) I. L. R. 1. All. 170.

a pecuniary allowance of Rs. 5 *per mensem* should be made to her by Sitárám out of a charitable allowance made to him by Government. The Court of first instance decreed that she was entitled to reside in two rooms in the house, but refused to her any further relief. On appeal by Gangábái (Kailash Náth not appealing), the District Court affirmed the decree. On special appeal the Division Court referred the question above mentioned to the Full Bench, and received the reply already mentioned, and, on the case coming on for final disposal before the Division Court, it affirmed the decrees of the Courts below, being of opinion that the sale of the ancestral property for payment of his debts by Sitárám (under the above circumstances) did not entitle his daughter-in-law to be maintained by him. The sale being for payment of his debts, the Court said, was one which his son, if alive, could not have resisted, for it was not suggested that the debts were contracted for immoral purposes. This remark of the Court shows that, if Kailash Nath had appealed, the decree, so far as it gave to the plaintiff a residence in the house, would have been reversed.

One of the main objects of partition, is to prevent Hindu families from becoming too unwieldy in size, and thus to enable the members of such families to limit their liabilities within reasonable bounds.

The result of the circumstances of this case and of our examination of the works of the Hindu jurists of special weight in this Presidency and of the other authorities, is that, for two reasons, we think that the plaintiff must fail in this suit, viz.: 1st, that her husband and his father were, before their deaths, separated in estate from the defendant Sadásiv, her husband's uncle; and, 2nd, because, at the time of the institution of the plaintiff's suit, there was not, in the possession or subject to the disposition of Sadásiv, any ancestral estate, or estate of the plaintiff's husband or his father. Either one of these reasons, independently of the other, is, we think, fatal to the plaintiff's claim to a money allowance. My brothers Bayley, Kemball, and Green concur in this judgment.

We affirm the decree of the lower Court; but as there were decisions, at the Appellate Side of this Court, which may have

1878.

SAVITRIBA'I v. LUXIMIBA'I AND SADASIV GANOBA'.

induced the plaintiff to make this appeal, we direct that the parties, respectively, should bear their own costs.

Attorney for the appellant:—*Mr. L. Fletcher.*

Attorneys for the respondents:—*Messrs. Craigie, Lynch, and Owen.*

[APPELLATE CIVIL.]

(FULL BENCH.)

Before Sir M. R. Westropp, Knt., Chief Justice, Mr. Justice Kemball, and Mr. Justice West.

May 1.

SIDLINGA'PA', SON OF BASA'PA' (ORIGINAL DEFENDANT), APPELLANT, *v.* SIDA'VA' KOM SIDLINGA'PA' (ORIGINAL PLAINTIFF), RESPONDENT.*

Jurisdiction—Small Cause Courts in Mofussal—Suit for maintenance.

In the absence of any special bond or other contract for the payment of maintenance, a suit for maintenance is not cognizable in a Court of Small Causes in the Mufussal.

Ordinarily, the right to maintenance does not rest upon contract. It is a liability created by the Hindu law, and arises out of the jural relation of the Hindu family. It is enforceable in numerous instances in which there is no connexion with contract.

Nobin Kálee Debeá v. *Bindoobáshinee Debeá* (5 Calc. W. R. 5 [Sm. C. C. Ref.]) followed.

THIS was a special appeal from the decision of N. Daniell, District Judge of Dharwar, reversing the decree of the Subordinate Judge of Háveri.

The case was referred to a Full Bench by Nánábhái Haridás and Larpent, JJ., on the preliminary objection raised by the respondents, that the case was one cognizable by a Court of Small Causes, and, therefore, not the subject of a special appeal.

Dhirajlál Mathurádás, for the defendants, in support of the objection:—The words "or other contract" in section 6 of Act XI. of 1865 includes an implied contract for maintenance which would spring out of the contract of marriage: *Ratanshankar* v. *Gulábshankar*,(1) *Ammalla Ammul* v. *Subbu Vadiyar*.(2) There being an

* Special Appeal No. 10 of 1874.

(1) 4 Bom. H. C. Rep. 173, A.C J.

(2) 2 Mad. H. C. Rep. 184.