

## APPELLATE CIVIL.

( 49 )

*Before Mr. Justice Melvill and Mr. Justice Kembell.*JIVI (ORIGINAL PLAINTIFF), APPELLANT, v. RAMJI (ORIGINAL DEFENDANT),  
RESPONDENT.\*1879  
March 3.*Limitation Act IX of 1871, Sch. II, Art. 128—Hindu Widow—Maintenance—  
Demand and Refusal.*

A Hindu widow has a legal right, irrespective of demand and refusal, to maintenance, and may recover arrears for any period not excluded by the law of limitation applicable to her suit.

In suits coming within the operation of the limitation Act IX of 1871 the widow may recover arrears for any period, unless it appears that there has been a demand and refusal, in which case she can recover arrears for twelve years only from the date of such demand and refusal.

A Limitation Act is not intended to define or create causes of action, but simply to prescribe the periods within which existing rights may be enforced.

THIS was a second appeal from the decree of W. M. P. Coghlan, Judge of the District of Thana, confirming the decision of Sakharam Krishnasheth, Subordinate Judge of Bassein.

The plaintiff, a Hindu widow, on the 18th of June, 1877 sued her late husband's undivided brother for maintenance for four years, viz., from 13th June 1873 to 13th June 1877, on which last day she alleged that the cause of action arose, as it was on that day that she had demanded the maintenance and was refused.

The defendant pleaded, *inter alia*, that no cause of action had arisen, and both the lower Courts allowed the defendant's contention, and rejected the plaintiff's claims. The District Judge in doing so gave the following reasons:—

"It is provided by Act IX of 1871, sch. II., art. 128, the Limitation Act governing this case, that the period of limitation for the recovery of maintenance by a Hindu widow is twelve years, counting from the date of claim and refusal. The former Limitation Act (XIV of 1359) gave a period of twelve years from the death of the husband. There was, therefore, a deliberate and decided change of the law by Act IX of 1871. Arrears of maintenance claimed and refused have been held to be attachable as a debt—*Hoymobutty v. Koroona*, (1) *Kashishur v. Grish Chander*; (2) but in this present case the arrears had never

\* Second. Appeal, No. 14 of 1879.

(1) 8 Calc. W. R. 41 Civ. Rul. (2) 6 Calc. W. R. 64 Civ. Rul. -

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been claimed, and, therefore, never refused. As maintenance in advance from 13th June 1877 is not claimed in the plaint, I must agree with the learned Subordinate Judge that it discloses no cause of action. The time for claiming maintenance is when the necessity arises, that is to say, in advance for any reasonable period, and when this was done and met with a refusal, Act IX of 1871, kept open the legal remedy for twelve years from the date of each claim and refusal. If a widow allows years to pass without giving notice of a claim to maintenance, she cannot recover arrears. If she may recover arrears, there is nothing in the law to limit recovery to any fixed number of years. It is only reasonable that a widow be expected to be vigilant in availing herself of her legal rights. In this case the plaintiff by her own laches has put herself out of Court."

*Ghanasham Nilkuntl Nadkarni* for the appellant.—The right to demand maintenance is inherent in the *status* of a Hindu widow in her husband's family and demand and refusal are not necessary to give her a cause of action. The law of limitation does not give her the right to maintenance. It only provides that when she initiates the enforcement of her right by a demand, the person refusing it is not to be kept in terror of her claims for a period longer than that prescribed by the Limitation Act.

*Dinkar Gungadhar Bhatt* for the respondent.—If the plaintiff's contention were correct, there would be no limitation to a widow's suit for maintenance. That this was not intended, can be gathered from sch. II, art. 128 of Act IX of 1871, which prescribes twelve years from the date of demand and refusal, instead of from the death of the widow's husband, as was done by Act XIV of 1859.

The judgment of the Court was delivered by

MELVILL, J.—If we correctly understand the decisions of the Courts below, they have held that a Hindu widow has no right to recover arrears of maintenance, except such as accrue due after a demand and refusal. In other words, they held that a demand and refusal create a prospective right to maintenance, but that there is no cause of action in respect of arrears of maintenance claimed for a period previous to such demand being made. This view is quite

inconsistent with the decision of this Court in *Sukvarbai v. Bhavarji*(1) and with that of the Madras High Court in *Venko padhyaya v. Kavari Hengusu*,(2) which latter decision is noticed with approval by the Privy Council in *Raja Parthee Singh v. Rani Rajkooer*.(3) From these and other cases it is clear that the Court have recognized the legal right of a Hindu widow to recover arrears of maintenance to the extent allowed by the law of limitation for the time being. It is true that the cases above referred to were decided when Act XIV of 1859 was in force, and that the District Judge in the present case draws a distinction between the provisions of that Act and those of Act IX of 1871, which govern the present case. The view of the learned District Judge seems to be that, because the latter Act provides that in suits for maintenance the period of limitation begins to run from the date when the maintenance sued for is claimed and refused, therefore the demand and refusal create the right to the maintenance. It might with equal justice be argued that, under the same Act, the right to recover money lent is created by a demand and refusal. The truth is, that a Limitation Act is not intended to define or create causes of action, but simply to lay down the periods within which existing rights may be enforced. A Hindu widow has a legal right to maintenance, and may recover arrears for any period not excluded by the law of limitation applicable to the suit. In suits coming within the operation of Act IX of 1871 she may recover arrears for any period, unless it appear that there has been a demand and refusal, in which case she can recover arrears for twelve years only from the date of such demand and refusal.

We must, therefore, reverse the decisions of the Courts below on the preliminary point, viz., that the plaint discloses no cause of action, and must remand the case in order that it may be determined whether, under all the circumstances of the parties and of the conduct of the plaintiff, the plaintiff is entitled to the maintenance and residence claimed; or any part thereof. Costs to follow the final decision.

*Decree reversed and case remanded.*

(1) 1 Bom. H. C. Rep. 194,

(2) 2 Mad. H. C. Rep. 36.

(3) 12 Beng. L. Rep. 233.