

1885.

RĀMRĀO  
TRIMBAK  
v.  
YESHVANT-  
RĀO  
MĀDHAVRĀO.

We think, therefore, that the Subordinate Judge was right in holding that the plaintiff could only claim maintenance. If such was the legal relationship between the parties when the services of the *vatan* were dispensed with on 1st August, 1864, it would not be altered by that event, although the amount of maintenance, which the defendants could be expected to pay, might possibly be influenced by the reduction in the income of the *vatan*.

The defendants' objection, that the claim for maintenance is barred by the Statute of Limitations, is, in our opinion, not sustainable. The necessity for bringing the suit, regarded as one for maintenance, did not arise until the award of the arbitrators was held by this Court in 1882 to be in force only during the life-time of the parties. From 1864 up to that time the question between the parties had been exclusively whether the sum awarded for maintenance by arbitrators should be reduced by reason of the six annas' reduction on the income of the *vatan*. The defendants have not objected before us to the amount of the maintenance awarded by the Subordinate Judge. We must, therefore, confirm his decree. Parties to pay their own costs of the two appeals.

*Decree confirmed.*

## APPELLATE CIVIL.

*Before Mr. Justice Birdwood and Mr. Justice Jardine.*

1885.  
December 16.

BHIMA'JI GOVIND KULKARNI, (ORIGINAL PLAINTIFF), APPLICANT,  
v. RAKMA'BA'I KOM GOVIND KULKARNI AND ANOTHER, (ORIGINAL  
DEFENDANTS), OPPONENTS.\*

*Decree—Fraud—Effect of setting aside a decree on the ground of fraud and collusion.*

A. filed a suit against B., in which a consent decree was passed. This decree was set aside in a subsequent suit brought by B., on the ground that it had been obtained by fraud and collusion between A. and B.'s agent, who had no authority to consent. Thereupon A. applied to have his suit restored to the file and re-heard on the merits, contending that, the decree having been set aside, the suit remained undecided.

\* Application under Extraordinary Jurisdiction, No. 103 of 1885.

*Held*, refusing the application, that A.'s decree, though set aside, was not reversed. The decree obtained by B. left A.'s decree legally complete, and amounted only to a declaration that the decree obtained by A. "should avail nothing for or against the parties to B.'s suit who were affected by it."

1885.

BHIMÁJI  
GOVIND  
v.  
RAKMÁBÁI

THIS was an application under section 622 of the Civil Procedure Code (XIV of 1882) against the order of Ráv Sáheb Venkatráo R. Inámdár, Subordinate Judge of Chikodi.

The applicant, Bhimáji Govind Kulkarni, filed a suit (No. 181 of 1878) against the opponents, Rákmábái and another, in the Court of the Second Class Subordinate Judge of Chikodi. In that suit Rákmábái appeared by her *mukhtyár* or agent. He admitted Bhimáji's claim, and a consent decree was passed on 13th July, 1878. When this decree was sought to be executed against Rákmábái, she brought a suit (No. 969 of 1880) to have the decree set aside, on the ground that it had been obtained by fraud and collusion between Bhimáji and her *mukhtyár*. She obtained a decree in her favour, which was finally confirmed, in appeal, by the High Court, on 9th September, 1884. Thereupon Bhimáji applied to the Subordinate Judge of Chikodi that his suit, No. 181 of 1878, against Rákmábái should be restored to the file and re-heard on the merits, contending that the suit remained undecided after the decree had been set aside. This application was rejected. He then applied to the High Court under section 622 of the Civil Procedure Code (XIV of 1882).

A rule *nisi* having been granted,

*Ganesh Rámchandra Kirloskar* appeared for opponent No. 1 to show cause, and *Gokaldás Káhandás Parekh* for applicant in support of the rule.

BIRDWOOD, J.—The opponents were the defendants in Suit No. 181 of 1878 in the Court of the Subordinate Judge of Chikodi. A consent decree was made in that suit, but was set aside in a subsequent suit brought by the opponent No. 1, on the ground that it had been collusively obtained by the fraud of the plaintiff, the applicant in this Court, and the opponents' agent, who had not obtained the opponents' authority to consent. The decree setting aside the applicant's decree was confirmed by the

1885.

BHIMAJI  
GOVIND  
v.  
RAKMAJAI

District Court in appeal, and by the High Court in second appeal. Thereupon the applicant applied to the Subordinate Court to resume proceedings in Suit No. 181 of 1878; and his application having been refused, he now applies with the same object to this Court, on the ground that the consent decree having been set aside, Suit No. 181 of 1878 still remains undecided, and must be completed.

We cannot, however, take this view of the effect of the decree obtained by the opponent No. 1. When the applicant's decree was set aside, it was not reversed. It was only by a Court of appeal that it could have been reversed. The decree obtained by the opponent No. 1 in a separate suit left the applicant's decree legally complete, and amounted only to a declaration that it should "avail nothing for or against the parties" to opponents' suit, "who were affected by it." See the judgment of Lord Brougham in *Earl of Bandan v. Becher*<sup>(1)</sup>; also *Mewa Lall Thakur v. Bhujhun Jha*<sup>(2)</sup> and *Eshan Chunda Safooi v. Nundamoni Dasse*<sup>(3)</sup>. The application cannot, therefore, be granted. The rule *nisi*, granted in this case, is discharged with costs.

*Rule discharged.*

(1) 3 Cl. and F., p. 510.

(2) 13 Beng. L. R., Appx. II.

(3) I. L. R., 10 Calc., 357.

## REVISIONAL CRIMINAL.

*Before Mr. Justice Birdwood and Mr. Justice Jardine.*

QUEEN-EMPRESS v. BAI RUKSHMONI.\*

1886.

January 21.

*Criminal Procedure Code (Act X of 1882), Sec. 198—Complaint of bigamy by a person "aggrieved"—Indian Penal Code (Act XLV of 1860), Sec. 494.*

Where the wife of a lunatic was prosecuted for bigamy on the complaint of the lunatic's brother,

*Held*, that the complainant, merely as brother of the lunatic, was not a "person aggrieved by such offence" within the meaning of section 198 of the Criminal Procedure Code (X of 1882), and that the complaint could not be entertained.

\* No. 333 of 1885.