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recover from the defendant. He could not demand any fulfilment by the defendant before the end of that month. Thus the operation of the decree as a command was wholly postponed until the time indicated which was thus prescribed as a term rather than as a condition (1). There is no provision that, failing fulfilment by the plaintiff at the end of *Margashirsha*, his right under the decree is to fail, and such an expression is what one would look for where the precise date was intended to form an essential element of the condition. As the case stands, we think that the specification of the end of *Margashirsha* has merely the effect of making the decree speak as from that time, and that conditional as it is with respect to the step to be taken by the plaintiff, the plaintiff had three years from the 9th January, 1883, within which he might seek execution. The construction, demanded by the appellant would have this consequence, that, whereas a simple order for reciprocal delivery would have allowed the plaintiff three years from July, 1882, for execution, the postponement of operation of the decree would cut down the time allowed him to six months. The case of *Sidney* v. *Vaughan* (2) shows that the mention [26] of something to be done coupled with an expression of time may but serve to indicate a term not to impose a condition *sine qua non*. The mention of a term when a particular right is to become enforceable is not a condition whether the enforcement be otherwise subject to a condition or not.

We confirm the decree of the District Court with costs,

Decree confirmed.

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APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.

YASHVANTRAV (*Original Opponent*) *Appellant* v. KASHIBAI (*Original Petitioner*), *Respondent*.* [28th April, 1887.]

Maintenance—Hindu law—Incontinence of a co-parcener's concubine disentitling her to maintenance.

Continued continence is, under the Hindu law, a condition precedent to a deceased co-parcener's concubine claiming maintenance.

[R., 20 M. 470=7 M.L.J. 303=2 Weir 646.]

APPEAL from a decision of G. Druitt, Acting Assistant Judge (F.P.) of Belgaum at Kaladgi.

The petitioner, who had been the concubine of the appellant's father, obtained a decree for maintenance against the appellant and his brother, which she now sought to execute. The appellant alleged that the petitioner had been living in prostitution, and had consequently forfeited her right to the maintenance awarded to her by the decree.

The Assistant Judge, however, ordered execution to issue. He said :—

"Opponent No. 2 is of course liable under the decree. No specific sources of income are charged with the payment of this allowance by the

* Appeal No. 29 of 1884.

(1) See Ev. Poth SS., 230, 237 Colebr. Obl., Sec. 228.
(2) 2 Bro. P. C., 254 (2nd ed.)

decree. It seems to follow, by analogy from the decision in *Parvati* v. *Bhiku* (1), that incontinence subsequent to the order awarding the allowance would not cause it to be forfeited * * * * * * *."

[27] From this order the opponent appealed to the High Court.

Ganasham Nilkanth Nadkarni, for the appellant.

Shantaram Narayan (*Shivram Vithal Bhandarkar*, with him), for the respondent.

JUDGMENT.

NANABHAI HARIDAS, J.—We have already, in the course of the argument, intimated our opinion that Mr. Druitt is right in holding that "no specific sources of income are charged with the payment of this allowance by the decree." Mr. Naylor, no doubt, directed that the allowance now in dispute, among others, was to be paid from certain sources of income specified by him in his report of the 13th April, 1870; but that decision was subsequently reversed by the High Court, and, on the matter being reconsidered by his successor, Mr. Baker, he came to the conclusion that "the other items," (among which the allowance in dispute is included), "should be paid from Bhujangrav's and Anna Saheb's joint shares." See his report, dated 5th August, 1872. This decision was, on the 20th August, 1873, confirmed by the High Court, and ordered to be carried out. See Miscellaneous Cross Appeals, 8 and 9, of 1870.

The only question, therefore, which remains for us to determine now is whether, according to Hindu law, Kashibai has by subsequent adultery forfeited her right to the maintenance awarded to her by the decree sought to be executed. She was a concubine of Davlatrav, who with his sons Bhujangrav and Anna Saheb formed a joint Hindu family up to the time of his death. The Assistant Judge held that "incontinence subsequent to the order awarding the allowance would not cause it to be forfeited." But, in the case of a co-parcener's widow, unchastity subsequent to a decree declaring her right to maintenance has been held to deprive her of such right—*Vishu Shambhog* v. *Manjamma* (2); *Moniram Kolita* v. *Kerry Kolitany* (3). We have, therefore, to see whether the right of a concubine in this respect differs from that of a widow. Mr. Shivram contends that it does. He urges that in the case of a concubine there is no express text rendering her right to maintenance conditional upon her continued chastity, as there is in the case of the widow of a co-parcener. It must be [28] observed, however, that there is no such text providing any maintenance for a concubine specially. There are texts providing generally for "women" of deceased co-parceners (4). It is under those texts that the widows of such co-parceners are held entitled to be maintained by the survivors (5); and they lay down the condition of continued chastity. Whether those text-writers really intended to include in the expression "women" concubines or "kept women" it is now unnecessary to speculate. It suffices for us that commentators and judicial authorities have distinctly declared that they are so included. But if they are so included, the restriction of continued chastity imposed by the texts must equally apply to them, as otherwise they would be in a more

(1) 4 B. H.C.R.A. C. J. 15. (2) 9 B. 108. (3) 7 I. A. 115.

(4) Texts of Katyayana and Narada cited in Vyav. May., Ch. IV, Sec. VIII, placita 5, 6 and 7, and in Mit. Ch. II, Sec. 1, placita 7, 27 and 28.

(5) 2 Macnaghten 112, 113; 1 Str. 171; 2 Str. 293, 295, 297; West & Buhler, H. L., 244.

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advantageous position than the widows. The wives and widows of disqualified co-parceners are entitled to maintenance, but only on condition of their continuing chaste (1). Hence, in the absence of any authority to that effect, we are not prepared to hold that a concubine of a deceased co-parcener is entitled to be maintained by the survivors, whether she continues chaste or not.

The position of a deceased co-parcener's permanent concubine in his family is in some respects analogous, though necessarily inferior, to that of his widow not inheriting. They are both dependent members of the family, and, as such, entitled to maintenance, as above stated (2). During the co-parcener's life-time, if not even after his death, his concubine is by the Hindu criminal law regarded as his wife, for it ordains punishment as for adultery for any sexual intercourse with her by another as if she were his wife (3), and the ceremonial law also regards her in that light, for it [29] declares the same length of impurity for her when he dies as for the death of a real husband (4).

These considerations certainly lend some support to the view the commentators have taken that the term "women" in the texts above referred to does include concubines. When competent public opinion, as reflected in the writings of the commentators, allots to the concubine a position similar to that of a wife, and when it assigns to her maintenance as to a wife, it is only fair to the family, bound to provide for her, and whose reputation is necessarily affected by the conduct of every member of it, that her right to such maintenance should be subject to the same restriction as the right of the wife. And, accordingly, we find it declared by the Shastri, in a case so far back as 1847, that the mother of an illegitimate son, *if well behaved*, is entitled to maintenance (5). It would be strange, however, if this condition of good behaviour attached to a concubine only when she had children.

For these reasons, we must hold that continued continence is a condition precedent to a deceased co-parcener's concubine claiming maintenance. It was urged by the appellant that Kashibai had, since the decree in her favour, left the family house and was living as a prostitute. This allegation was not inquired into by the lower Court under the erroneous view it took of the law on the subject. We must, therefore, reverse its decision, and remand the case for decision on the merits. Parties to be at liberty to give additional evidence on the above point. The costs of this appeal to abide the result.

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(1) 1 Str. 175, 2 Coleb. 3 Dig., 438.

(2) 1 Str. 171, 174, 1 Norton, 48, 51.

(3) Vyav. May., Ch. XIX, pl. 11, Yajn. Vyav. 290, translated in Mandlik's H.L., p. 242; Vijnaneshvara's comments on that text, Manu, Ch. VIII, 363; comments of Kulluka and Raghavananda on the text (Mandlik's ed.) untranslated. They say the punishment is ordained "on the ground of (her) being another's wife" (dara); and Viramitrodaya (Cal. ed.) 509, 510, untranslated, "on the ground of her being equal to another's wife."

(4) Nirnaya Sindhu Ashauch, 11

(5) 1 West & Bühler, 582.