*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Pirthee Singh* v. *Ranee Raj Kower, from the High Court of Judicature, North-Western Provinces, Allahabad; delivered 28th March* 1873.

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Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THIS was a suit brought by Ranee Raj Kower against Rajah Pirthee Singh to recover arrears of maintenance, and also to have a decree for future maintenance. Rajah Pirthee Singh was the adopted son of Rajah Petumber Singh, and the Plaintiff was the fourth or youngest of four widows left by the late Rajah. The subordinate Judge gave a decree in favour of the Plaintiff, which was appealed to the High Court, who supported that decision and increased the amount of maintenance awarded by it. From that decision there is an Appeal to Her Majesty in Council which we now have to consider.

The defence set up by the adopted son was that the Plaintiff had been provided with maintenance so long as she lived with the family of her deceased husband, but that she had quitted his house for improper purposes. He says "The Defendant provided the Plaintiff with "maintenance so long as she remained in Ava" (that was the family house), "according to the "family custom. In 1861 the Plaintiff, disre-"garding her husband's honour, left for Kotah "with Bhola Nath, contrary to the terms of the "will and the family custom, and became an "abandoned character. This being so she has "lost her right. Even after this the Defendant,

" to avoid scandal and to oblige her, and relying " on her promise that she would no more let " Bhola Nath have any access to her, allowed " her lodgings at Durriyapoor, and regularly " took care of her maintenance. The Plaintiff's " claim for maintenance prior to the institution " of the suit is therefore illegal, and her claim " for interest is also illegal, the payment of " which was never stipulated. The Plaintiff has " nevertheless not parted with Bhola Nath, *i.e.*, " she has continued to act and behave contrary " to her promise, disregarding the honour and " custom of the family, and has not left off her " former bad habits. She has, therefore, no right " under the Hindoo law to have a maintenance " fixed for her for the future." Now, that defence on the part of the Defendant has not been proved, and has been very properly given up. The Plaintiff alleged that some dispute arose between her and the elder widow with regard to her jewels which she did not make out; and she has not made out any cause for leaving the residence of her late husband any more than the Defendant has made out his defence. The question, therefore, comes to this: whether a Hindoo widow loses her right to maintenance by reason of her leaving her husband's house, provided she does not leave for the purposes of unchastity or for any other improper purpose.

Several cases have been cited upon this point, and it will be as well to refer in the first instance to a case which was decided by the Privy Council, as that is one of the highest authority. That was a suit by Cossinauth Bysack and another *v.* Hurroosoondry Dossee and another which was tried in the Supreme Court in Calcutta, in which the Chief Justice, Sir Edward Hyde East, gave judgment. The question was put to the pundits, whether a widow was deprived of her property upon the ground of her having left her deceased husband's residence. Sir Edward Hyde East says: " Upon " the last ground of error the pundits have uni-

" formly answered that the widow was not " bound to live with her husband's relatives. " The eighth question put by the Court to their " pundits was: If a widow from a just cause " cease to reside in the family of her husband, " does she thereby forfeit her right of succession " to her deceased husband's estate? *A.* If a " widow for any other cause but for unchaste " purposes cease to reside in her husband's " family, and take up her abode in the family " of her parents, her right would not be for- " feited." He certainly goes on to say here there was a good cause at the time, namely, the extreme youth of the wife, and no pretence was made of the prohibited cause. It was alleged that, having left the residence of her deceased husband, and having refused to reside with the family, she did not forfeit the property which she had taken. That case was appealed to Her Majesty in Council, and was decided on the 24th June 1826. The opinion of the Judicial Committee was delivered by Lord Gifford. He says: " With respect to the last supposed ground " of error in this decree which was assigned by " the Appellants, namely, that it was not ordered " by either of the decrees that Hurroosoondry " Dossee should reside with or under the care, " protection, and guardianship of the Appellants, " who, as the surviving brothers of Bissonauth " Bysack, were alone entitled to have the care, " protection, and guardianship of his widow, the " pundits appeared to be unanimous in the " opinion that a Hindoo widow is not bound to " live with her husband's relatives." That is the principle laid down. Then says his Lordship: " I will read the eighth answer to the " eighth question put, which will explain " what the Hindoo law is upon the subject, " and in that it appears the other pundits " who were called in agreed, or at least they " expressed no objection to the opinion pro- " nounced." The question put is this: 'If a

" ' widow from a just cause ceases to reside in " ' the family of her husband, does she thereby " ' forfeit her right of succession to her deceased " ' husband's estate?' The answer is, 'If a " ' widow from any other than unchaste " ' purposes ceases to reside in her husband's " ' family, and takes up her abode in the family " ' of her parents, her rights would not be for- " ' feited.' " Then his Lordship goes on to say: " Now, it was not pretended in the case that " she had removed from the protection of her " husband's family for unchaste purposes. She " was only of the age of 14 years at the death of " her husband. His brothers were young men, " and she thought it more prudent and decorous " to retire from their protection, and live with " her mother and her family after the husband's " death. Therefore it appears quite clear from " the answers given by the pundits that she did " not forfeit the right of succession to her hus- " band's estate on account of removing from the " brothers of her late husband; that they had " no right to insist upon her not withdrawing " from them in order to put herself under the " protection of her mother, and therefore there " appears to be no foundation to that extent for " the Appeal." The reasons given, that she was only of the age of 14 years at the death of her husband and that his brothers were young men, do not appear to be the reasons upon which that decision was founded. It was merely pointed out, as their Lordships understand the judgment, for the purpose of showing that the widow was not removing from her husband's house for unchaste or improper purposes.

It, therefore, appears that a Hindoo widow is not bound to reside with the relatives of her husband; that the relatives of her husband have no right to compel her to live with them; and that she does not forfeit her right to property or maintenance merely on account of her going and residing with her family or leaving her husband's residence from any other cause than unchaste or improper purposes.

That decision is quite in accordance with the vyavastha which are quoted by Shamachurn Sircar in his book called Vyavastha Darpana. At page 370 Vyavastha, Nos. 199 and 200 are thus stated: "Should a woman without un-" chaste purposes quit the family house, and live " with her parents or other relations, she is " still entitled to maintenance. The widow, " however, is not entitled to maintenance by " residing elsewhere without a just cause, if she " was directed by her husband to be maintained " in the family house." The husband in this case left a will, but he did not impose any condition upon either of his widows to reside in his family house after his death. He wrote a letter to the collector, in which he stated that he did not wish that his widows should have the management of his property, and put the property into the hands of a mooktear, because, he said, it was of importance to maintain the reputation of his family. But it is no more than any other Hindoo gentleman would desire, that after his death his property should not be jeopardized, that the reputation of his widows should be maintained, and that they should not destroy the reputation of his family by destroying the reputation of themselves.

It has been held that the Hindoo law does not require a Hindoo widow, for the purpose of maintaining her reputation, necessarily to live with her husband's relatives. She does not injure her reputation by living with her own mother or her own father. It is laid down as a rule of law that she is not bound to live with her husband's relatives. The decision of the Privy Council was quite in accordance with those texts of the Hindoo law referred to by Shamachurn Sircar.

In the case of Shiba-sundari Dasi the widow of Golack-chander, cited in Boboo Shamachurn Sircar's book at page 381 in which Sir Lawrence Peel delivered a Judgment. It appeared that

Shiba-sundari Dasi widow of one Golack-chander who died during his father Ram-mohan's life-time, voluntarily left the family house, (voluntarily, that is to say, without any cause except her own will and desire,) and sued the Defendants who were the surviving sons and representatives of the other sons of Ram-mohan for separate maintenance, a verbal reference had been made to three respectable Hindoos. Kashi-nath Mallik, Gobinda-chander Banarjea, and Ram-mohan Neoghi who awarded Rs. 12 per month as a sufficient allowance to her, she being allowed apartments in the family house and food. Sir Lawrence Peel said, "We "think she is entitled to a separate maintenance. "The words food and raiment being too vague "and ambiguous an expression, we must refer "it to the master to inquire and report whether "the amount offered was just and proper with "reference to her situation in life." Then in another case, "Srimati Mando dari Debi the "eldest of the two widows of Tilak-ram Pakrasi, "a Hindu native of Bengal, filed a bill againt "his son praying that Defendant may set forth "a full, true, and perfect account of the property, "and may be compelled by a decree to pay her "the same." I believe it was not made a question about her having left the father's house, but in that case arrears of maintenance were awarded to her and future maintenance secured.

There was also the case of *Jadu-manir Dasi v. Khegtra-mohan Shil*, reported at page 384 of the same book, in which Sir Lawrence Peel, having considered the whole question, laid down the law in a clear and explicit manner. Every one who is acquainted with Sir Lawrence Peel must have the highest respect for his opinion upon all questions of this kind. He delivered the judgment of the Court. He said "The question is "whether a Hindoo childless widow, who, some "time after the death of her husband, uncompelled by cruelty or ill usage, left the house of "the family of her deceased husband, to dwell

" at first in the house of her own father, and " subsequently with her aunt, living with her " own relations, the residence being in all res- " pects a proper one and her conduct unim- " peached, forfeits her right of maintenance out " of the property which was that of her deceased " husband in his lifetime and which had devolved " on his heirs." There the question was whether the principle which had been laid down in the case cited from the Privy Council, which was applicable to property inherited by a widow from her deceased husband, was applicable to a case of maintenance. Sir Lawrence Peel, after referring to some conflicting authorities, said, " This state " of the authorities has induced us to examine " closely into the law on the subject. We " should not hesitate to follow the decisions " of the Suddur in preference to those of " our own Court, if they appeared to us to " be at once more just and more conformable " to the Hindoo law. We have intended to " follow the Privy Council. The Privy Council " has, on the subject of the right of the Hindoo " widow to return to the home of her parents, " laid down a broad rule, upon which it is not " desirable to infringe. That Court says, ' it was " ' not pretended that she had withdrawn her- " ' self for unchaste purposes. She was only " ' fourteen at the death of her husband, his " ' brothers were young men ; and she thought " ' it more prudent and decorous to retire from " ' their protection and live with her mother and " ' her family after the husband's death, there- " ' fore it appears quite clear from the answers " ' given by the pundits that she did not forfeit " ' the right of succession to the husband's estate " ' on account of removing from the brothers of " ' her late husband; that they had no right to " ' insist on her not withdrawing herself from " ' them, in order to put herself under her " ' mother's protection.' The decisions of that " Court must of course give the law to all " Courts here. The answer of the pundits which

the Privy Council adopts is, " that if a widow, " from any other cause than unchaste purposes, " ceased to reside in her husband's family and " takes up her abode in her parents' family, her " rights are not forfeited." Then he says, " In the " Privy Council the question was whether the " Hindu heiress forfeited her estate, by selecting " without impropriety her father's roof for her " residence. But it is to be observed that the " opinion of the pundits was generally expressed " as to forfeiture of rights, and the Court expressed " in general terms that the widow had a right " under the circumstances to select that resi- " dence, and could not be compelled to reside " under the roof of her husband's family. This " freedom of choice had respect to causes as appli- " cable to a widow, not to an heiress as to one who " inherited," meaning to say, that the rule which had been laid down was equally applicable to a case of maintenance as it was to the case of property which the widow had inherited; that is to say, that she was entitled to a freedom of choice, and that unless she left the residence of her deceased husband for unchaste purposes she could not be deprived either of the property which she had inherited from him, or be deprived of maintenance which the Hindoo law requires the heirs of her husband to provide for her.

We are therefore not now deciding the question for the first time. We are not now for the first time laying down a rule upon this subject. In the case of *Shurno Moyce Dassee v. Gopal Lall Doss* reported in the first volume of Marshall's decisions in the High Court, page 497, the widow sued for maintenance, and it was held that she was entitled to that maintenance notwithstanding she had left the residence of her deceased husband. The Court said, " In this case a widow " sues for maintenance. The Defendant who is " her stepson objects that she resides in the " house of her father, and alleges that she is " therefore not entitled to maintenance. The " widow alleges that she left the family home

" because she was tortured or rendered uncom-
" fortable, but did not prove that allegation.
" We find, however, that it is laid down in the
" Vyavastha Darpana of Shamachura Sircar the
" learned interpreter of the late Supreme Court,
" vol. 1, page 319, section 160, that 'should a
" 'woman without unchaste purposes quit the
" 'family house and live with her parents or own
" 'relations, yet still she is entitled to mainte-
" 'nance,' and in section 161 'The widow, however,
" 'is not entitled to maintenance by residing else-
" 'where without a cause if she was directed by
" 'her husband to be maintained in the family
" 'home.' We think therefore that the widow
" is entitled to retain the decree for maintenance
" which she has obtained, and dismiss the
" appeal."

In this case their Lordships are of opinion that there was no direction by the husband's will which rendered it necessary for the widow to reside in her husband's house. The case of a widow is very different from the case of a wife. A wife of course cannot leave her husband's house when she chooses, and require him to provide maintenance for her elsewhere; but the case of a widow is different. All that is required of her is that she is not to leave her husband's house for improper or unchaste purposes, and she is entitled to retain her maintenance unless she is guilty of unchastity or other disreputable practices after she leaves that residence.

The case was tried by a subordinate judge, in this instance, who was a Hindoo, and, therefore must be acquainted with the habits, usages, and religion of Hindoos; and he thought that the widow having left the husband's house, was still entitled to her maintenance, and he awarded her the sum of 150 rupees a month, with a sum of money calculated at that rate for the years during which she had not been allowed maintenance. The case was appealed to the High Court, and that Court thought that, having regard to the amount of the husband's property

the widow was entitled to a larger sum; and they awarded her maintenance at the rate of 200 rupees a month. Their Lordships do not think it necessary to disturb that decision. The amount of maintenance it is stated in the Vyavastha 197 in Shamachurn Sircar's book should be fixed with reference to the proprietor's estate. Now in this case the deceased husband left property to the extent of two lacs or 20,000*l.* a year. It does not appear to their Lordships to be excessive, even though he left four widows, that each of those widows should have at the rate of 200 rupees a month equal to 240*l.* a year. Looking to the state in which a widow is bound to live and the religious duties which she is called upon to perform, it does not appear to their Lordships, having reference to the property of the deceased husband, that this widow ought to receive a less sum than that which has been awarded to her by the High Court, namely Rs. 200 a month.

Some question was made as to the right of the widow to recover past arrears. A case was cited from the Madras High Court in which arrears were awarded; in the case also in which Sir Lawrence Peel gave that elaborate judgment to which I have referred, arrears of maintenance were awarded to the widow as well as a decree in her favour with regard to future payments.

Under these circumstances their Lordships are of opinion that the decision of the High Court is correct, and they will therefore humbly recommend Her Majesty that that decree be affirmed, with the costs of this appeal.