*Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Srimati Hemangini Dasi* v. *Kedar Nath Kundu Chowdhry, from the High Court of Judicature at Fort William, in Bengal; delivered 3rd April* 1889.

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Present:

LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The Appellant is the widow of Tara Churn Kundu, who died on the 19th of April 1865. He left one son, Hurrish Chunder, by the Appellant, and two sons, Kedar Nath (the Respondent) and Annoda Pershad, by another wife, who died before him. Annoda Pershad died in June 1882, leaving a will by which Kedar Nath was appointed executor of his estate. The suit was brought on the 13th September 1884, by the Appellant, against Kedar Nath in his own right and as executor to the estate of Annoda Pershad, and against Hurrish Chunder, and the plaint prayed to have it held that the Plaintiff was entitled to get Rs. 500 a month from the properties left by her husband, for the expenses of her religious acts and her maintenance, and that the Rs. 500 a month might be declared to be a charge upon the whole of his estate. It also prayed for a decree for Rs. 3,016. 9. 3. 1. 1 kraut, on account of maintenance for the past

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six months and one day. After the institution of the suit, and before the filing, on the 6th December 1884, of a written statement by Kedar Nath, Hurrish Chunder, who attained his majority on the 3rd November 1882, instituted two suits against Kedar Nath and others, members of another branch of the family who were co-sharers with Tara Churn in different properties, for a partition of the joint family property. This was stated in the written statement of Kedar Nath, and it was pleaded that if the Plaintiff was entitled to any maintenance her claim to it would lie against her son, to be paid out of his share of the joint property which would be allotted to him after partition. On the 20th February 1886 decrees for partition were made in those suits. The judgement of the High Court on appeal from the Subordinate Judge was given on the 29th July 1886, and they held, contrary to the decision of the Subordinate Judge, that subsequently to the decree for partition the Plaintiff was entitled to maintenance only against the share allotted to her son; and as to the claim for past maintenance, which was for the period since the family had separated in food and worship, she having been maintained in the family of her son could not claim maintenance from her stepsons or their shares, though her son might possibly claim contribution. Accordingly they dismissed the suit as against Kedar Nath.

The decision as to the arrears has not been questioned before their Lordships, and they entertain no doubt that the High Court was right in taking into consideration the decree for partition. The main question is one upon which there is no distinct text in the Hindu law books. So long as the estate left by Tara Churn remained joint and undivided the Plaintiff was no doubt entitled to claim her maintenance out of the

whole estate. Does that right continue to exist after partition, or is there substituted for it a right to maintenance out of her son's share? According to the Daya Bhaga, ch. 3, sect. 1, vs. 12, 13, where there are many sons of one man by different mothers, but equal in number and alike by class, partition may be made by the allotment of shares to the mothers, and while the mother lives the sons have not power to make a partition among themselves without her consent. In this case the mother seems to take on behalf of her sons. It would seem to follow that, after such a partition, a mother's right to maintenance would be out of the share she took, and not out of shares taken by the other mothers.

When the Hindu law provides that a share shall be allotted to a woman on a partition, she takes it in lieu of or by way of provision for the maintenance for which the partitioned estate is already bound, and thus it is material to see in what way she takes a share. According to Jímútaváhana it is a settled rule that a widow shall receive from sons who were born of her an equal share with them, and she cannot receive a share from the children of another wife; therefore she can only receive her share from her own sons. Col. Dig. Book 5, ch. 2, v. 89; 3 ed., vol. 2, p. 255. In Sir F. Macnaghten's Considerations on Hindu Law, p. 62, a case in the Supreme Court of Sree Mootee Jeeomony Dossee *v.* Atmaram Ghose is reported, which was a suit for partition, where a man died leaving two widows and three sons by one, and one son, Atmaram, by Luchapriah the other; and it is said that it was understood and admitted that Luchapriah was not entitled to any separate property upon a partition made between her only son and his three half brothers, and that she was to look to him for her maintenance.

The Subordinate Judge, in his judgement, said the question who was to give the maintenance never properly arose in that suit in the absence of Luchapriah, and if any such question was then decided it was an *obiter dictum.* The question did arise between Atmaram and his half brothers, and if the contention of the present Appellant that the maintenance is a charge upon the estate and to be taken into account in making the partition is right, the Court should have provided for it. The case appears to be a direct authority upon the question in this appeal. Then there is a case reported at p. 75 where a man had three sons by his first wife, two by his second, and two by his third, and all survived him. In a suit for partition it was declared, in accordance with the authority in Col. Dig, before noticed, that the first wife was entitled to one fourth of the three seven parts of her sons, and the second wife to one third of the two seven parts of her sons. Nothing is said as to the third wife, one of whose sons had died, and she was his heir.

The argument addressed to their Lordships for the Appellant was that the maintenance is a charge on the estate, and like debts must be provided for previous to partition. But the analogy is not complete. The right of a widow to maintenance is founded on relationship, and differs from debts. On the death of the husband his heirs take the whole estate, and if a mother on a partition among her sons takes a share, it is taken in lieu of maintenance. Where there are several groups of sons, the maintenance of their mothers must, so long as the estate remains joint, be a charge upon the whole estate; but when a partition is made, the law appears to be that their maintenance is distributed according to relationship, the sons of

each mother being bound to maintain her. The stepsons are not under the same obligation.

Their Lordships will therefore humbly advise Her Majesty to affirm the judgement of the High Court, and dismiss the appeal. The Appellant will pay the costs of it.