1876. July 18.

REG. v. ARUNA'CHELLAM.

and has led them to believe their acts innocent. The case, therefore, only calls for a nominal sentence."

The prisoners appealed to the High Court on the ground that the conviction was contrary to law.

The appeal came on for hearing on the 18th of July 1876, when Mr. *Tarrant* appeared for the prisoners and contended that the conviction was wrong, as a disposal tantamount to a transfer of possession or control over the minor's person should be shown in order to constitute an offence under Section 272.

The High Court affirmed the convictions.

APPELLATE CIVIL.

Before Mr. Justice Innes and Mr. Justice Kindersley.

NELLAIKUMARU CHETTI (PLAINTIFF), SPECIAL APPELLANT, *v.* MARAKATHAMMAL (DEFENDANT), SPECIAL RESPONDENT. (1).

1876. September 22.

Widow—Grant of money in lieu of maintenance—Right of disposal.

Where a sum of money was given to a widow, without restriction, in lieu of maintenance, by her deceased husband's family. *Held* that it became absolutely hers, and that she could dispose by will of landed property acquired by means of it.

PLAINTIFF, as the undivided nephew of one Subramanian Chetti (deceased), sued to recover certain landed property acquired by Muttachi, widow of the said Subramanian, and which at the death of the said Muttachi had been taken possession of by her niece, the defendant, under a will alleged to have been executed by Muttachi. It was admitted on both sides that Muttachi was given a sum of money in quit of her maintenance on the death of her husband, that the donor was plaintiff's father, the undivided brother of Subramanian, and that the property in question had been purchased by Muttachi with the money so given her.

The Subordinate Court held in Regular Appeal, in reversal of the original decree, that the money having been given without restriction to the widow for her maintenance, it should be classed as stridhanam, and that being so, property acquired by means of it became absolutely that of the widow, and could be disposed of by her by will.

(1) Special Appeal No. 604 of 1876 against the decree of A. Annusámi, Subordinate Judge of Tinnevelly, dated 26th February 1876, reversing the decree of Mahalingier, District Munsif of Ambasumudram, dated 31st July 1875.

1876. September 22.

NELLAIKUMARU CHETTI v. MARAKATHAMMAL.

Plaintiff appealed on the grounds

1. That money given to a widow for maintenance is not stridhanam.
2. That even if the law were not so, the widow had no power to dispose by will of the lands so acquired.

Ráma Ráo for appellant.—Testamentary disposition has only been allowed in case of a Hindu widow dying possessed of property when she is divided. Only her stridhanam can be willed by a married woman. This does not come under the head of stridhanam, as not having been given her as a pure gift of love.

[INNES, J.—Where property is given absolutely, as this appears to have been, the widow can dispose of it.]

The case of *Mussumat Doorga Koonwar* v. *Mussumat Tejoo Koonwar* (2), quoted by the Sub-Judge, is really no authority for the doctrine laid down in that case that the property there was stridhanam. Manu (Chapter IX, 194, 195) gives a definition of stridhanam and Chapter 2, Mitákshara, s. 11.

[KINDERSLEY, J.—We are inclined to think it does not very much matter whether it was stridhanam or not. Here, as she was acquitted of giving any account to the family of this property, we must infer that she was entitled to the absolute disposal of it.]

I submit only for her lifetime, as it was not stridhanam. *Rája Chandranath Roy* v. *Ramjai Mazumdar* (3). There the Privy Council held that, if the mother had not disposed of the property, then unquestionably the son would have taken it.

[INNES, J.—Still it was admitted in that case that she could dispose of the property during her lifetime, so that it all comes back to that at last.]

INNES, J.—The case quoted, *Rája Chandranath Roy* v. *Ramjai Mazumdar* (3), shows that property given to a widow in lieu of maintenance is property which may be disposed of *inter vivos*. Then the rule comes in that property which can be disposed of by a person in his lifetime can be disposed of by will. I think the judgment of the Lower Appellate Court should be affirmed.

KINDERSLEY, J.—Under old Hindu Law property in the possession of a woman must either be stridhanam or family property. But this is property acquired by a widow under a

(2) 5 Suth. W. R. C. R. 53.
(3) 6 Ben. L. R. 303.

1876. September 22.

NELLAIKUMARU CHETTI v. MARAKATHAMMAL.

special arrangement by which she was to give an acquittance to the family, and they in return to acquit her of any accountability for it. With that sum of money she could do any thing she liked.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Innes and Mr. Justice Kernan.

CHINNA UMMAYI AND 10 OTHERS (PLAINTIFFS), APPELLANTS, *v.* TEGARAI CHETTI AND 2 OTHERS (DEFENDANTS) RESPONDENTS (1).

1876. August 22. October 16.

Dancing girl—Immoral custom—Public Policy.

In a suit by the dancing girls of a temple claiming to have by custom a veto upon the introduction of any new dancing girls into the service of that temple, and praying for an inquiry as to whether the Dharmakarta of the temple was a fit and proper person to hold that office. *Held*, dismissing the appeal, that, assuming that plaintiffs established that, by the custom of the pagoda, they had the rights they claimed, and that the custom, in some respects, fulfilled the requisites of a valid custom the Court could not shut its eyes to the fact that by making the declaration prayed for it would be recognizing an immoral custom, viz., for an association of women to enjoy a monopoly of the gains of prostitution, a right which no Court could countenance.

THE facts in this case were as follows :—

In the temple of Mallikeswarasvámi, two dancing girls were dedicated by the Dharmakarta to the services of the temple, without the consent of the existing body of dancing girls, and the present suit was instituted against the Dharmakarta and these two Déva Dásis asking for the following relief, viz., that the Court should ascertain and declare the rights of the Déva Dásis of the pagoda in regard

(1) to the dedication of Déva Dásis ;

(2) to the Dharmakarta's power to fine and suspend them ;

and that the Court should also ascertain and declare the rights of plaintiffs, the existing Déva Dásis, as to the exclusion of all other Déva Dásis, save those who are related to, or adopted by, some one of the Déva Dásis for the time being, or those who being approved by all are elected and proposed to the Dharmakarta for dedication.

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(1) Appeal No. 9 of 1876 against the decree of Mr. Justice Holloway, dated 25th of April 1876.