

QUEEN-
EMPERESS
*
YOHAN.

The *Acting Government Pleader and Public Prosecutor* (*Subramanya Ayyar*) for the Crown.

Mr. *Mitchell* for the accused.

JUDGMENT.—We cannot agree with the view taken by the Sessions Judge. The preamble and sections 4, 5 and 63 of the present Act XV of 1872 are almost identical with the preamble and sections 4, 5 and 56 of Act V of 1865.

Section 68, as amended by section 6, Act II of 1891, makes punishable the solemnization of a marriage between persons of whom one is a Christian, unless the person solemnizing such marriage has been authorized for that purpose under section 5. It is conceded that the third accused was not authorized under section 5, and hence the case is exactly similar to that in Proceedings of the Madras High Court dated 21st March 1871(1) and the accused are, *primâ facie*, liable to punishment.

We are told that this application has been made by Government merely to obtain an authoritative declaration of the law and a re-trial is not pressed for, having regard to the length of time which has elapsed.

We, therefore, do not think it necessary to pass any further order.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Shephard.*

NAGAMMA (PLAINTIF), APPELLANT,

v.

VIRABHADRA (DEFENDANT), RESPONDENT.*

Hindu law—Maintenance—Forfeiture of widow's right to maintenance by reason of unchastity.

The unchastity of a widow deprives her wholly of her right to maintenance, and the fact that there has been an agreement as to maintenance makes no difference. *Valu v. Ganga*(2) and *Vishnu Shambhog v. Manjamma*(3) followed.

SECOND APPEAL against the decree of P. Subbayar, Subordinate Judge of South Canara, in appeal suit No. 246 of 1892, reversing

(1) 6 M.H.C.R., App. 20.

(2) I.L.R., 7 Bom., 84.

* Second Appeal No. 634 of 1893.

(3) I.L.R., 9 Bom., 108.

the decree of I. P. Fernandez, District Munsif of Kundapur, in original suit No. 108 of 1891.

NAGAMMA
2.
VIRABHADRA.

Plaintiff in this case, the widow of defendant's deceased son, Subraya Hebbara, sued for recovery of Rs. 20-2-6, being the value of rice and money with interest, due for her maintenance from October 1890 to April 1891 under a deed of agreement executed by the defendant on 6th March 1887.

The defendant admitted the agreement, but averred that the plaintiff had been living in adultery for a year and a half, that she had been degraded from caste for her pregnancy, and that thereby she forfeited her right to maintenance.

The plaintiff in her statement in answer to defendant's statement admitted having been put out of caste in consequence of pregnancy, but denied having lived in adultery, her pregnancy being the result of a forcible connection, and contended that the agreement was not invalidated by such pregnancy.

The Subordinate Judge reversed the decree of the District Munsif in favour of the plaintiff, who preferred this appeal.

Pattabhirama Ayyar for appellant.

Ramachandra Rau Sahib for respondent.

JUDGMENT.—We must follow the decision in *Valu v. Ganga*(1) and *Vishnu Shambhog v. Manjamma*(2), and hold that unchastity of a widow deprives her wholly of her right to maintenance. No text has been cited in favour of the theory that a bare maintenance can be allowed. The fact that there has been an agreement in our opinion makes no difference. It merely fixes the amount and the security. We must dismiss the appeal with costs.

(1) I.L.R., 7 Bom., 84.

(2) I.L.R., 9 Bom., 108.