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absolute. At the time this application was made arrears of alimony *pendente lite* were due to the wife. The Court (STRAIGHT, J.) refused to make such decree absolute until such arrears were paid.

IN a suit under Act IV. of 1869, instituted in the High Court by one Charles James De Bretton, for the dissolution of his marriage with his wife, Florence Emma De Bretton, on the ground of her adultery, Straight, J., before whom the suit was tried, made an order on the petitioner for payment to the respondent of Rs. 70 per mensem by way of alimony pending the suit. On the 17th June, 1881, the Court gave the petitioner a decree *nisi* for dissolution of marriage. On the 9th February, 1882, an application was made on behalf of the petitioner to have such decree made absolute. The respondent was called on to show cause why this application should not be granted.

Mr. *Spankie*, for the respondent, contended that the decree *nisi* should not be made absolute until the arrears of alimony due by the petitioner to the respondent were paid. The petitioner, in omitting to pay the alimony in accordance with the order of the Court, is in contempt. *Latham v. Latham* (1) is in point.

Mr. *Howard*, for the petitioner.

STRAIGHT, J.—Upon hearing Mr. *Spankie* for the respondent and Mr. *Howard* for the petitioner, I decline to make the decree *nisi* granted by me in this case on the 17th June, 1881, absolute for the dissolution of the marriage of the parties, until such time as the sum of Rs. 295, balance of alimony due to the respondent down to the 1st February, 1882, under the order of the Court, has been paid.

FULL BENCH.

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Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, and Mr. Justice Tyrrell.

SHAM LAL (DEFENDANT) v. BANNA (PLAINTIFF).*

Hindu Law—Hindu widow—Maintenance—Charge on her husband's estate—Bond fide purchaser for value without notice.

The maintenance of a Hindu widow is not, until it is fixed and charged on her deceased husband's estate by a decree or by agreement, a charge on such estate

*Second Appeal, No 501 of 1880, from a decree of Maulvi Zain-ul-abidin, Subordinate Judge of Shahjahanpur, dated the 29th April, 1880, reversing a decree of Maulvi Amirullah, Munsif of Shahjahanpur, dated the 5th February, 1880.

(1) 30 L. J., P. and M. 163.

which can be enforced against a *bond fide* purchaser of such estate for value without notice. When the maintenance of a Hindu widow has been expressly charged on her husband's estate, a portion of such estate will be liable to such charge in the hands of a purchaser, even if it be shown that the heirs to such estate have retained enough of it to meet such charge; but such estate will not be liable if its transfer has taken place to satisfy a claim for which it is liable under Hindu Law and which under that law takes precedence of a claim of maintenance.

THE following question arising in this appeal was referred to the Full Bench by Stuart, C.J., and Straight J., the Divisional Bench before which the appeal came for hearing:—

“Is the maintenance of a Hindu widow such a charge upon joint ancestral immoveable property as to be enforceable, wholly or proportionately, against the entirety or any part of such joint ancestral property, which has passed into the hands of a *bond fide* purchaser for value, at public or private sale, without notice of such maintenance.”

Munshi *Hanuman Prasad* and Mir *Zakur Husain*, for the appellant.

Mr. *Siraj-ud-din* and Pandit *Ajudhia Nath*, for the respondent.

The following judgment was delivered by the Full Bench (STUART, C. J., STRAIGHT, J., OLDFIELD, J., and TYRRELL, J.):—

OLDFIELD, J.—We have very fully and carefully considered all the authorities and arguments laid before us at the hearing of this reference, but in framing our answer and having regard to clearness and brevity we have not thought it necessary to incumber our reply by referring to the various cases quoted *seriatim* and at length.

The question of the right to maintenance of a Hindu widow was discussed by the Full Bench of this Court in the cases of *Ganga Bai v. Sita Ram* (1) and *Lalti Kuar v. Ganga Bishan* (2), and so far determined that it was held that there is a legal obligation on the part of those who succeed by inheritance to the joint ancestral property to maintain the widow of the deceased co-parceners, an obligation which could be enforced against those who had succeeded to the estate, and which did not rest on the mere ground of relationship to the widow's husband. Those decisions however

(1) I. L. R. 1 All. 170. (2) N.-W. P. H. C. Rep., 1875, p. 263.

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went no further and did not touch the question raised by this reference, whether maintenance is a charge on the property which will attach to it in the hands of a *bonâ fide* purchaser for value without notice.

The Hindu Law is extremely obscure on the nature of the widow's right to maintenance. But little is to be found in the *Mitakshara* beyond the passages which treat in general terms of the duty of supporting dependent relatives, and the right to maintenance of persons who are excluded from inheritance, who together with their wives are entitled to be supported by reason of such exclusion.

The *Smriti Chandrika* and *Viramitrodaya* are somewhat more explicit. They declare the widow's right to be supported by those heirs who succeed to the estate, whose duty in that respect is declared dependent on their taking the property, and the latter recognizes the widow's right to insist on provision being made for her support by allotting her a share of the estate (*Smriti Chandrika*, ch. IX, s. ii., v. 14 ; ch. XI, s. i., v. 34 ; *Viramitrodaya*, ch. III, pt. i., s. 13).

These and similar texts have reference only to the widow's right as against the heir who succeeds to the joint family estate by inheritance, and they do not seem to be intended to limit the full right of ownership in the land of the heir so as to give a real right of property in it to the widow, prior to allotment to her of a share. Indeed, too much stress should not be put on any of the texts which speak of the wife's ownership in her husband's property (*Viramitrodaya*, ch. III, pt. i., s. 13). The author of *Viramitrodaya* does not apparently consider there is any real ownership on her part; he says: "Her right is only fictional but not a real one: the wife's right to the husband's property, which to all appearance seems to be the same (as the husband's right) like a mixture of milk and water, is suitable to the performance of acts which are to be jointly performed, but is not mutual like that of the brothers; hence it is that there may be separation of brothers, but not of the husband and wife; on this reason is founded the text, namely,—'Partition cannot take place between the husband and wife; therefore it cannot but be admitted that on the extinc-

tion of the husband's right the extinction of the wife's right is necessary.' "

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Strange has treated of maintenance as one of the charges on inheritance, but scarcely in the sense of a charge attaching to the land into whosoever hands it passes, since he places in the same category other claims which admittedly are not charges on the land in that sense.

It has been held that a purchaser of an undivided share of joint family property has a right to have the share partitioned, and takes subject to the right of the widows who at partition can claim a share. This right of some widows to a share on partition is expressly given by law and stands on a different footing, and it would not be safe to infer from this that maintenance generally is of the nature of a charge on the property.

The later decisions of the Court have recognized that, until fixed and charged by decree of Court or contract on particular property, maintenance is not a charge on the estate, to be enforced against a *bonâ fide* purchaser without notice.—*Lakshman Ramchandra v. Sarasvatibai* (1); *Lakshman Ramchandra Joshi v. Satyabhamabai* (2); *Adhiranee Narain Coomary v. Shona Malee Pat Mahadai* (3); *Juggernath Sawunt v. Maharanee Odhiranee Narain Koomaree* (4); *Srimati Bhagabati Dasi v. Kanailal Mitter* (5). And this appears to us to be the correct view of the law. The right to maintenance is of an indefinite character: the heir who succeeds to the estate may be said to take it with a trust for the widow's support, which will give her a right against him to have the allowance ascertained and fixed and made chargeable on particular property, but till this has been done a charge cannot be said to exist in the sense of a title issuing out of the land itself, and binding every person who comes into the estate, and a *bonâ fide* purchaser for value without notice of the claim will therefore be protected.

The principle of protecting a *bonâ fide* purchaser without notice cannot be objected to as being something peculiar to English Law, as it rests on grounds of public convenience which are of univer-

(1) 12 Bom. H. C. Rep., 69. (3) I. L. R., 2 Bom. 494.

(2) I. L. R., 1 Calc., 365. (4) 20 W. R. 126.

(5) 8 B. L. R., 225.

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sal application, and has been recognized by this Court.—See *Heera Lall v. Kousillah* (1) and *Goolabee v. Ramtahal Rai* (2).

It may be added that, when the maintenance has been expressly charged on the purchased property, it will be liable, although it be shown that there is property in the hands of the heirs sufficient to meet the claim, but the property will not be liable if the transfer was made to satisfy a claim for which the ancestral property is liable by Hindu Law, and which under that law takes precedence of that of maintenance.

APPELLATE CIVIL.

Before Mr. Justice Straight and Mr. Justice Tyrrell,

RAHCHANDAR BAHADUR (JUDGMENT-DEBTOR) v. KAMTA PRASAD
(DECREE-HOLDER).*

Execution of decree—Time of sale—Irregularity in proclamation of sale—Act X. of 1877 (Civil Procedure Code), ss. 274, 289, 290, 311.

Held that the fact of a sale of immoveable property in execution of a decree having taken place before thirty days from the proclamation of sale being made on the property had expired was not a material irregularity in the publication of the sale.

Mohunt Megh Lall Pooree v. Shib Pershad Mudi (3) dissented from.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

The *Junior Government Pleader* (Babu Dwarka Nath Banarji), for the appellant.

Munshi *Hanuman Prasad*, for the respondent.

The following judgment was delivered by the Court (STRAIGHT, J. and TYRRELL, J.):

STRAIGHT, J.—This is a first appeal from an order refusing to set aside a sale on the ground of irregularity in its publication. The proclamation was fixed up in the Court-house on the 16th April, 1881, and posted at the spot, where the property was attached, on the 23rd of the same month, the sale being

* First Appeal, No. 133 of 1881, from an order of Pandit Jagat Narain, Subordinate Judge of Cawnpore, dated the 28th July, 1881.

(1) N.-W. P. H. C. Rep., 1867, p. 42. (2) N.-W. P. H. C. Rep., 1869, p. 191.
(3) I. L. R. 7 Calc. 34.

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