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Indian Majority Act could not relinquish her dower. The learned Judges relied upon a passage from Abdur Rahim's Principles of Muhammadan Law (page 241 of the book) that minors cannot perform even benevolent acts to their detriment.

Therefore, in my opinion, the ekrarnama of 1926 is not binding upon the plaintiff and cannot operate either to reduce the amount of the dower or change its character. On this finding it is not necessary to go into the question whether the ekrarnama was obtained under coercion or that the lady was not a willing executant of it.

The appeal succeeds and I would allow it. There will be a decree for dower claimed by the plaintiffs with costs throughout against defendant no. 1 only. The decree of the learned Subordinate Judge in respect of the properties against both the defendants will stand. The costs in respect of them will be paid by the defendants according to the value of the properties as decreed by the lower Court.

COURTNEY TERRELL, C.J.—I agree.

Appeal allowed.

S. A. K.

APPELLATE CIVIL.

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January, 3.

Before Courtney Terrell, C.J. and James, J.

GODFREY

v.

MUSAMMAT PARBATI PALUNI.*

Contract Act, 1872 (Act IX of 1872), section 23—contract to support a woman who had been a mistress, whether is void as being immoral—past service rendered by promisee, even if immoral, whether constitutes good consideration for a contract to compensate.

*Circuit Court, Cuttack. Appeal from Appellate Decree no. 78 of 1934, from a decision of Babu Kshetra Mohan Kumar, Additional Subordinate Judge of Cuttack, dated the 17th April, 1934, confirming a decision of Maulavi Mirza Ahmed Beg, Munsif, 2nd Court, Puri, dated the 10th November, 1933.

An agreement to support a woman who had been a mistress is not void as being immoral or opposed to public policy.

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The consideration in the case of a contract to enter into the relationship of protector and mistress (which is doubtless void as being immoral) should not be confused with the consideration and object in the case of a contract to compensate a woman afterwards for an injury done to her and for the loss which she has sustained owing to an association, be it immoral or otherwise, with the protector; such past consideration under the Indian law is a perfectly good consideration for a contract to compensate.

Dhiraj Kuer v. Bikramajit Singh(1), *Husseinali Casam Mahomad v. Dinbai*(2), *Sabava Yellappa v. Yamanappa Sabu* (judgment of *Barlee, J.*)(3), *Mahtabunnissa v. Rifquatullah*(4) and *Man Kuar v. Jasodha Kuer*(5), followed.

Appeal by the defendant.

The facts of the case material to this report are set out in the judgment of Courtney Terrell, C.J.

B. K. Ray, for the appellant.

Suba Rao and *A. S. Khan*, for the respondent.

COURTNEY TERRELL, C.J.—The appellant Mr. L. E. Godfrey, an Excise Inspector of Sambalpur Sadr, is described by his learned Advocate as “a European gentleman of standing”. He seeks to escape liability from a contract entered into with the respondent in the following circumstances. The respondent and the appellant were originally inhabitants of Bhadrak town and many years ago they came into contact and an attachment sprang up between them and the respondent who is an Indian woman of humble position became the mistress of the

(1) (1881) I. L. R. 3 All. 787.

(2) (1924) A. I. R. (Bom.) 135.

(3) (1933) A. I. R. (Bom.) 209.

(4) (1924) 85 Ind. Cas. 459.

(5) (1877) I. L. R. 1 All. 478.

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appellant. After some years of association he entered into an agreement with the respondent to pay her ten rupees a month for her maintenance so long as she remained outcasted and unmarried. Notwithstanding the humble position in life of the respondent, she had most certainly by association with the appellant sacrificed such amenities as might be hers by association with him. There was nothing in the agreement with reference to future association and the contract was merely in respect of the past association and ten rupees a month was to be paid to the woman so long as she deprived herself of such advantages attaching to membership of her community or so long as she should remain unmarried. It is a fact that for some considerable time after the making of the contract the respondent and the appellant continued to be in association; but the agreement of which I had spoken had no reference to such continued relationship; it had reference merely to past relationship and to the future for the period that she should remain outcasted and remained unmarried. The time came when the appellant wished to marry another woman of his own status in life. He then refused to pay to the respondent the ten rupees a month which he had agreed to pay and discarded her altogether. When sued by her in respect of the arrears of the agreed ten rupees a month maintenance, he set up the defence, surprising as it may seem if we attribute to him the status claimed for him by his learned Advocate, that the agreement to pay compensation was void as being against public policy; and he has attempted to argue, firstly, that there should have been a finding to the effect that the real object of the agreement was to promote the continued relationship with himself and that it was void because it was in effect an agreement for the continuance of their relationship. The fact that their relationship did continue after the agreement has no effect whatever on the validity of the agreement already made. If the law were otherwise, it would be possible for a man who had made an agreement for maintenance

of a past mistress to destroy the effect of that agreement the next day by resuming cohabitation with her for a week; the argument was however not seriously pressed and has no merit whatever.

But it was further argued that an agreement to maintain a mistress after the relationship has passed is an agreement which is void as being of an immoral character. That argument has often been attempted and so far as I can examine the authorities, it has never been successful. The argument is based upon the confusion between an agreement to become a mistress which is doubtless void as being immoral and an agreement to compensate a woman afterwards for an injury done to her and for the loss which she has sustained owing to an association, be it immoral or otherwise, with the plaintiff.

A brief reference may be made to some of the cases which have come before the Courts. One of the earliest cases was in the year 1881 before Mr. Justice Straight and Mr. Justice Oldfield [*Dhiraj Kuer v. Bikramjit Singh*(¹)]. The judgment in that case is extremely brief and the reasoning was that the past cohabitation was not in the nature of a consideration at all and as the learned Judges said "Such a consideration, if consideration it can properly be called, which seems to us more than doubtful, would not be immoral, so as to render the contract de facto void"; and that the contract was really of a kind to compensate the woman for past services voluntarily rendered. The next is the case of *Husseinali Vasam Mahomed v. Dinbai*(²) decided by Chief Justice Macleod. The facts in that case were particularly involved; but the following passage from the judgment of Chief Justice Macleod may be cited. At page 137 the learned Chief Justice said: "It cannot be said that the object of an agreement to provide for the future maintenance

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of a mistress after the connection has ceased is unlawful"; and the learned Judge refers to the decision in *Dhiraj Kuer v. Bikramjit Singh*⁽¹⁾ to which I have just made reference. In the case of *Subava Yellappa v. Yamanappa Sabu*⁽²⁾ which was decided by Mr. Justice Patkar and Mr. Justice Barlee there are observations in the judgment of Mr. Justice Patkar which would seem to indicate that he was of opinion that a contract to support a woman who had been a mistress was of the nature of an immoral contract. That view was dissented from by Mr. Justice Barlee who sat with him. The two learned Judges arrived at the same conclusion with regard to the order which was to be made in that particular case; but the reasoning of Mr. Justice Barlee, with which I respectfully agree, indicates that he agrees with the earlier decisions that a contract of the kind which I have mentioned is not void.

The matter becomes to my mind clear when one realises the distinction between the two classes of contract. Section 23 of the Indian Contract Act states that "the consideration or object of an agreement is lawful, unless the court regards it as immoral, or opposed to public policy". Now the contract to enter into the relationship of protector and mistress is undoubtedly regarded by the court as immoral and unenforceable and void; but in the case of a contract to compensate a woman for what she has lost and so long as that loss shall continue cannot be regarded as immoral and that is the consideration and the object of the agreement to compensate. The tendency is to confuse the consideration in the case of a contract to enter into the relationship with the consideration and object in the case of the agreement to compensate. The case before us is not a contract to enter into the relationship of protector and mistress; the object is to compensate the person for that which she has suffered and is suffering and I am unable to find any dictum or

(1) (1881) I. L. R. 3 All. 787.

(2) (1933) A. I. R. (Bom.) 209.

judgment to the effect that such a contract is unlawful. It seems to me unnecessary to go into the cases decided under the English Law. Past consideration under the Indian law is good consideration and the fact that a woman has rendered service in the past whether immoral or otherwise and has suffered an injury of a kind and continues to suffer from that injury, to my mind forms a perfectly good consideration for the contract to compensate her. We have had to consider the case from a strictly legal point of view. In my opinion the appellate decision of the Subordinate Judge is quite correct. There is no merit whatever in the appeal, and I would dismiss it with costs.

JAMES, J.—I entirely agree. If I may say so, I would accept as correct the view of the law expressed by Mr. Justice Sulaiman in *Mahtab-un-nissa v. Rifagat-ullah*(1). Therein he points out that there is a clear distinction between a mere contract to pay an allowance in future in order that an illicit connection should be continued and a contract in favour of a woman with whom cohabitation has already taken place. This has been the view held by the Allahabad High Court from the time when the Indian Contract Act was introduced. Before the introduction of the Act a contract of the kind with which we have here to deal was a perfectly valid contract enforceable by the Courts in India—[*Man Kuer v. Jasodha Kuer*(2)]. In the Indian Contract Act when the term consideration was defined by sub-section (d) of section 2 of the Act, it was stated in the clearest possible terms that when, at the desire of the promisor, the promisee had done something, such act was consideration for a contract, thereby apparently affirming the state of law as described in *Man Kuer v. Jasodha Kuer*(2). It appears to have been assumed in some cases that although the Indian Contract Act thus stated that past consideration should be good consideration, it was intended not to affirm the law as it stood in India,

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but to introduce a new rule from English law, and to introduce by implication the limitations placed upon it by the English decisions. A contract of this kind, not under seal, could not be enforced in England, not for the reason that it is immoral or against public policy, but because it is required there that the past consideration should be such as would have entitled the promisee at the time of performing the past act to sue the promisor for compensation—[*Beaumont v. Reeve*(1)]; and this rule has been applied more or less in all instances in which past consideration has been recognised as sustaining a contract, so that it has been said there that an executed consideration will sustain only such a promise as the law will imply. But there is nothing in the Indian Contract Act which implies that these decisions of the English courts are to be applied in limitation of the definition given in section 2(d) of the Act. We are not strictly concerned here with the question of whether long before the parties entered into this contract the plaintiff could have supported a contract which promised her an annuity in consideration of future cohabitation. The only question is of whether the contract promising an annuity in compensation for inconvenience suffered through past services rendered to the promisor at his request is immoral or opposed to public policy. It appears to me to be clear that there is nothing in the present contract which can be so described, whatever might have been said of a contract entered into with a view to future cohabitation. All that was over and done at the time when the present contract was made: and the defendant merely undertook to compensate the plaintiff for the injuries sustained on his account; loss of caste and loss of eligibility for marriage. I agree that this contract cannot be regarded as void on account of its being immoral or opposed to public policy, and that this appeal should be dismissed with costs.

Appeal dismissed.

S. A. K.

(1) (1846) 8 Q. B. 463.