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in chambers. Whether he could conveniently deal with the question of costs under section 366 might be open to doubt.

BAYLEY, J.—I concur. As Judge in chambers I was of opinion that the order applied for in this case should be granted. I felt doubtful, however, as to whether I had power to make it, and, therefore, I referred the question to the Court.

That point being now settled, the alternative part of the summons will be made absolute.

The following order was made:—"This Court doth order that the suit shall abate, and this Court doth set aside such order for abatement, and doth order that the name of the said L. W. G. Rivett-Carnac, administrator of the property and credits of the plaintiff Fulvahu, be entered in the place of the said Fulvahu on the record, and that the name of the said Dayál Mulji, the alleged executor of the said defendant Gocaldás Valabdás (now deceased) and Gomtibái, the widow, and Cursandás, the son of the said Gocaldás Valabdás, be entered on the record in the place of the said defendant."

Attorneys for the plaintiffs.—Messrs. *Crawford* and *Buckland*.
Attorneys for the defendants.—Messrs. *Hore, Conroy* and *Brown*.

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

BAI DAYA, WIDOW (ORIGINAL PLAINTIFF), APPELLANT, *v.* NATHA GOVINDLAL (ORIGINAL DEFENDANT), RESPONDENT.*

1885
January 7.

Hindu law—Maintenance—Step-mother, right of, to maintenance—Family property. Under the Hindu law there is no legal obligation upon a step-son to support a step-mother independently of the existence in his hands of family property.

THIS was a second appeal from the decision of F. Beaman, Assistant Judge of Ahmedabad, reversing the decree of Ráv Sáheb Lallubhai P. Párekh, Joint Subordinate Judge of Ahmedabad.

The plaintiff Dayá sued her step-son to recover from him arrears of maintenance, alleging that he had inherited from her husband moveable and immoveable property of the value of Rs. 10,000. The defendant replied that the property owned by his father did not amount to more than Rs. 1,125; that

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his father had left a debt of Rs. 2,000, to pay which the defendant had incurred a liability of Rs. 1,800, and that under the Hindu law a step-mother had no right to claim maintenance from her step-son independently of the family property.

The Subordinate Judge held that the plaintiff was entitled to claim maintenance, and awarded her Rs. 95. The Assistant Judge held that she was not entitled, and rejected the plaintiff's claim. The plaintiff appealed to the High Court.

Ganesh Rámchandra Kirloskar for the appellant.—Under the Hindu law the obligation is cast upon a son to support his step-mother. The Hindu texts, which speak of the mother as a fit subject of maintenance, include a step-mother. Those texts are Manu, ch. VIII (on Judicature), pl. 389, (Grady's ed.) p. 190; a text ascribed to Manu and referred to in Colebrooke's Dig., bk. 5, ch. VI, sec. 2, art. 1, p. 490; and, thirdly, a text in the Mitakshara on the Subtraction of Gift, ch. X, fol. 69, p. 1, pl. 1; Strange's Manual, p. 54, para. 209.

In support of the contention I rely upon the opinion of Bálambhatta, who asserts that the term '*mátá*' stands for '*janani*' "genitrix", and *sapatnamátá* "noverca"—West and Bühler, 471, (3rd ed.)

[SARGENT, C. J.—That opinion is with reference to inheritance, not maintenance.]

A shástri at Ahmedabad in answer to a question put to him said that step-sons were bound to support their step-mother in virtue of Manu's text, commanding children to maintain aged parents—West and Bühler, 472, note. The following authorities also support my contention:—*Sávitribái* v. *Luximibái*[1]; 1 Norton's Leading Cases, p. 44; Mayne's Hindu Law, sec. 481; 2 Strange's Hindu Law, 315; Steele's Customs, 178.

Ráv Sáheb *Vásudev Jagannáth* for the respondent.—There is no legal obligation to maintain a step-mother. The Hindu lawyers have interpreted the word "mother" to mean the natural parent, and not to include a step-mother—Stokes' Hindu Law

(1) I. L. R. 2 Bom. 573.

Books, 231; *Kesserbái* v. *Valab Rávji*[1]; Vyavastha Chandrika, p. 258. The legal obligation upon the son to maintain his "genitrix" is due to the blood relation between them. This relationship does not exist in regard to the step-mother, and the reason for the obligation does not exist in her case.

SARGENT, C. J.—The plaintiff in this case sued her step-son for arrears of maintenance, alleging that he had inherited moveable and immoveable property from her husband. Although no distinct issue was raised, the question as to her right to maintenance independently of there being inherited property was also dealt with at the hearing in both the lower Courts. The Assistant Judge found that, after paying off his father's debts, the defendant had nothing left but irrecoverable outstandings which he had offered to make over to the plaintiff, and that, under those circumstances, defendant was under no legal obligation to support the plaintiff.

It has been urged before us that the question, whether defendant had inherited property liable for plaintiff's maintenance, was dealt with in such an unsatisfactory manner by the Assistant Judge that we ought not to accept his finding. It was objected that the opinion expressed by the Assistant Judge, that the entries in the defendant's books did not represent actual entries of interest, was a mere assumption, and not based upon any evidence; and, further, that he had not appreciated the evidence afforded by the defendant's account in the books of his sister, which shows that sums were paid in by defendant from time to time to the credit of his account. There is, doubtless, some force in these objections; we do not think however we should consult the appellant's interests by sending the case back for a fresh finding. The Subordinate Judge himself has only found that there are still outstandings from which he thinks defendant might recover Rs. 150 a month; but this is pure assumption, and is rebutted by defendant's offer to assign over the outstandings to the plaintiff.

We proceed, therefore, to consider the question, whether the plaintiff is entitled to maintenance from her step-son indepen-

(1) I. L. R. 4 Bom. 188.

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dently of his having inherited available assets from his father, and that question, since the Full Bench decision in *Sávitribái* v. *Luximibái*[1], must, we think, depend upon whether a step-mother is one of those relations whose maintenance is made by certain special texts a legal and imperative duty as distinguished from those general female relations whose maintenance independently of family property is only a moral and optional duty. Sir Michael Westropp, in delivering the judgment of the Court in that case, points out that there is "an important distinction in the language of Manu and other Hindu jurists when, without reference to the existence of family property, they especially treat of the maintenance and support of the wife or of parents or of an infant son, and when they speak of the maintenance and support of the females of the family at large," and concludes that it is only in the former class of cases that, independently of the existence of family property, a legal obligation exists.

This view of the Hindu texts has been fully discussed by the learned authors of West and Bühler's Treatise on Hindu Law[2], and the opinion has indeed been expressed that undue importance had been given to the above distinction relied on by Sir Michael Westropp. They say, p. 240: "Whatever precept of the Smritis, therefore, had been violated to the injury of a complainant, whether expressed in terms hortative or prohibitory, and whether a penalty was annexed to the rule or not, the alleged injury might, if the prince or the judges so willed, be remedied or punished without an 'excess of jurisdiction'. See Yajn., I. 360; *Muttayan Chetti* v. *Sivágiri Zamindár*[3]."

This may be true, but in determining at the present day which of the duties enjoined by the Smriti writers is to be clothed with a legal obligation and to become a part of the substantive law of the Hindu community as administered by regular Courts of justice, we may well and, indeed, ought in my opinion to pay regard to the tone of the language in which the injunction is couched as affording some indication, at least, of the importance which attached to it in the opinion of its promulgators.

(1) I. L. R. 2 Bom. 573. (2) Page 239 (3rd ed.).
(3) I. L. R. 3 Mad. 380.

Acting, as we apprehend, on this principle, and having due regard to the altered conditions of modern life, the Full Bench would appear to have arrived at the conclusion that it was only in the special cases mentioned in the texts, to which the judgment refers at p. 593, that an obligation to maintenance arising exclusively from the relationship between the parties ought to be enforced by law. These texts are the following:—Manu, ch. VIII (On Judicature), pl. 389: "A mother, a father, a wife, and a son shall not be forsaken; he who forsakes either of them, unless guilty of a deadly sin, shall pay 600 *panas* to the king." A text ascribed to Manu and referred to in the Dig., bk. 5, ch. VI, sec. 2, art. 1, p. 490: "A mother and a father in their old age, a virtuous wife, and an infant son must be maintained, even doing a hundred times that which ought to be done." And, lastly, a text in the Mitákshara on the Subtraction of Gift, ch. X, fol. 69, p. 1, pl. 1, referred to by Mr. Strange in his Manual of Hindu Law, which says: "Where there may be no property but what is self-acquired, the only persons whose maintenance out of such property is imperative are aged parents, wife, and minor children."

It is said that the word *mátá* and *mátá pitrau*, which are the Sanskrit words used in these texts for mother and parents, include a step-mother. That *mátá* may in certain cases be construed as meaning step-mother, would appear from the contention of Bálambhatta mentioned in West and Bühler, 471, and also from the discussion of the term "*mátrau*" in the texts of Vyása and Vrihaspati at p. 244 of the Digest— see West and Bühler, 472; but the discussion in both cases proceeded on the supposition that the primary meaning of *mátá* was "natural mother", and that it was only in a secondary or figurative sense that it could mean step-mother. It follows, therefore, that the conclusion that it is intended to be used in the latter sense must be drawn from the context or from a comparison of cognate texts. At the foot-note at p. 472, West and Bühler, it appears that the shástri at Ahmedabad held "step-mothers" to be included in the expression "aged parents" in the text cited from the Mitákshara.

On the other hand in Steele's Law and Custom of Hindu Castes, on the authority of answers obtained from Khándesh, the

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absolute necessity to provide maintenance is referred to as confined to the natural mother. One would naturally expect to find that much difference of opinion prevailed as to the extent of the obligation to maintain a step-mother, as it is plain that, regarded from a moral point of view, the obligation must necessarily vary much with the circumstances of the family, and can ly be a very high one when the step-mother has been in *loco parentis* towards the children during their infancy, which is by no means always the case, and, indeed, we should imagine more frequently not. Again, if the maxim "*noscitur a sociis*" be applied in interpreting the texts, the combination of mother, father, wife, and children in the same text would appear to confine the term to the natural mother as one of the four nearest and dearest relations which a man possesses; and, lastly, the strong terms in which a violation of the duty is denounced, point in the same direction.

Upon all the considerations which the case suggests, we think that the expression "mother" and "parents" should be read in their natural sense in the above text, and that the obligation to support a step-mother independently of family property should be left to the conscience of each individual, influenced, as it must be, more or less by the opinion of the particular community in which he lives.

Decree confirmed, except as to costs. Parties to pay their own costs throughout.

Decree confirmed.