concern. [After dealing with the facts of the case the judgment ended:—]

The appeals, therefore, must be allowed, the attachment before judgment removed and the security discharged. The appellants must get their costs of the proceedings in this Court and in the Court below.

Appeals allowed.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

BHUPAL TAVANAPPA KASTURI (ORIGINAL PLAINTIFF), APPELLANT *v.* TAVANAPPA GANGARAM KASTURI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS*.

1921. *September* 16.

Hindu law—Maintenance—Adult co-parcener who cannot sue for partition can recover maintenance.

Under Hindu law, a member of a joint family who cannot sue for partition without the consent of certain members of that family can, if he is driven out of the family, sue for maintenance out of the family property.

FIRST appeal from the decision of J. T. Lawrence, Assistant Judge at Belgaum.

Suit to recover maintenance.

The plaintiff was a member of a joint Hindu family. The other members of the family were his father, his uncle, a cousin and a step-brother. The plaintiff was driven out of the family on the 15th May 1917.

The plaintiff sued to recover the amounts of his maintenance and marriage expenses from the defendants.

* First Appeal No. 96 of 1921.

1921.

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The trial Court raised one issue:—Is a suit of the present nature tenable? This issue was found in the negative and the suit dismissed, on the following grounds:—

"A co-parcener of an undivided Hindu family governed by the Mitakshara law is entitled to maintenance out of the undivided family property, but only to separate maintenance under exceptional circumstances. If maintenance be denied to him by the other co-parceners what remedy has he got for enforcing his undoubted right? Can he bring a suit for partition? In *Apaji* v. *Ramchandra* (16 Bom. 29) the Full Bench of the Bombay High Court, Telang J. dissenting, held that in the Bombay Presidency under the Mitakshara law a son cannot in the life-time of his father sue his father and the other co-parceners for a partition of the undivided family property and for possession of his share therein, the father not assenting thereto. The dissenting view of Telang J. has been followed in certain Calcutta and Madras cases. But this Court is bound by the ruling of the Bombay High Court. It cannot be said that the defendant No. 1 would not assent to plaintiffs' bringing a suit for partition. But it is scarcely probable that under the circumstances he would do so. But there is another remedy open to plaintiff. An individual co-parcener of a joint Hindu family governed by the Mitakshara law can sue to be put in possession jointly with his co-parceners."

The plaintiff appealed to the High Court.

A. G. Desai, for the appellant.

G. S. Rao, for respondent No. 1.

MACLEOD, C. J.:—The plaintiff sued for separate maintenance and marriage expenses as a co-parcener in an undivided Hindu family. The defendants are his father, uncle, cousin and step-brother. The plaintiff alleged that he had quarrelled with the defendants and was driven out of the joint family house in May 1917. An issue was raised: "Is a suit of the present nature tenable?" That issue was answered in the negative and accordingly the plaintiff's suit was dismissed.

We might point out that it would have been better if all the issues in the case had been raised, and then, if there was a preliminary issue, it could be

dealt with first. Undoubtedly, the plaintiff, owing to the decision of a Full Bench of this Court in *Apaji Narhar* v. *Ramchandra Ravji*[1], cannot file a suit for partition without his father's consent. The Judge says that the plaintiff has another remedy, namely, a suit for joint possession. But that is obviously a remedy which would tend to create further difficulties and aggravate the ill-feeling which appears to exist in the family.

Then the learned Judge holds that a separate suit for maintenance will not lie. It is difficult to see why a member of a joint Hindu family who cannot file a suit for partition without the consent of certain members of that family, if he is driven out from the family, cannot sue for maintenance out of the family property. In *Himmatsing Becharsing* v. *Ganpatsing*[2] it was held that a suit for maintenance out of the ancestral estate by a Hindu son lay against his father where the property in the hands of the latter was impartible. But the Court decided there that the right of a son to sue for maintenance where he might sue for partition was not in question. The decision of Sir Michael Westropp C. J. and Melvill J. in Special Appeal No. 394 of 1872 was referred to in the note. The question at issue in that case was whether a son who might sue for partition could sue for maintenance. But if the son cannot sue for partition, as in this case, then, as far as he is concerned, the family estate is just as impartible as it is when the estate is impartible amongst all the co-owners. I see, therefore, no objection whatever, to allowing the plaintiff in this case to file his suit for separate maintenance. Whether he can establish his case on the evidence and obtain a decree against the defendants is another matter. That can only be decided when proper issues have been raised and evidence has been taken. The decree,

(1) (1891) 16 Bom. 29.

(2) (1875) 12 Bom. H. C. 94.

1921.

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therefore, dismissing the suit must be set aside, and the case must be remanded to the trial Court to be dealt with on its merits.

Costs in the lower Court and of the appeal to be costs in the suit.

The Court fees payable to Government must be recovered from the respondents.

Decree set aside.

R. R.

CRIMINAL APPELLATE.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1921.

September 21.

EMPEROR *v.* T. S. MACHADO.*

Native Passenger Ships Act (X of 1887), sections 9, 10 and 31—Steamer conveying passengers—Absence of certificate A—Voyage, meaning of.

The accused had a steamer which plied between Bombay and Goa for conveyance of passengers. He had certificate A as required by sections 9 and 10 of the Native Passenger Ships Act, 1887 ; but it expired on the night of 31st May 1921. The steamer left Bombay with passengers on the 31st May 1921 for Goa, where she stayed for a few hours and after picking up passengers at coast ports, returned to Bombay on the 2nd June 1921. The accused was, on these facts, charged with the offence of sailing a ship without a certificate, under section 31 of the Act :—

Held, acquitting the accused, that the accused had committed no offence, for the voyage from Bombay to Goa and back was really one voyage.

Per MACLEOD, C. J.:—"No doubt the rules provided by the Act were intended for the safety of passengers, and the certificate A which expired on the 31st May was one granted for the six months of fair weather. The certificate A which would be granted on the 1st June would necessarily be of a different character, and if it is desired that, in order to secure the safety of the passengers, a ship leaving at the end of May should also hold a rough weather certificate, if the ship does not return during May, then that must be provided for by an amendment in the Act."

* Criminal Appeal No. 498 of 1921.