1863. *June* 22. S. *A. No.* 188 *of* 1863.

the practice which has unquestionably prevailed in the Mofussil Courts for a long series of years of awarding interest upon all demands of which the payment has been illegally delayed, was shown to be based upon any existing regulation or positive rule of law by which interest would at the time the Act passed have been payable in respect of this debt, unquestionably it would still be payable notwithstanding the enactment. We are unable, however, to find any such provision, and it necessarily follows that, there being no allegation of a demand in writing, the award of interest up to the date of suit must be disallowed. The appellant is entitled to the costs of this appeal.

Appeal allowed.

APPELLATE JURISDICTION (*a*)

Special Appeal No. 369 *of* 1863.

ILATA SHAVATRI and another.....*Appellants.*

ILATA NÁRAYANAN MAMBUDIRI.....*Respondent.*

A Hindu adulteress living apart from her husband cannot recover maintenance from him so long as the adultery is uncondoned.

A daughter living apart from her father for no sufficient cause cannot sue him for maintenance.

1863. *June* 25. *S. A. No.* 369 *of* 1863.

THIS was a Special Appeal from the decree of Wm. Holloway, Civil Judge of Tellicherry, in Appeal Suit No. 442 of 1861, reversing the decree of J. M. D'Rozario, the District Munsif of Calicut, in Original Suit No. 450 of 1858. This suit was brought by the wife and daughter of the first defendant to recover certain ancestral property in his possession, out of which they alleged themselves to be entitled to maintenance. It appeared that the first plaintiff had committed adultery, that she had consequently been expelled from her caste, and that she and her daughter had left the first defendant's house and were then living apart from him. The Munsif, however, fancying that Act XXI of

(*a*) Present : Phillips and Frere, JJ.

1850(*a*) applied, decreed for the plaintiff's with costs. On appeal the Civil Judge reversed the Munsif's decree in the following judgment :—

1863. *June* 25. S. A. *No.* 369 *of* 1863.

"This is a suit by a woman whose own witnesses admit her to have committed adultery, to recover subsistence from her husband. Nothing is more manifest than the principle that adultery uncondoned bars a suit for maintenance. If the people of the plaintiff's caste had chosen from a capricious exercise of their authority, to expel her from her caste, her right would by no means have been barred. Act XXI of 1850 simply prevented the fact of a man differing from his forefathers upon matters of the greatest difficulty and of the highest concern, from stripping him of his property. It cannot interfere with the plain rule both of all ecclesiastical law and of all morality, equally existent in the English and Hindu law, which I have here set forth. The daughter can have no possible right of action against her father, and at any rate her case must fail from suing in the present combination. If she has any rights, they must be founded on a totally different basis. As far as here appears she absents herself from her fathers house, and with a feeling perhaps not unnatural, clings to her guilty mother, but nothing is alleged or proved in this suit to show her entitled to that to which no daughter is *prima facie* entitled to, namely, a separate subsistence."

Mayne, for the plaintiff's the special appellants, contended, first, that adultery was not a bar to an action for maintenance ; secondly, that a daughter might sue for maintenance, and thirdly, that there was no misjoinder.

Karunagara Manavan, for the respondent, was not called upon.

PHILLIPS, J. :—This appeal must be dismissed. On the first point it is clear, both from text books and cases, that a Hindu wife leaving her husband's house without sufficient

(*a*) This Act enacts that "so much of any law or usage now in force within the territories subject to the Government of the East India Company, as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of any religion, or being deprived of caste, shall cease to be enforced as law in the Courts of the East India Company, and in the Courts established by Royal Charter within the said territories.

1863. *June* 25. S. A. *No.* 369 *of* 1863.

cause cannot claim maintenance. *A fortiori* this is so, when as in the present case, the wife is admittedly an adulteress. So by English law, a wife's departure from her husband without sufficient reason exempts him from the duty of supporting her, and her elopement accompanied with adultery discharges him from all obligations to find her necessaries, and he will not be bound by her contracts for them, unless of course he pardons her and takes her back.(*a*) But here neither misconduct nor condonation on the part of the husband is even suggested. Then as to the daughter, I concur with the learned Civil Judge in holding that no daughter is *prima facie* entitled to a separate subsistence and that nothing is alleged or proved to shew the second plaintiff entitled thereto. It thus becomes unnecessary to consider the point taken as to misjoinder.

FRERE, J. concurred.

Appeal dismissed.

(*a*) Bright *on the Law of Husband and Wife*, II, 14.

NOTE.—See *Vyavahara Mayukha*, ch. IV, sec. XI § 12. "If she be unchaste a woman must be turned out of doors and without a maintenance :" *R. A. No.* 2 *of* 1823, Mad. Sel. Dec. 366 : T. L. Strange, *Manual of Hindu Law*, 2d. ed., § 198, M. S. D., 1857, p. 139.

"Infidelity in the female, save in certain of the lowest classes, occasions forfeiture of caste and puts an end to the marriage." T. L. Strange, *Manual of Hindu Law*, 2d. ed., p. 11, citing the *Smriti Chandrika*.

As to impropriety of conduct disentitling a Hindu *widow* to maintenance. See *Ranee Bussunt Koomaree* v. *Ranee Kummul Komaree*, 7, S. D. A. Rep. 144 : 1, Morl. Dig. 441.

APPELLATE JURISDICTION (*a*)

Special Appeal No. 145 *of* 1863.

NAMASIVÁYA CHETTI .....*Appellant.*

SIVAGÁMI and others.....*Respondents.*

The widow of an undivided Hindu has no right to sell his property for payment of his debts, even though it be self-acquired.

1863. *June* 27. S. A. *No.* 145 *of* 1863.

THIS was a special appeal from the decision of V. Sundara Nayudu, the Principal Sadr Amin of Negapatam, in Appeal Suit No. 479 of 1861, affirming the decree of S. Vaiyadanáyagam, the District Munsif of Máyavaram, in Original Suit No. 238 of 1859.

(*a*) Present : Phillips and Frere, JJ.