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portionment of the rent should take place, and then in order to obtain such an apportionment, it would be quite proper that either *A* or *B* should bring a suit against the tenant for so much of the rent as he considers his proper portion, making *B* or *A*, as the case may be, defendant to the suit.

An illustration of this will be found in the case of *Sreenath Chunder Chowdhry* v. *Mohesh Chunder Bandopadhya* (1).

But here there has been no division of the area of the property. The area is entire, the rent has always been paid by the tenant in its entirety, and the title of the co-sharers remains ijmali.

We think, therefore, that the decision of the Munsif is right; and that the judgment on special appeal must be reversed, and the plaintiffs' suit dismissed, with costs in both the Courts.

Before Mr. Justice L. S. Jackson and Mr. Justice R. C. Mitter.

NILMONEY SINGH DEO (DEFENDANT) *v.* BANESHUR (PLAINTIFF).*

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May 2.

Illegitimate Sons—Right to Maintenance under Hindu Law.

An adult illegitimate son has not, by Hindu law as prevalent in Bengal, any right to maintenance.

THIS was a case in which the plaintiff, who was admittedly an illegitimate son of Rajah Nilmoney Singh Deo, sued the Rajah for maintenance at eight annas a day, asserting that by custom and by Hindu law illegitimate sons were entitled to maintenance.

The Rajah did not dispute the paternity, and admitted that if the plaintiff had been his son by a *dasi* (a handmaid brought into the family with a bride) he would, by the custom of the family, have been entitled to *some* maintenance; but denied that the plaintiff had any such right, as he was a son by a common woman of a different and inferior caste. Both the lower Courts came to the conclusion that the plaintiff was not the son of a *dasi*; but

(1) 1 C. L. R., 453.

* Special Appeals, Nos. 1115, 1116, and 1117 of 1877, against a decree of H. L. Oliphant, Esq., Officiating Judicial Commissioner of Zilla Chota Nagpore, dated the 6th March 1877, affirming the decree of Lieutenant-Colonel B. W. Morton, Deputy Commissioner of Manbhoom, dated the 31st of July 1876.

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were of opinion that, as it was admitted that the son of a *dasi* was entitled to maintenance, and that the son of a *dasi* was also illegitimate, they refused to make a distinction between an illegitimate son of one description and an illegitimate son of another, and gave the plaintiff maintenance at four annas a day.

From this order the Rajah appealed to the High Court, on the ground that by Hindu law as prevalent in Bengal no illegitimate sons had any right to maintenance, and that the custom to maintain illegitimate sons by a particular favoured class of women could not confer any right to the same indulgence on all illegitimate sons indiscriminately.

Baboo *M. C. Ghose* and Baboo *B. C. Dutt* for the appellant.

No one appeared for the respondent.

The judgment of the Court was delivered by

JACKSON, J. (MITTER, J., concurring).—The special appeal before us is one of three arising out of three suits brought by different persons, who all allege themselves to be sons of the the Rajah of Punchookootee, born of women of low condition, but not *dasis* or recognized handmaids, who are referred to in the evidence regarding a certain custom to which I shall presently refer. The plaintiff claimed to receive from the defendant Rajah allowance and arrears thereof at the rate of eight annas per day.

The Rajah defendant, in his written statement, set out that he was a Khetrya by caste; that the mother of the plaintiff (admitting apparently the fact of paternity) was a woman of the Lohar caste, and that consequently plaintiff had no claim to maintenance at his hands; and he then averred that there was a custom in the family of that Raj to the effect, that when the Rajahs marry, and certain *dasis* or handmaids come into their family with the bride, if it should so happen that such *dasis* become pregnant and bear children to the Rajah, then maintenance is allowed to such children; but the defendant entirely denied that the plaintiff came within that description, or was in any sense entitled to be maintained. He also said that the plaintiff (as it

appears from the fact of his suing in his own name) was able to earn his livelihood by the sweat of his brow, and that I suppose may be taken as admitted. . . . . We are relieved, and I am glad that we are relieved, from considering cases in connection with the Mitakshara by an admission which appears in the course of the examination of one of the plaintiff's witnesses, and which the Judicial Commissioner ought not to have passed unnoticed, that this family is absolutely governed by the Dyabhaga. Now, as to the law of Bengal, it appears to me quite clear that no such claim as the present is countenanced. All the passages which refer to, and which enjoin, as a sacred duty, the maintenance of the family, refer, in the first instance, to what is to be done with the estate after the father had died. They also refer chiefly to provisions for persons who are disqualified from inheriting, and who, but for such disqualification, would have partaken of the inheritance. We are not aware of a single passage which can be referred to in which a son by such connection as we have before us in this case is described as a proper object of maintenance. . . . . This matter is absolutely, as it seems to me, concluded by authority, for we have not one but several decisions of our own Court, among which I may instance one *Prem Chand Pepara* v. *Hulas Chand Pepara* (1), and another, *Man Mohini Dasi* v. *Balak Chandra Pandit* (2), where claims of maintenance standing vastly higher than the present claim and advanced against living fathers were rejected. In truth, it seems to me, looking at the rate of maintenance which the plaintiff has asked for and the still lower rate which the Courts have allowed him in this case, that it was not seriously contemplated to prefer the present claim on the footing of the plaintiff being a member of the Rajah's family. It much more resembles an attempt to extend to a grown up and able-bodied son the sort of allowance which the Code of Criminal Procedure enables Magistrates to award to an infant illegitimate child and the mother of such child. I think, therefore, that there is no valid argument in favour of the judgment of the Courts below, that those decisions are errone-

(1) 4 B. L. R., Ap., 23; S. C., 12 W. R., 494.

(2) 8 B. L. R., 22; S. C., 15 W. R., 498.

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ous, and must be set aside without costs, as the appellant does not apply for them. This judgment will apply to appeals Nos. 1116 and 1117 of 1877.

Appeal decreed.

Before Mr. Justice Markby and Mr. Justice Prinsep.

1878. *June* 20

IN THE MATTER OF ABDOOL HAMED.*

Insolvency—Jurisdiction of District Court of Akyab under Act X of 1877, *chap.* XX—*Burma Courts Act* (*XVII of* 1875), *ss.* 31, 66.

The Deputy Commissioner of Akyab, sitting as District Judge, has power to entertain applications under chap. xx of Act X of 1877.

Section 6 (*d*) of that Act interposes no obstacle in the way of the Deputy Commissioner dealing with such applications, nor does the exercise of such power in any way "affect the jurisdiction of the Recorder of Rangoon sitting as an Insolvent Court in Akyab" within the meaning of that section.

CASE referred to the High Court by the Judicial Commissioner of British Burma under s. 31 of the Burma Courts Act (Act XVII of 1875).

It appeared that one Abdool Hamed, who was a prisoner in the civil jail of Akyab under an order of the Judge of the District Court of Akyab, made an application to the Deputy Commissioner of Akyab, as District Judge, to be declared an insolvent under s. 351 of Act X of 1877. The application was objected to by some of his creditors. The Deputy Commissioner, doubting whether he had jurisdiction to decide the matter, referred the following question, amongst others, to the High Court, *viz.*: Whether the District Court of Akyab has any jurisdiction, and if so, a concurrent jurisdiction within the town of Akyab under chap. xx of Act X of 1877; or whether the Recorder has an exclusive insolvency jurisdiction within that town under 11 and 12 Vict., c. 21.

No one appearing to argue the point, the opinion of the High Court (so far as regards the question, the subject of this report), was given by

* Reference, No. 701 of 1878, from an order made by John Jardine, Esq., Judicial Commissioner, British Burma, dated the 11th May 1878.