being taken from them for a public purpose. Delay which has been caused by the conduct of the respondent cannot be attributed to the petitioners.

Again, it is contended on behalf of the State that the petitioners cannot be allowed to secure a reference under section 18 of the Act of 1894, for they cannot be permitted to resile from their admission on the 23rd September, 1955, that they did not wish to proceed with their claim for compensation for the land, the brick-kiln and the bricks. This contention appears to me to be devoid of force, for they withdrew the reference under the erroneous belief that Government proposed to compensate them in kind if not in cash.

For these reasons I would accept the petition, set aside the order of the Collector and direct that a reference be made to the District Judge under the provisions of section 18 of the Act of 1894. There will be no order as to costs.

FULL BENCH

Before Bhandari, C. J., Chopra and Mehar Singh, JJ.

PT. RAM PARKASH,—*Defendant-Appellant.*

versus

SHRIMATI SAVITRI DEVI,—*Plaintiff-Respondent.*

Regular First Appeal No. 203 of 1949.

1957

May, 23rd

Hindu Married Women's Right to Separate Residence and Maintenance Act (XIX of 1946)—Section 2—Whether a Hindu wife is entitled to claim separate residence and maintenance on the ground that her husband had married a second wife when the second marriage took place before the passing of the Act—Act, whether retrospective—Hindu Adoption and Maintenance Act (LXXVIII of 1956)—Section 18—Whether retrospective—Change in law during the pendency of the appeal—How far to be taken into consideration for the decision of the appeal—Marriage according to

Hindu Law—concept of—Rights and duties of husband and wife—Interpretation of Statutes—Rules as to—Intention of the Legislature—How to be ascertained—Duty of the Court while interpreting a statute—Statutes in regard to married women—Nature and interpretation of—Statute or amendment—Whether prospective or retrospective—Determination of—Rules as to, stated—Restrospective—Meaning of—Interpretation of enabling and enlarging Act—Mode of.

Held, that a Hindu wife is not entitled to claim separate residence and maintenance from her husband under the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, on the ground that her husband had married a second wife when the second marriage took place before the passing of the Act. The Act is not retrospective and is prospective only.

Held, that there is nothing in the Hindu Adoption and Maintenance Act, 1956, to indicate that it was intended to operate retrospectively or to deprive husbands of the rights which had been acquired by them before its enactment. It provides merely that after this Act comes into force a Hindu wife shall be entitled to separate residence and maintenance in certain circumstances and that she will forfeit her right to separate residence and maintenance in certain other circumstances.

Held, that it is an established rule of law that a case should be decided in accordance with the law as it exists at the time of the decision by the appellate Court, but this rule is applicable only where the statute changing the law is intended to be retrospective and to apply to pending litigation or is retrospective in its effect. If neither of these two conditions concur or if it appears that the Legislature did not intend that the rights which were acquired before the enactment of the new law should be taken away, the case cannot be regulated by the law which has intervened during the pendency of the appeal but by the law which was in force when the original judgment was delivered.

Held, that according to Hindu Law marriage is a holy union for the performance of religious duties. The relationship between husband and wife imposes upon each of them certain legal marital duties and gives each of them certain legal marital rights. The marital rights and duties

are absolutely fixed by law and include the husband's right to protect his wife, to give her a home, to provide her with comforts and necessities of life within his means, to treat her kindly and not cruelly or inhumanly and to discharge the duties growing out of the relationship which has been created by the marriage. On the other hand, it is the duty of the wife to live with her husband wherever he may choose to reside and to fulfil her duties in her husband's home. She has no right to separate residence or maintenance unless she satisfies the Court that the husband had refused or neglected to maintain her in his own place of residence or that the wife by reason of the husband's misconduct was justified in living separate and apart from him. She cannot claim separate maintenance if she leaves her husband's home of her own accord or for reasons which are not considered proper or justifiable by law. If, however, the husband is guilty of such cruelty as endangers her personal safety or he keeps a concubine in his house or is suffering from a loathsome or contagious disease, the wife is entitled to live apart and to claim separate maintenance from him.

Held, that while interpreting a statute the first and foremost duty of a Court is to ascertain the intention of the Legislature and that intention can best be ascertained from the language which the Legislature has chosen to employ. If the language is clear and unambiguous and conveys a clear and definite meaning the task of interpretation can hardly be said to arise, for it is not allowable to interpret what has no need of interpretation. The Court must proceed on the assumption that the Legislature meant exactly what it said, however, unjust, arbitrary or inconvenient the meaning conveyed may be. It is not within the province of the Court to depart from the plain meaning of the expressions used in the statute and to interpose contrary views of is own of what is just and expedient or what the public need demands. Its duty is not to make the law reasonable but to expound it as it stands according to the real sense of the words.

Held, that the statutes in regard to married women are remedial in their nature and ought to be construed liberally in favour of the equality of the legal personality of husband and wife, in respect of property, contracts, torts and civil rights where this is the clear purpose of the

statute. But the Court has no right to depart from the language of the statutes. They should be fairly and favourably construed with the object of promoting justice, avoiding harsh or incongruous results, suppressing the mischief or evil sought to be remedied and defeating all attempts at evasion. The liberality with which a statute is construed cannot, however, enable the Court to ignore the words of the statute or give them a forced or unnatural meaning, or to engraft upon the law something which the Legislature has chosen to omit, or to give the law a retrospective operation when none was intended.

Held, that while interpreting a statute a Judge should not allow himself to be swayed by his own personal wishes, desires or predilections, for rights of the parties to a litigation are not regulated by the whim or caprices of the presiding officer but by the law as applied to the facts of the particular case. If a rule of law prescribed by a statute operates to the prejudice of a person or class of persons, application must be made to the Legislature and not the Courts.

Held, that "retrospective" means looking backwards; having a reference to a state of things existing before the act in question. A retrospective statute contemplates the past and gives to a previous transaction some different legal effect from that which it had under the law when it occurred or transpired. Every statute which takes away or impairs a vested right acquired under existing law or creates a new obligation, imposes a new duty or attaches a new disability in respect of transactions or considerations already past, must be deemed to be prospective.

Held, that whether a statute operates prospectively or retrospectively is one of legislative intent. If the terms of a statute are clear and unambiguous and it is manifest that the Legislature intended the Act to operate retrospectively, it must unquestionably be so construed. If, however, the terms of a statute do not of themselves make the intention certain or clear, the statute will be presumed to operate prospectively where it is in derogation of a common law right, or where the effect of giving it a retrospective operation would be to interfere with an existing contract, destroy a vested right or create a new liability in connection with a past transaction or invalidate a defence

which was good when the statute was passed. The statute would operate retrospectively when the intent that it should so operate clearly appears from a consideration of the Act as a whole, or from the terms thereof which unqualifiedly give the statute a retrospective operation or imperatively require such a construction or negative the idea that it is to apply only to future cases. If the Court is in doubt whether the statute was intended to operate retrospectively, it should resolve the doubt against such operation. Curative and validating statutes operate on conditions already existing and can have no prospective operation. Statutes relating to practice or produre which do not create new or take away vested rights are generally held to operate retrospectively where they do not contain language clearly showing a contrary intention. A statute should not be given retrospective operation unless its words are so clear, strong and imperative that no other meaning can be annexed to them, or unless the intention of the Legislature could not be otherwise satisfied, particularly where retrospective operation would alter the pre-existing situation of parties or affect or interfere with their antecedent rights. The rule that laws are not to be construed as applying to cases which arose before their passage is applicable when to disregard it would impose an unexpected liability that if known might have caused those concerned to avoid it.

Held, that the provisions of an enabling and enlarging Act must be construed in the spirit of the rights enlarged by them; they should not be extended by construction beyond the plain meaning of the language used.

Case referred by a Division Bench consisting of Hon'ble Mr. Justice Bishan Narain, and Hon'ble Mr. Justice G. L. Chopra, on the 14th November, 1956, to a Full Bench. Regular First Appeal from the order of Sh. Ram Lal, Sub-Judge, 1st Class, Hoshiarpore, dated the 3rd August, 1949, granting a decree of Rs. 200 as the costs of utensils and Rs. 1,560 as arrears of maintenance, i.e., total Rs. 1,760 in favour of the respondent, and also granting a decree for future maintenance from the date of passing the decree at the rate of Rs. 65 per mensem.

D. N. AWASTHY and S. C. MITTAL, for Appellant.

SHAMAIR CHAND, P. C. JAIN and H. R. SODHI, for Respondent.

JUDGMENT

Bishan Narain, J. BISHAN NARAIN, J.—This appeal arises out of a suit by Mst. Savitri Devi against her husband Pandit Ram Parkash for recovery of Rs. 17,629 as arrears of the maintenance and the price of certain articles.

It appears that Mst. Savitri was married to Ram Parkash in January, 1935. She has now claimed maintenance on various grounds which need not be given in this order of reference. The only other fact that need be mentioned is that according to the finding of the trial Court Ram Parkash married one Mst. Sumitran Devi in April, 1944. The trial Court *inter alia* came to the conclusion that Mst. Savitri Devi was entitled to maintenance under the provisions of the Hindu Married Women's Right to Separate Residence and Maintenance Act, XIX of 1946. The husband has filed this appeal and it is argued on his behalf that the Act is not applicable to a case where the husband has married again before the 1946 Act came into force. This question is of frequent occurrence and there is a sharp conflict of opinion in various High Courts in India. It has been held in *Kasubai* v. *Bhagwan* (1), *Palaniswami Gounder* v. *Devanai Ammal and others* (2), *Laxmibai Wamanrao* v. *Wamanrao Govindrao* (3), and *B. Rattan Chand* v. *Mst. Kalawati* (4), that this Act has no application to a case where the husband has married again before the 1946 Act was passed. A contrary view has been taken in *Sm. Pancho* v. *Ram Parsad* (5), *Varalakshmi* v. *Viramulu* (6), *Anjana Dei* v. *Krushna Chandra and another* (7), *Kulamani*

(1) A.I.R. 1955 Nag. 210 (F.B.)
(2) A.I.R. 1956 Mad. 337 (F.B.)
(3) A.I.R. 1953 Bom. 342
(4) A.I.R. 1955 All. 364
(5) A.I.R. 1956 All. 41
(6) A.I.R. 1956 Hyderabad 75
(7) A.I.R. 1954 Orissa 117

Hota v. *Parbati Debi* (1), and *Baijnath Dharamdass and another* v. *Hiraman Ram Rasik* (2). In the Madras High Court conflicting view was taken in various decisions but the Full Bench of that Court has settled the conflict that existed in that Court. The judgments that have been overruled by that Full Bench, however, have been relied upon by other Judges of other High Court. In the circumstances, it appears to me that it is fit and proper that this question should be authoritatively decided by this Court. I am, therefore, of the opinion that the following question should be referred to a Full Bench for decision:—

> Whether a Hindu wife is entitled to claim residence and maintenance under the Hindu Married Women's Right to Separate Residence and Maintenance Act (Act No. XIX of 1946) on the ground that her husband had married a second wife when the second marriage took place before the passing of the said Act?

Let the papers be placed before the Hon'ble the Chief Justice for orders.

CHOPRA, J.—I agree.

BHANDARI, C.J.—This is a contest between a married woman and her husband concerning her right to separate residence and maintenance.

Bhandari, C. J.

It appears that the plaintiff Smt. Savitri Devi was married to the defendant Ram Parkash in the year 1935. The husband and wife lived happily together at various places but were unable to have a

(1) A.I.R. 1955 Orissa 77
(2) A.I.R. 1951 Vindhya Pradesh 10

Pt. Ram Parkash
v.
Shrimati
Savitri Devi

Bhandari, C. J.

child of their own. Early in 1943, the husband became infatuated with one Smt. Samitri, a young woman, who lived near his house in Delhi, and developed clandestine relations with her to the great distress of his wife. In November, 1943, he took his wife to her father's house in the Hoshiarpur District on the pretence that the required a change of air and during her absence from Delhi installed in his house as mistress the woman with whom he had become infatuated. In the year 1946, the Central Legislature enacted a measure known as the Hindu Married Women's Right to Separate Residence and Maintenance Act, which entitled a Hindu wife to live separately from her husband without forfeiting her claim to maintenance, if the husband had taken a second wife. On the 21st August, 1948, the wife brought a suit for the recovery of a large sum of money on account of arrears of maintenance from the date of desertion to the date of the suit and on account of the price of the articles which had been given to her by her parents on the occasion of her wedding, *muklawa*, etc. The trial Court came to the conclusion that the husband had contracted a marriage with Smt. Samitri in April, 1944, that the Act of 1946 was retrospective in its operation and that the wife's claim to separate residence and maintenance was fully justified. In this view of the case the trial Court granted a decree in favour of the wife.

The husband preferred an appeal from this order and it was argued on his behalf that the Act of 1946 was not applicable to a case where the husband had contracted a fresh marriage before the commencement of the Act of 1946. Two sets of authorities were cited before the Division Bench. In one set of authorities *Kasubai* v. *Bhagwan* (1), *Palaniowami* v. *Gounder* (2), *Laxmibai Wamanrao* v. *Wamanrao*

(1) A.I.R. 1955 Nag. 210 (F.B.)
(2) A.I.R. 1956 Mad. 337 (F.B.)

Govindrao (1), *B. Rattan Chand* v. *Mst. Kalawati* (2), the Courts took the view that this Act has no application to a case where the husband had married again before the Act of 1946 was passed. In the other set of authorities such as *Pancho* v. *Ram Prasad* (3), *Varalakshmi* v. *Viramulu* (4), *Anjani Devi* v. *Krushna Chandra and another* (5), *Kulamani Hota* v. *Parbati Dei* (6), *Baijnath Dharamdass and another* v. *Hiraman Ram Rasik* (7), it was held that the Act operates retrospectively and applies to a case in which the second marriage was solemnised before the enactment of the statute. In view of the conflict of opinion which has manifested itself the Division Bench has referred the following question to the Full Bench for decision, namely—

> "Whether a Hindu wife is entitled to claim residence and maintenance under the Hindu Married Women's Right to Separate Residence and Maintenance Act (Act No. 19 of 1946) on the ground that her husband had married a second wife when the second marriage took place before the passing of the Act?"

According to the Hindu Law marriage is a holy union for the performance of religious duties. The relationship between husband and wife imposes upon each of them certain legal marital duties and gives each of them certain legal marital rights. The marital rights and duties are absolutely fixed by law and include the husband's right to protect his wife, to give her a home, to provide her with comforts and

(1) A.I.R. 1953 Bom. 342
(2) A.I.R. 1955 All. 364
(3) A.I.R. 1956 All. 41
(4) A.I.R. 1956 Hdy. 75
(5) A.I.R. 1954 Orissa 117
(6) A.I.R. 1955 Orissa 77
(7) A.I.R. 1951 Vindhya Pradesh 10

Pt. Ram Parkash
v.
Shrimati
Savitri Devi

Bhandari, C. J.

necessities of life within his means, to treat her kindly and not cruelly or inhumanly and to discharge the duties growing out of the relationship which has been created by the marriage. On the other hand, it is the duty of the wife to live with her husband wherever he may choose to reside and to fulfil her duties in her husband's home. She has no right to separate residence or maintenance unless she satisfies the Court that the husband had refused or neglected to maintain her in his own place of residence or that the wife by reason of the husband's misconduct was justified in living separate and apart from him. She cannot claim separate maintenance, if she leaves her husband's home of her own accord or for reasons which are not considered proper or justifiable by law. If, however, the husband is guilty of such cruelty as endangers her personal safety or he keeps a concubine in his house or is suffering from a loathsome or contagious disease, the wife is entitled to live apart and to claim separate maintenance from him.

With the passage of time and the advancing march of civilisation people began to recognise that it was somewhat inequitable that the husband should be at liberty to pick all the plums from the tree of marriage and the wife should be left only with stones. The Legislature accordingly proceeded to enact a number of measures with the express object of emancipating married women from the liabilities which the Hindu Law attached to them with the object of enlarging their rights and with the object of protecting the wife from the importunities of the husband. These measures introduce a fundamental change of public policy and lay down a new foundation of equality of husband and wife.

The rule of Hindu Law that marriage contemplates the living together of husband and wife even

after the husband has married a second time has been abrogated by statute. The first statutory innovation on this ancient rule is the measure known as the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, which supplanted the Hindu Law with reference to the right of a wife to claim separate residence and maintenance. This Act came into force on the 2nd May, 1946. Section 2 was in the following terms:—

> "Notwithstanding any custom or law to the contrary a Hindu married woman shall be entitled to separate residence and maintenance from her husband on one or more of the following grounds, namely,—
>
> (1) if he is suffering from any loathsome disease not contracted from her;
>
> (2) if he is guilty of such cruelty towards her as renders it unsafe or undesirable for her to live with him;
>
> (3) if he is guilty of desertion, that is to say, of abandoning her without her consent or against her wish;
>
> (4) if he marries again;
>
> (5) if he ceases to be a Hindu by conversion to another religion;
>
> (6) if he keeps a concubine in the house or habitually resides with a concubine;
>
> (7) for any other justifiable cause."

The Act of 1946, was repealed and replaced by the Hindu Adoption and Maintenance Act, 1956, section 18 of which runs as follows:—

> "18(i) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this

Pt. Ram Parkash
v.
Shrimati
Savitri Devi

Bhandari, C. J.

Act, shall be entitled to be maintained by her husband during her life time.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance,—

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injuries to live with her husband;

(c) if he is suffering from a virulent form of leprosy;

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion;

(g) if there is any other cause justifying her living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion."

Statutes relating to rights of married women must be construed in accordance with the same rules of interpretation as are applicable to other statutory enactments. The first and foremost duty of a Court is to ascertain the intention of the Legislature and

that intention can best be ascertained from the language which the Legislature has chosen to employ. If the langcage is clear and unambiguous and conveys a clear and definite meaning the task of interpretation can hardly be said to arise, for, as pointed out by an ancient jurist, it is not allowable to interpret what has no need of interpretation. The Court must proceed on the assumption that the Legislature meant exactly what it said, however, unjust, arbitrary or inconvenient the meaning conveyed may be. It is not within the province of the Court to depart from the plain meaning of the expressions used in the statute and to interpose contrary views of its own of what is just and expedient or what the public need demands. Its duty is not to make the law reasonable but to expound it as it stands according to the real sense of the words. Statutes in regard to married woman are remedial in their nature and ought to be construed liberally in favour of the equality of the legal personality of husband and wife, in respect of property, contracts, torts and civil rights where this is the clear purpose of the statute. But the Court has no right to depart from the language of the statutes. They should be fairly and favourably construed with the object of promoting justice, avoiding harsh or incongruous results, suppressing the mischief or evil sought to be remedied and defeating all attempts at evasion. The liberality with which a statute is construed cannot, however, enable the Court to ignore the words of the statute or give them a forced or unnatural meaning, or to engraft upon the law something which the Legislature has chosen to omit, or to give the law a retrospective operation when none was intended.

The rules for determining whether a statute or amendment is to operate prospectively or retrospectively can be found in any well-known work on

Pt. Ram Parkash
v.
Shrimati
Savitri Devi

Bhandari, C. J.

the interpretation of statutes. 'Retrospective' means looking backwards; having a reference to a state of things existing before the act in question. A retrospective statute contemplates the past and gives to a previous transaction some different legal effect from that which it had under the law when it occurred or transpired. Every statute which takes away or impairs a vested right acquired under existing law or creates a new obligation, imposes a new duty or attaches a new disability in respect of transactions or considerations already past, must be deemed to be prospective.

The question whether a statute operates prospectively or retrospectively is one of legislative intent. If the terms of a statute are clear and unambiguous and it is manifest that the Legislature intended the Act to operate retrospectively, it must unquestionably be so construed. If, however, the terms of a statute do not of themselves make the intention certain or clear, the statute will be presumed to operate prospectively where it is in derogation of a common law right, or where the effect of giving it a retrospective operation would be to interfere with an existing contract, destroy a vested right or create a new liability in connection with a past transaction or invalidate a defence which was good when the statute was passed. The statute would operate retrospectively when the intent that it should so operate clearly appears from a consideration of the Act as a whole, or from the terms thereof which unqualifiedly give the statute a retrospective operation or imperatively require such a construction or negative the idea that it is to apply only to future cases. If the Court is in doubt whether the statute was intended to operate retrospectively, it should resolve the doubt against such operation. Curative and validating statutes operate on conditions already

existing and can have no prospective operation. Statutes relating to practice or procedure which do not create new or take away vested rights are generally held to operate retrospectively where they do not contain language clearly showing a contrary intention. It has been held that a statute should not be given retrospective operation unless its words are so clear, strong and imperative that no other meaning can be annexed to them, or unless the intention of the Legislature could not be otherwise satisfied, particularly where retrospective operation would alter the pre-existing situation of parties or affect or interfere with their antecedent rights. The rule that laws are not to be construed as applying to cases which arose before their passage is applicable when to disregard it would impose an unexpected liability that if known might have caused those concerned to avoid it.

Two principal reasons have been advanced in support of the proposition that the Act of 1956 applies retrospectively and enables a wife to claim maintenance from her husband even when the husband contracted a second marriage before the commencement of the Act. The first reason is that the expression "if he marries again" in section 2(4) is not equivalent to the expression "if he marries again after the commencement of the Act" but is merely descriptive of the position of the husband as a twice married man on the date on which the wife prefers a claim for separate maintenance under the Act. This view was propounded by Sastri, J., in *Lakshmi Anmal and others* v. *Narayanaswami Naicker and others* (1), when the learned Judge observed as follows:—

> "It is unreasonable to construe section 2(1) of the Act as meaning that the loathsome disease therein described should have been contracted by the husband after the

(1) A.I.R. 1950 Mad. 321

Pt. Ram Parkash
v.
Shrimati
Savitri Devi

Bhandari, C. J.

Act and if the disease had originated before the Act, the wife is not entitled to separate maintenance. 'Cruelty' and 'desertion' referred to in section 2(2) and (3) obviously do not exclude cruelty and desertion which started anterior to the passing of the Act. Similarly, the reference to apostasy in section 2(5) and to the keeping of a concubine in the house in section 2(6) must contemplate events which had their inception before the Act came into force. With reference to section 2(4), however, it is argued that the words 'marries again' refer to a future marriage, that is after the Act. I appreciate the verbal point of this interpretation but I am unable to accept it. In my opinion the words are merely descriptive of the position of the husband as a twice married man at the date when the wife's claim for separate maintenance is made under the Act and do not exclude a husband who had taken a second wife before the Act from its operation. Reading section 2 as a whole and the several clauses of the section together I see no reason to hold that while all the other clauses which use the present tense refer to a state of affairs in existence at the date of a suit for separate maintenance by the wife, though it had its origin before the Act came into force, clause (4) of section 2 also must have reference only to an event which occurs after the Act comes into force."

The view taken by Sastri, J., in *Lakshmi Anmal and others* v. *Narayanasawami Naicker and other* (1), was

(1) A.I.R. 1950 Mad. 321

amplified and endorsed in *Baijnath Dharamdass and another* v. *Hiraman Ram Rasik* (1), *Anjani Dei* v. *Krushna Chandra and another* (2), *Musumuru Nagendramma* v. *Musuncra* v. *Ramakotayya* (3), *Pancho* v. *Ram Prasad* (4).

I regret, I am unable to concur in the view that clause (4) of section 2 is designed to operate retrospectively and that a wife is at liberty to take the benefit of the Act even though the second marriage took place before the commencement of the Act. This clause declares that a Hindu woman shall be entitled to separate residence and maintenance from her husband "if he marries again". There can be little doubt that on a plain interpretation of the language the words "if he marries again" are conditional and prospective and not descriptive or retrospective *Kasubai* v. *Bhagwan* (5), and can refer only to a future marriage, that is a marriage, which is solemnised after the commencement of the Act *Mt. Sukhribai* v. *Pohkal Singh* (6), *Sidda Setty* v. *Munianna* (7), *Laxumibai Wamanrao* v. *Wamanrao Govindras* (8), *Kasubai* v. *Bhagwan B. Rattan Chand* v. *Mst. Kalwanti* (9), *Palaniswami Gounder* v. *Devanai Anmal and others* (10), The Legislature must be presumed to know the meanings of the words employed by it, to have used the words advisedaly and to have expressed its intention by the use of the words found in the statute. In any case clause (4), must be deemed to operate prospectively, for to hold otherwise would be to destroy a vested right or to create a new liability in connection with a past transaction. This interpretation may possibly

(1) A.I.R. V.P. 10
(2) A.I.R. 1954 Orissa 117
(3) A.I.R. 1954 Mad. 713
(4) A.I.R. 1956 All. 41.
(5) A.I.R. 1955 Nag. 210, 220 (F.B.)
(6) A.I.R. 1950 Nag. 33
(7) A.I.R. 1953 Mad. 712
(8) A.I.R. 1953 Bom. 342
(9) A.I.R. 1955 All. 364
(10) A.I.R. 1956 Mad. 337 (F.B.)

Pt. Ram Parkash
v.
Shrimati
Savitri Devi

Bhandari, C. J.

work an injury to a wife whose husband contracted the second marriage before the commencement of the Act of 1946, but a Judge should not allow himself to be swayed by his own personal wishes, desires or predilections, for rights of the parties to a litigation are not regulated by the whim or caprices of the presiding officer but by the law as applied to the facts of the particular case. If a rule of law prescribed by a statute operates to the prejudice of a person or class of persons, application must be made to the Legislature and not to the Courts. I entertain no doubt in my mind that the expression 'if he marries again' means nothing more or less than 'if he marries again after the Act of 1946 has come into force'.

The second ground for holding that clause (4) of section 2 is retrospective and not prospective is that the Act is declaratory and not remedial, for it merely declares and reaffirms the doctrine of Hindu Law that a wife is at liberty to claim separate residence and maintenance from her husband when he takes a new wife. Ramaswami, J., examined this question in considerable detail in *Musunuru Nagendramma* v. *Musunuru Rama Kotayya* (1), and after an elaborate citation of ancient texts came unhesitatingly to the conclusion that Hindu Law recognises that in certain cases including supersession by second marriage, the husband and wife should be excused from co-habitation. This excusing from co-habitation was deemed a justifying cause for the superseded wife being given compensation or separate maintenance. The cases from which the absolute proposition that the mere fact that the husband marries a second wife would not entitle the wife to live away from her husband and have separate maintenance, are based upon an incorrect translation of Manu placitum 75 by Colebrooke and adopted by Mayne and without a critical discussion

(1) A.I.R. 1954 Mad. 713

of the texts or adduction of adequate reasons. The learned Judge accordingly came to the conclusion that clause (4) of section 2 is nothing more than a declaration of what the Law was and shall be hereafter taken and must, therefore, be deemed to operate retrospectively. Although the learned Judge has exhibited a very commendable and laborious examination of cases to support his theories and to sustain his ultimate conclusion, but the correctness of the broad general proposition propounded by him was doubted by a Full Bench of the Nagpur High Court in *Kasubai* v. *Bhagwan* (1). The learned Judges held,—

(1) that the elaborate examination by Ramaswami, J., does not bring to light a single decision prior to the Act in support of the claim for separate maintenance founded on nothing else but the second marriage of the husband;

(2) that the actual decision in *Musunuru Nagendramma* v. *Musunuru Rama Kotayya* (2), turned on the finding that there was cruel conduct on the part of the husband;

(3) that it does not appear that in that case the husband was willing to receive the first wife and maintain her in his house;

(4) that Subba Rao, J., who was the other member of the Division Bench, reserved his opinion on the question whether the first wife was entitled to maintenance by reason of the second marriage alone and whether such marriage in itself afforded a sufficient ground for awarding maintenance to the first wife;

(5) that it was not disputed by Ramaswami, J., that the first duty of a Hindu wife is

(1) A.I.R. 1955 Nag. 210, 215
(2) A.I.R. 1954 Mad. 713

Pt. Ram Parkash
v.
Shrimati
Savitri Devi

Bhandari, C. J.

to live with her husband wherever he may choose to reside;

(6) that there was no warrant for the proposition that the judge-made law prior to 1946 excused co-habitation in the case of a superseded first wife.

In *Anjani Dei* v. *Krushma Chandra and another* (1), Panigrahi, C.J., appears to have given another reason for holding that clause (4), of section 2 merely declares the Hindu Law. He observed as follows:—

> "As I have shown above Courts have held from time to time that a wife would be entitled to separate maintenance and residence, if the husband abandons and breakes off marital relations. The very fact that a husband transfers his affections to another woman whether married or not is a justifying reason for not compelling the first wife to live with hes husband. The Hindu Women's Right to Separate Residence and Maintenance Act, 1946, merely gives statutory recognition to the dicta of Judges who had on several occasions appplied this principle to the facts of individual cases."

While commenting on this decision Rao, J., observed in *Kasubai* v. *Bhagwan* (2), that the attention of the learned Chief Justice was probably not drawn to the implications of the text of Manu and that the distinction between the husband keeping an unmarried woman and his taking a second wife was missed. While there was support in the decision or dicta even prior to the Act for granting separate maintenance because keeping a concubine amounted to misconduct on the part of the husband justifying the wife to

(1) A.I.R. 1954 Orissa 117.
(2) A.I.R. 1955 Nag. 210, 215.

live apart from him and claim maintenance. He was not aware of any decision prior to the Act which had placed a second wife on a par with a concubine and in effect regarding second marriage as in itself misconduct.

Apart from the cases mentioned above, the learned counsel for the plaintiff has not invited our attention to any authority which propounds the proposition that before the enactment of the Act of 1946 a Hindu married woman was entitled to separate residence and maintenance by reason only of the fact that her husband had married a second time. On the other hand the Courts have expressed the view that the Act of 1946 is not declaratory but remedial, for it has for the first time conferred a right on a wife to live separately from the husband and to claim maintenance from him when he has taken a new wife *Laxmibai Wamanrao* v. *Wamanrao Govindrao* (1), *Mst. Sunhribai* v. *Pohkal Singh* (2), *Pancho* v. *Ram Prasad* (3), and *Laxmibai Wamanrao* v. *Wamanrao Govindrao* (4). In my opinion the law is not retrospective in its operation. It cannot take from a husband the rights which existed under the law in force at the time of its passage. These rights were vested in the husband and in the absence of a provision to the contrary, any subsequent alteration in the law could not take them away. While the provisions of an enabling and enlarging Act must be construed in the spirit of the rights enlarged by them, they should not be extended by construction beyond the plain meaning of the language used.

During the course of arguments a question arose whether the wife in the present case is entitled to separate residence and maintenance with effect from the date of her husband's second marriage, for the

(1) A.I.R. 1953 Bom. 342.
(2) A.I.R. 1950 Nag. 33.
(3) A.I.R. 1956 All. 41.
(4) A.I.R. 1956 Mad. 337.

Pt. Ram Parkash
v.
Shrimati
Savitri Devi

Bhandari, C. J.

Act of 1956 which came into force while this appeal was pending in this Court declares that a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time and to live separately from him if he has another wife living. It is undoubtedly an established rule of law that a case should be decided in accordance with the law as it exists at the time of the decision by the appellate Court, but this rule is applicable only where the statute changing the law is intended to be retrospective and to apply to pending litigation or is retrospective in its effect. If neither of these two conditions concur or if it appears that the Legislature did not intend that the rights which were acquired before the enactment of the new law should be taken away, the case cannot be regulated by the law which has intervened during the pendency of the appeal but by the law which was in force when the original judgment was delivered. There is nothing in the Act of 1956 to indicate that it was intended to operate retrospectively or to deprive husbands of the rights which had been acquired by them before its enactment. It provides merely that after this Act comes into force a Hindu wife shall be entitled to separate residence and maintenance in certain circumstances and that she will forfeit her right to separate residence and maintenance in certain other circumstances.

I am of the opinion that Hindu wife is not entitled to claim residence and maintenance under the Hindu Married Woman's Right to Separate Residence and Maintenance Act, 1946, on the ground that her husband had married a second wife when the second marriage took place before the passing of the Act.

Let an appropriate answer be returned to the Division Bench.

Chopra, J.

CHOPRA, J.—I agree.

Mehar Singh, J.

MEHAR SINGH, J.—I agree.