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MAYNE'S
TREATISE ON
HINDU LAW AND USAGE

TENTH EDITION

BY

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PREFACE.

'MAYNE on Hindu Law and Usage' became, from its first edition, a classic, and from its third, nearly one of the "sources" of Hindu law; and two or, as they go in the legal world, three, generations of lawyers have been brought up on it. But it is sixteen years since the last edition, and thirty-two years since the seventh edition for which Mr. Mayne himself was responsible, was published. During this long interval of time, there have been very considerable accretions to the body of case-law including a great number of important decisions on several branches of Hindu law as well as very material changes effected by legislation from 1914 to 1938, culminating in the enactments of 1937-38. A thorough revision of the work involving substantial alterations in it has therefore become necessary and the latest enactment has made an editor's task one of exceptional difficulty. While a great part of what Mr. Mayne wrote has been retained, many parts of the work have been rewritten and some of the chapters have been recast. Two new chapters have been added, one on the Hindu Women's Rights to Property Act and the other on Impartible Estates. Nearly every topic has received fuller treatment, space being found either by excision or condensation of parts of comparatively less necessary matter. I believe all the relevant cases in the reports up to the end of July 1938 have been incorporated.

As some account of the development of Hindu law was an integral part of Mr. Mayne's treatise, a re-examination of the Sanskrit authorities in the light of later researches and views became also necessary. The wealth of material made available by such works as the Arthasastra of Kautilya, the translation of the Acharadhyaya of Mitakshara with notes from the gloss of Balambatta by Mr. Srisa Chandra Vidyarnava, the Manubhashya of Medhatithi by Dr. Ganganatha Jha, the translations of the Viramitrodaya-tika and of the Mayukha by Mr. J. R. Gharpure, Dr. Jayaswal's "Manu and Yajnavalkya", the very valuable Vedic Index by Drs. Macdonell and Keith, the 1928 edition of "Law and Custom" of Dr. Jolly whose services to the history of Hindu law are unique, the Cambridge History of India, Mr. P. V. Kane's indispensable "History of Dharmasastra", Dr. Jha's "Hindu Law in its Sources", Dr. Ganapati Sastri's edition of Visvarupa's commentary, and the new editions of the "Smriti Chandrika," enables one to arrive at sounder and more accurate conclusions than were

possible a generation or two ago. As a consequence, views somewhat different from those of Mr. Mayne have been expressed on some questions, especially in the first and second chapters as well as in the chapter on Marriage and Sonship. On others, however, such re-examination has served only to bring fresh support to Mr. Mayne's conclusions, e.g., on propinquity being the sole creterion of Mitakshara succession, the part played by custom in the Smriti law and the existence of only two schools of Hindu law.

Care has however been taken to keep the historical and the legal discussions separate so that the statement of the law may be readily available. But such passages in the Smritis and the commentaries as are primary authorities for the actual rules of law have been discussed in relation to the latter.

Mr. Mayne was perhaps right when he wrote in the seventies of the last century that Hindu law was in a state of arrested progress in which no voices were heard unless they came from the tomb. But this passage was retained down to the last edition (§ 40) though it had become quite clear that Hindu law had shown an amazing adaptability to modern conditions. In fact there was no department of Hindu law in which progress was not visible when, after the pandits ceased to be official referees of courts by Act XI of 1864, Judges had to take upon themselves the exposition of Hindu law. Distinguished judges, Indian and European, both in India and on the Privy Council, have, during half a century, notwithstanding occasional set-backs and cross-currents, helped to develop Hindu law to suit the new and complex needs of a highly progressive society. And the voices of the dead have been quite as helpful as the voices of the living, as for instance, on the doctrine of severance in status by unilateral declaration of intention. At the very commencement of the period, five writers, namely, Mr. Mayne himself, Mr. Mandlik, Sir Gooroodass Banerjee, Dr Sarvadhikari and Dr. Jolly, by their labours at about the same time, helped to lay the foundations of modern Hindu law. Messrs West and Buhler, Dr. Bhattacharya, Mr. G. C. Sarkar Sastri, Mr. J. C. Ghose and Mr. P R. Ganapathi Iyer have also made valuable contributions.

The one astonishing experience of any student of Hindu law who carefully studies the Commentaries and Digests is the impression he receives of the remarkable ability and vision of the Hindu jurists, their grasp of principles and their seminal ideas. Once you get behind their unfamiliar garb and utterance, you get into contact with acute and accomplished lawyers who would be a credit to any age or country. And a juster word was never said than what Mr. Mayne himself said in his

preface to the first edition: "Hindu law has the oldest pedigree of any known system of jurisprudence, and even now it shows no signs of decrepitude."

But it is obvious that the age of the legislator has now come. The latest of the enactments has struck at the root of the Mitakshara system of coparcenary and presents in the compass of two sections the concentrated drawbacks of uncoordinated piecemeal legislation. The difficulties created by the Act are referred to in Chap. XIV. If the intention of the legislature was to destroy survivorship altogether, it would have been much simpler to make the Mitakshara coparcenary a Dayabhaga coparcenary in all respects. But if the intention was to make the widow a coparcener in the Mitakshara sense, it could easily have been better expressed.

While many parts of Hindu law require reform and legislation may be welcome, it is essential that Hindu law should be in a form readily accessible to the Indian ministers, politicians, legislators, the Press and the Public. A codification of the Hindu law of property and succession is very desirable. In future, the legislatures will be frequently called upon to consider measures of reform. And any legislation will be most unsatisfactory if reform is undertaken at one point without envisaging its consequences throughout the whole field of Hindu law. The time has certainly come to cheapen the ascertainment of law, to make it, if only in its broad outline, a common possession of all literate citizens and to minimise the inconveniences and complications of a personal law, intermixed as it is with local or family customs which have long outlived the needs of an earlier day, by the enactment of a code of Hindu law applicable to the whole of Hindu India which is governed by the two schools.

In this connection the distribution of legislative authority in the Government of India Act, 1935, so far as personal laws are concerned, is anomalous and unsatisfactory. Whether the personal law is Hindu or Mahomedan, a reasonable degree of uniformity and certainty is necessary throughout India and it should not vary from province to province or, it may be, almost from district to district as in Bombay or in the Punjab. While intestacy and succession, and transfers of property are rightly placed in the concurrent list so that both the Federal and the Provincial Legislatures have power to legislate on those subjects, the jurisdiction of the former is excluded as regards agricultural land. Probably all that was meant by art. 21 of the Provincial legislative list was to leave the policy of restricting alienations, as in the Punjab, to the Provincial Legislatures. But as it stands, especially when read with articles 7 and 8 in the Concurrent List, the net is very much wider. And as almost all land in the provinces

is agricultural, the Legislatures in the various Provinces alone can legislate as to intestacy, succession and transfers of property in respect of it. Such a procedure involves several and conflicting sets of laws not only among the various Provinces but also as regards the same Hindu families in each Province. It is necessary therefore that the Hindu law of property and succession should, like the law of marriage and adoption, be placed either in the concurrent list or in the federal list, being removed from the exclusive provincial field.

Appendix III requires a word of explanation. It contains an adequate statement of Marumakkattayam and Aliyasantana law which Mr. P. Govinda Menon, B.A., B.L., Advocate, has at my request prepared for this edition. I would express my grateful acknowledgments to him as also to Mr. B. Sitarama Rao, B.A., B.L., Government Pleader, Madras, who revised it.

Apart from its usefulness to practitioners and students as containing the law and usage of Hindus in some districts of Madras, Appendix III will enable one to compare the two systems, the one derived from the patriarchate and the other from the matriarchate. To my mind, it disproves alike the theory that the matriarchate is the germ which develops into the patriarchal system and the theory that the joint family system and succession depend upon the offering of sraddhas. On the other hand it shows that the sraddhas follow the system of family and succession.

A special debt of thanks and appreciation is due to Messrs. P. P. Ramabhadra Ayyar, M.A., M.L., and V. Ramaswami Ayyar, B.A., M.L., Advocates, for their continuous and unwearied assistance to me in the preparation of this edition. I must also thank Mr. P. Satyanarayana, B.A., M.L., Advocate; my son, Mr. S. Parthasarathi, B.A., B.L., Advocate; and Mr. N. D. Varadachari, B.A., B.L., Advocate, for assistance in connection with the earlier part of the work as well as Mr. S. K. L. Ratan, B.Sc., B.L., Advocate, and Mr. R. Chakravarti, M.A., B.L., for assistance in connection with the latter part of the work.

17th August, 1938. S. SRINIVASA IYENGAR.

PREFACE TO THE FIRST EDITION.

I HAVE endeavoured in this work to show, not only what the Hindu Law is, but how it came to be what it is. Probably many of my professional readers may think that the latter part of the enquiry is only a waste of time and trouble, and that, in pursuing it, I have added to the bulk of the volume without increasing its utility. It might be sufficient to say that I have aimed at writing a book, which should be something different from a mere practitioner's manual.

Hindu Law has the oldest pedigree of any known system of jurisprudence, and even now it shows no signs of decrepitude. At this day it governs races of men, extending from Cashmere to Cape Comorin, who agree in nothing else except their submission to it. No time or trouble can be wasted, which is spent in investigating the origin and development of such a system, and the causes of its influence. I cannot but indulge a hope that the very parts of this work, which seem of least value to a practising lawyer, may be read with interest by some who never intend to enter a Court. I also hope that the same discussions, which appear to have only an antiquarian and theoretical interest, may be found of real service, if not to the counsel who has to win a case, at all events to the judge who has to decide it.

The great difficulty which meets a judge is to choose between the conflicting texts which can be presented to him on almost every question. This difficulty is constantly increased by the labours of those scholars who are yearly opening up fresh sources of information. The works which they have made accessible are, naturally, the works of the very early writers, who had passed into oblivion, because the substance of their teaching was embodied in more modern treatises. Many of these early texts are in conflict with each other, and still more are in conflict with the general body of law as it has been administered in our Courts.

An opinion seems to be growing up that we have been going all wrong; that we have been mistaken in taking the law from its more recent interpreters, and that our only safe course is to revert to antiquity, and, wherever it may be necessary, to correct the Mitakshara or the Daya Bhaga by Manu, Gautama, or Vasishtha. Such a view omits to notice that some of these authors are perhaps two thousand years old, and that even the East does change, though slowly. The real task of the lawyer is not to reconcile these contradictions, which is impossible, but to account for them. He will best help a judge who is pressed, for instance, by a text which forbids a partition, or which makes a father the absolute despot of his family, by showing him that these texts were once literally true, but that the state of society, in which they were true, has long since passed away. This has been done to a considerable extent by Dr Mayr in his most valuable work *Das Indische Erbrecht*. He seems, however, not to have been acquainted with the writers of the Bengal school, and of course had no knowledge of the developments which the law has received through nearly a century of judicial decisions. I have tried to follow in the course marked out by him, and by Sir H. S Maine in his well-known writings. It would be presumption to hope that I have done so with complete, or even with any considerable, success. But I hope the attempt may lead the way to criticism, which will end in the discovery of truth.

Another, and completely different current of opinion, is that of those who think that Hindu Law, as represented in the Sanskrit writings, has little application to any but Brahmans, or those who accept the ministrations of Brahmans, and that it has no bearing upon the life of the inferior castes, and of the non-Aryan races. This view has been put forward by Mr. Nelson in his "View of the Hindu Law as administered by the Madras High Court." In much that he says I thoroughly agree with him. I quite agree with him in thinking that rules, founded on the religious doctrines of Brahmanism, cannot be properly applied to tribes who have never received those doctrines, merely upon evidence that they are contained in a Sanskrit law book. But it seems to me that the influence of Brahmanism upon even the Sanskrit writers

has been greatly exaggerated, and that those parts of the Sanskrit law, which are of any practical importance, are mainly based upon usage which, in substance, though not in detail, is common both to Aryan and non-Aryan tribes. Much of the present work is devoted to the elucidation of this view. I also think that he has underestimated the influence which the Sanskrit law has exercised, in moulding to its own model the somewhat similar usages even of non-Aryan races This influence has been exercised throughout the whole of Southern India during the present century by means of our Courts and Pundits, by Vakils, and Officials, both judicial and revenue, almost all of whom, till very lately, were Brahmans

That the Dravidian races have any conscious belief that they are following the Mitakshara, I do not at all suppose Not has an Englishman any conscious belief that his life is guided by Lord Coke and Lord Mansfield But it is quite possible that these races may be trying unconsciously to follow the course of life which is adopted by the most respectable, the most intellectual, and the best educated among their neighbours The result would be exactly the same as if they studied the Mitakshara for themselves That this really is the case is an opinion which I arrived at, after fifteen years' acquaintance with the litigation of every part of the Madras Presidency. Even in Malabar I have witnessed continued efforts on the part of the natives to cast off their own customs and to deal with their property by partition, alienation, and devise, as if it were governed by the ordinary Hindu Law These efforts were constantly successful in the provincial Courts, but were invariably foiled on appeal to the Sudder Court at Madras, the objection being frequently taken for the first time by an English Barrister It so happened that during the whole time of this silent revolt, the Sudder Court possessed one or more judges, who were thoroughly acquainted with Malabar customs, and by whom cases from that district were invariably heard Had the Court been without such special experience, the process would probably have gone on with such rapidity that, by this time every Malabar *tarwad* would have been broken up. The revolt would have been a revolution

A third class of opinion is that of the common-sense Englishman, whose views are very ably represented by Mr Cunningham now Judge of the Bengal High Court— in the preface to his recent "Digest of Hindu Law" He appears to look upon the entire law with a mixture of wonder and pity He is amused at the absurdity of the rule which forbids an orphan to be adopted He is shocked at finding that a man's great-grandson is his immediate heir, while the son of that great-grandson is a very remote heir, and his own sister is hardly an heir at all He thinks everything would be set right by a short and simple code, which would please everybody, and upon the meaning of which the judges are not expected to differ These of course are questions for the legislator not for the lawyer I have attempted to offer materials for the discussion by showing how the rules in question originated, and how much would have to be removed if they were altered The age of miracles has passed, and I hardly expect to see a code of Hindu Law which shall satisfy the trader and the agriculturist, the Punjabi and the Bengali, the pundits of Benares and Ramaiswaram of Amritsar and of Poona But I can easily imagine a very beautiful and specious code, which should produce much more dissatisfaction and expense than the law as at present administered

I cannot conclude without expressing my painful consciousness of the disadvantage under which I have laboured from my ignorance of Sanskrit This has made me completely dependent on translated works A really satisfactory treatise on Hindu Law would require its author to be equally learned as a lawyer and an Orientalist Such a work could have been produced by Mr Colebrooke, or by the editors of the Bombay Digest, if the Government had not restricted the scope of their labours Hitherto, unfortunately, those who have possessed the necessary qualifications have wanted either the inclination or the time The lawyers have not been Orientalists, and the Orientalists have not been lawyers. For the correction of the many mistakes into which my ignorance has led me, I can only most cordially say *Exoriare aliquis nostris ex ossibus ultor.*

JOHN D MAYNE

INNER TEMPLE,
July 1878.

PREFACE TO THE THIRD EDITION.

SINCE the publication of the last edition of this work, many new materials for the study of Hindu Law have been placed within the reach of those, who, like myself, are unable to examine the authorities in their original Sanskrit. Professor Max Muller's Series of the Sacred Books of the East has given us translations of the entire texts of Apastamba, Gautama, and Vishnu, by Dr. Buhler and Dr. Jolly. Mr. Narayan Mandlik has supplied us with a translation of the whole of Yajnavalkya, and a new rendering of the Mayukha; while the Sarasvati Vilasa and the Viramitrodaya have been rendered accessible by the labours of Mr. Foulkes and of Golapchandra Sarkar.

Judging from an examination of these works, I doubt whether we need expect to receive much more light upon the existing Hindu Law from the works of the purely legal writers. They seem to me merely to reproduce with slavish fidelity the same texts of the ancient writers, and then to criticise them, as if they were algebraic formulas, without any attempt to show what relation, if any, they have to the actual facts of life. When, for instance, so modern a work as the Viramitrodaya gravely discusses marriages between persons of different castes, or the twelve species of sons, it is impossible to imagine that the author is talking of anything which really existed in his time. Yet he dilates upon all these distinctions with as much apparent faith in their value, as would be exhibited by an English lawyer in expounding the peculiarities of a bill of exchange. From the extracts given by Mr. Narayan Mandlik, I imagine that the modern writers of Western India are more willing to recognise realities than those of Bengal and Benares. Probably, much that is useful and interesting might be found (amid an infinity of rubbish) in the works on ceremonial law. But what we really want is that well-informed natives of India should take a law book in their hands, and tell us frankly, under each head, how much of the written text is actually recognised and practised as the rule of every-day life. The great value of Mr. Narayan Mandlik's work consists in the extent to which he has adopted this course. His forthcoming work will be looked for with the greatest interest by every student of Hindu Law.

* * * *

An unusual number of important decisions have been recorded since the publication of the last edition, and it will be seen that several portions of this work have been re-written in consequence. The law, as to the liability of a son for his father's debts, and as to the father's power of dealing with family property to liquidate such debts, seems at last to be settling down into an intelligible, if not a very satisfactory, shape. The controversies arising out of the text of the Mitakshara defining stridhanum appear also to be quieted by direct decision, and the conflicting view of woman's rights taken by the Bombay High Court has at last been restricted and defined, and made to rest upon inveterate usage, rather than upon written law. A single decision of the Privy Council has established the heritable right of female Sapindas in Bombay, and recognized the all-important principle, that succession under the Mitakshara law is based upon propinquity, and not upon degrees of religious merit.

JOHN D. MAYNE.

INNER TEMPLE,
January 1883.

[Soon after Mr. Mayne's death, an appreciation of him from the pen of a retired judge of the Madras High Court, Mr. Justice Shephard, appeared in May 1917 in 32 M.L.J., 97.]

ABBREVIATIONS

Agra.	North-West Provinces High Court, 3 vols. [1866-1868].
A.I.R. All.	All India Reporter, Allahabad.
A.I.R. Bom.	All India Reporter, Bombay.
A.I.R. Cal.	All India Reporter, Calcutta.
A.I.R. Lah.	All India Reporter, Lahore.
A.I.R. Mad.	All India Reporter, Madras.
A.I.R. Nag.	All India Reporter, Nagpur.
A.I.R. Oudh.	All India Reporter, Oudh.
A.I.R. Pat.	All India Reporter, Patna.
A.I.R. P.C.	All India Reporter, Privy Council.
A.I.R. Pesh.	All India Reporter, Peshawar.
A.I.R. Rang.	All India Reporter, Rangoon.
A.I.R. Sind.	All India Reporter, Sind.
Ait. Brah.	Aiteraya Brahmana.
All.	Indian Law Reports, Allahabad Series [from 1876].
A.L.J.	Allahabad Law Journal.
All. E.R.	The All England Law Reports, Annotated.
Apas.	Apastamba, Max Muller's Sacred Books of the East, Vol. II, by Buhler.
A. C.	English Law Reports, Appeal Cases.
Apararka.	Part translated in 21 M.L.J. Journal.
Apastamba Grihya Sutras.	Sacred Books of the East Series, Vol. XXX.
Arthas.	The Arthasastra of Kautilya (Punjab Sanskrit Series) edited by Drs. Jolly and Schmidt (1923).
———	By Dr. T. Ganapati Sastri (Trivandrum Sanskrit Series, 1920).
Ashburner	Ashburner's Principles of Equity by Denis Browne, 2nd edition, 1933.
A. S. Lit.	Ancient Sanskrit Literature by Professor Max Muller.
Asvalayana.	Asvalayana Grihya sutras, Sacred Books of the East Series, Vol. XXIX.
A.W.N.	Allahabad Weekly Notes.
A.W.R.	Allahabad Weekly Reporter.
Baden-Powell.	The Indian Village Community, by B. H. Baden-Powell, 1896.
Balambhatti.	Commentary on the Mitakshara by Balambhatta, edited by J. R. Gharpure.
B.L.R. or Beng. L.R.	Bengal Law Reports, High Court [1868-1875].

B.L.R. (Sup. Vol.).	Bengal Law Reports, Supplemental Volume. Full Bench Rulings, in 2 parts [1862-1868].
———A.c.j.	Bengal Law Reports, Appellate Civil Jurisdiction.
———Appx.	,, ,, ,, Appendix.
———F.b.	,, ,, ,, Full Bench.
———O.c.j.	,, ,, ,, Original Civil Jurisdiction.
———P.C.	,, ,, ,, Privy Council.
Baudh.	Baudhayana, Max Muller's Sacred Books of the East, Vol. XIV, by Dr. Buhler
Bellasis.	Bombay Sudder Dewany Adawlut Reports.
Bhattacharya, H. L.	'Commentaries on Hindu Law', by Dr. Jogendranath Bhattacharya, 2nd ed., 1893.
Bom.	Indian Law Reports, Bombay Series [from 1876]
Bom. H.C.	Bombay High Court Reports [1863-1875].
——A.c.j.	,, ,, ,, Appellate Civil Jurisdiction.
——O c.j.	,, ,, ,, Original ,, ,,
Bom L R.	Bombay Law Reporter.
Bom. Sel. Rep.	Bombay Select Reports. Sudder Dewany Adawlut.
Bor.	Borrodaile's Reports (Bombay Sudder Adawlut), Folio, 1825 [The references in brackets are to the paging of the edition of 1862].
Boul.	Boulnois, Calcutta Supreme Court [1856-1859].
Brih.	Brihaspati, translated by Dr. Jolly, Sacred Books of the East Series, Vol XXXIII.
C A.	Court of Appeal
Cal.	Indian Law Reports, Calcutta Series [from 1873].
C.H.I.	The Cambridge History of India (six volumes).
C.L J.	Calcutta Law Journal.
C L R.	Calcutta Law Reporter.
C W.N.	Calcutta Weekly Notes.
Ch.	English Law Reports, Chancery Appeals.
Ch. D.	English Law Reports, Chancery Division.
Cl. & F.	Clark and Finnelly's Reports, House of Lords.
Cole. Pref.	Colebrooke's Prefaces to the Daya Bhaga and the Digest.
——Essays.	Colebrooke's Essays.
D. Bh. or Daya Bh.	Daya Bhaga, by Jimutavahana (Colebrooke).
D. Ch. or Dat. Chand.	Dattaka Chandrika (Sutherland).
Dharmasindhu.	By Kasinath (Bombay edition).
Dig.	Jagannatha's Digest translated by Mr. Colebrooke (1801), complete in two volumes. Madras Reprint, 1864.
D.K.S.	Daya Krama Sangraha (Wynch).
D.M. or Dat. Mima.	Dattaka Mimamsa (Sutherland).
Domat.	Domat's Civil Law.
Dubois.	Enlarged edition (1897) of Hindu Manners, Customs, and Ceremonies, by the Abbé Dubois.
Eq.	English Law Reports, Equity cases.

E.R.	English Reports.
F. MacN.	Sir F. MacNaghten's Considerations on Hindu Law [1829].
Fult.	Fulton's Reports, Supreme Court, Calcutta [1842-1844].
Ganapathi Iyer, H.L.	Hindu Law by P. R. Ganapathi Iyer, Advocate, Madras, Vol. I (1914).
Ganapathi Iyer, Endowments.	Hindu and Mahomedan Religious Endowments by P. R. Ganapathi Iyer, Advocate, Madras, 2nd edition (1918).
Gaut.	Gautama, Max Muller's Sacred Books of the East, Vol. II, by Bühler.
Ghose, H.L.	'The Principles of Hindu Law', by Jogendra Chunder Ghose, 3 volumes, Third edition (1917).
Gib.	Gibelin. Etudes sur le Droit civil des Hindous [1846].
Gobhila.	Gobhila Grihyasutra, S. B. E. Series, Vol. XXX.
Hals.	Halsbury's Laws of England, 1st and 2nd editions.
Hay.	Calcutta High Court, Appellate side, 2 volumes [1862-1863].
Hiranyakesin.	The Grihyasutras of Hiranyakesin, S. B. E. Series, Vol. XXX.
H.L.S.	'Hindu Law in its Sources', by Dr. Ganganath Jha, Vol. I (1930), Vol. II (1933).
H.S.L.	'A History of Sanskrit Literature', by Dr. A. Berriedale Keith (1928).
H.L.	Law Reports, House of Lords.
H.L.C.	Clark's Reports, House of Lords.
Hyde.	Calcutta Reports, High Court, Original side, 2 vols. [1864-1865].
I.A.	English Law Reports, Indian Appeals [from 1873].
I.A., Sup. Vol.	English Law Reports, Indian Appeals, Supplemental Volume [1872-1873].
I.C.	The Indian Cases.
Ind. Wisd.	Monier Williams' Indian Wisdom [1875].
I. S. Act.	The Indian Succession Act, 1925.
Jayaswal, M & Y.	Dr. Jayaswal's Tagore Law Lectures on 'Manu and Yajnavalkya'.
Jolly, T.L.L.,	Dr. Jolly's Tagore Law Lectures on Hindu Law, 1883.
Jolly, L & C.	'Law and Custom', by Dr Julius Jolly. Authorised translation by Bata Krishna Ghosh (1928).
Kane or H.D.S.	'History of Dharmasastra', by P. V. Kane, Advocate, Bombay, Vol. I (1930).
K.B.	English Law Reports, King's Bench.
Kn.	Knapp's Privy Council Cases [1831-1836].
Lah.	Lahore Series of the Indian Law Reports [from 1920].
L.J. Ch.	Law Journal, Chancery.
L.J.P.C.	Law Journal, Privy Council.
L.T.	Law Times Reports.
Luck.	Lucknow Series of the Indian Law Reports.

Macdonell, S.L.	'History of Sanskrit Literature', by Professor Macdonell.
Madanaparijata.	Portions translated by S. Sitarama Sastri in 9 M.L.J. Journal; part by S. S. Setlur, Vol. II, 515-541; Sanskrit text edited in Calcutta, 1893.
M.L.J.	Madras Law Journal.
M.L.T.	Madras Law Times.
M.L.W.	Madras Law Weekly.
M.W.N.	Madras Weekly Notes.
Mad.	Madras Series of the Indian Law Reports [from 1876].
Mad. Dec.	Decisions of the Madras Sudder Court. The selected decisions from 1805-1847 are cited by volumes: the subsequent reports, by years.
Mad. H.C.	Madras High Court Reports [1862-1876].
Madhaviya.	Madhava's Daya Vibhaga (Burnell) [1868], also edited by S. S. Setlur, Vol. I, 317-354
Mad. Jur.	Madras Jurist, 11 vols. [1866-1876].
Mad. Man.	Manual of the Madura District, J. H. Nelson, 1868.
Mal. Man.	Malabar Manual, by W. Logan, 3 vols. [1887-1891].
Maclean.	Manual of the Administration of Madras, Vol. I, 1885 by Dr. Maclean.
Mandlik.	The Vyavahara Mayukha and Yajnavalkya, Sanskrit text and translation with Introduction and Appendices, Bombay (1880), by Rao Saheb V. N. Mandlik.
Manu.	Translation by Dr. Buhler, Max Muller's Sacred Books of the East, Vol. XXV
Manu Bhashya of Medhatithi.	Translated by Dr. Ganganath Jha (Calcutta University Series, 1920).
Manu Smriti.	With six commentaries, edited by V. N. Mandlik (1886), Kulluka's commentary, Bombay edition.
Marsh.	Marshall's Cases on Appeal to the High Court of Bengal [1864].
Maxwell.	'On the Interpretation of Statutes', by Sir P. B. Maxwell, 7th edition, 1929.
Mayr.	Das Indische Erbrecht [1873].
Mimamsa Sutras of Jaimini.	By Dr. Ganganath Jha, Sacred Books of the Hindus Series, 1916.
Mer.	Merivale's Chancery Reports.
Mit.	Mitakshara by Vijnanesvara Yogi; Sanskrit text published by Moghe Sastri (1882); and with the commentaries of Subodhini and Balambhatti by S. S. Setlur (1912).
M. Dig.	Morley's Digest, 2 vols., Calcutta [1850].
M.I.A.	Moore's Indian Appeals [1836-1872].
Morton.	Decisions of late Supreme Court, Calcutta, 1 vol. [1774-1848].
Montr.	Montriou's Hindu Law Cases, Calcutta Supreme Court [1780-1801].
Morris.	Bombay Sudder Adawlut Reports.

M & S.	'Marriage and Stridhana', by Sir Gooroodass Banerjee, Tagore Law Lectures for 1878, 5th edition, 1925.
Muirhead.	'Historical Introduction to the Private Law of Rome', by J. Muirhead, 3rd edition, 1916.
Mysore.	Mysore Law Reports [1878-1895].
Mys. H.C.R.	Mysore High Court Reports.
Mys. L.J.	Mysore Law Journal.
Nar.	Narada, cited from translation by Jolly [London 1876]. Sacred Books of the East, Vol. XXXIII.
Naraharayya.	The Prayaschittadhyaya in the Mitakshara translated by S. N. Naraharayya, Sacred Laws of the Aryans Series, 1913.
N.C.	Sir Thomas Strange's Notes of Cases, Madras [1816].
Nelson's View.	View of the Hindu Law as administered by High Court of Madras, Nelson, Madras [1877].
———Scientific Study.	A Prospectus of the Scientific Study of the Hindu Law, Nelson, Madras [1881].
Nirnayasindhu.	Of Kamalakara. Sanskrit text (Bombay edition); part translated by S. S. Setlur, Vol. II. 559-568.
N.L.J.	Nagpur Law Journal.
N.L.R.	Nagpur Law Reports.
N.-W.P.	Decisions of the High Court of the N.-W. Provinces, Allahabad [1869-1875].
O.W.N.	Oudh Weekly Notes.
P. or Prob.	English Law Reports, Probate Division.
P. and D.	" " " Probate and Divorce Division.
Parasara Madhaviyam.	Part translated in 1 M.L.J. Journal; Sanskrit text published in Bombay Sanskrit Series (1893).
Paraskara.	Paraskara Grihyasutras, Sacred Books of the East Series, Vol. XXIX.
Pat.	Patna Series of the Indian Law Reports (from 1922).
P.L.T.	Patna Law Times.
P.L.R.	Punjab Law Reporter.
P.C.	Privy Council.
Pat. L.J. or P.L.J.	Patna Law Journal, Indian Law Reports [from 1916].
P.L.W.	Patna Law Weekly.
P.R.	Punjab Record.
P.W.N.	Patna Weekly Notes.
Perry, O.C.	Sir Erskine Perry's Oriental Cases, Bombay Supreme Court [1853].
Punjab Customs.	Notes on Customary Law as administered in the Courts of the Punjab, Boulnois and Rattigan, 1876.
Punjab Customary Law.	Three Volumes, edited by C. L. Tupper, C. S., Calcutta [1881].
Q.B.D.	English Law Reports, Queen's Bench Division.
Raghunandana.	The Daya Tattva of Raghunandana, translated by Golap Chandra Sarkar Sastri, Calcutta, 1874; also printed in Setlur, Vol. II, 469-514.

Raghunandana.	Author of Udhvahatattva.
Samskara Mayukha.	Of Nilakantha Bhatta. Text edited by J. R. Gharpure (1927).
Sankararama Sastri.	'Fictions in the development of Hindu Law Texts', by C. Sankararama Sastri, Advocate, Madras (1926).
Sankhayana.	Sankhayana Grihyasutra, Sacred Books of the East Series, Vol. XXIX.
Sarasvati Vilasa.	Translation by Rev. T. Foulkes (1881); also edited by S. S. Setlur, Vol. I, 119-211.
Saraswati, P. N.	'The Hindu Law of Endowments', by Pandit Pran Nath Saraswati (1897) (Tagore Law Lectures for 1892).
Sarkar, G. C.	Hindu Law by Golap Chandra Sarkar Sastri, 7th edition (1933).
Sarkar, Adoption.	Tagore Law Lectures on Adoption by Golap Chandra Sarkar Sastri, 2nd edition, 1916.
Sarvadhikari.	Dr. Rajkumar Sarvadhikari's Tagore Law Lectures, (1880); first edition, 1882, second edition, 1922.
Rang.	Rangoon Series of the Indian Law Reports (from 1923).
Sarkar, K. L., 'Mimamsa'.	'The Mimamsa Rules of Interpretation as applied to Hindu Law' by Kisori Lal Sarkar, Tagore Law Lectures for 1905.
Satap. Brah.	The Satapatha Brahmana, Sacred Books of the East Series, Volumes XII, XXVI, XLI, XLIII and XLIV.
S.B.E.	Sacred Books of the East Series, edited by Prof. Max Muller.
S.D.	Decisions of the Bengal Sudder Court. The selected decisions from 1791-1848 are cited by volumes, with a double paging, which refers to the original edition, and to that subsequently published in Calcutta The subsequent reports are referred to by years.
Sen, P.N.,	'Hindu Jurisprudence', by P. N. Sen, Tagore Law Lectures for 1909, first edition, 1918.
Setlur.	'Collection of Texts on Inheritance'. Vol. I, Mitakshara, 1-61; Vyavahara Mayukha, 62-118; Sarasvati Vilasa 119-211; Smritichandrika, 212-316; Vyavahara Madhaviyam, 317-354; Dattaka Mimamsa, 355-422; Dattaka Chandrika, 423-449. Vol. II, Dayabhaga, 1-108; Dayakramasangraha, 109-158; Vivada Ratnakara, 159-242; Vivada Chintamani, 243-274; Viramitrodaya, 275-468; Dayatattva, 469-514; Madanaparijata, 515-541, 569; Vaidyanatha Dikshitiyam, 544-550, 571-575; Parasara Madhaviyam, 550-557; Dharmasindhu, 588; Nirnayasindhu, 559-568; Samskara Kaustuba, 568-569.
Sev.	Cases on appeal to High Court of Bengal in continuation of Marshall, by Sevestre [1869].
Shamasastri.	Translation of Kautilya's Arthasastra, 2nd edition (1923).

Smritichandrika.	Smriti Chandrika (translated by Kristnasawmy Iyer), Madras [1867].
————	Sanskrit text edited by Mr. Gharpure; also by the Mysore Government Oriental Library Series (1914).
Sorg H.L.	Treatise on Hindu Law applicable to the French establishments in India, by Leon Sorg, Chief Justice of the Court of First Instance in Pondicherry, 1897.
——Co. Con.	Opinions of the Consultative Committee of Indian Jurisprudence at Pondicherry.
Steele.	'Law of Castes and Tribes in the Dekhan', by Steele.
Stokes, H.L.B.	Stokes' Hindu Law Books containing translations of Vyavahara Mayukha, by Borrodaile; Daya Bhaga and Mitakshara, by Colebrooke; Daya Krama Sangraha by Wynch; Dattaka Mimamsa, and Dattaka Chandrika by Sutherland [Madras, 1865].
Stra. H.L.	Sir Thomas Strange's Hindu Law [1830]; 4th edition, 1864; 5th edition, 1875.
Stra. Man.	Mr. T. L. Strange's Manual of Hindu Law, 1863.
Suth. Syn.	Mr. Sutherland's Synopsis of the Law of Adoption. Stokes' Hindu Law Books, Madras, 1865.
Theobald.	'A Concise Treatise on the Law of Wills', by H. S. Theobald.
Thesawaleme.	The Thesawaleme; or, Laws and Customs of Jaffna. (H. F. Mutukisna), 1862.
Thurston, E.	'Castes and Tribes in Southern India', by E. Thurston (7 volumes).
T. P. Act.	The Transfer of Property Act, 1882.
Trevelyan.	Hindu Law by Sir E. J. Trevelyan, 3rd edition, 1929.
————, Minors.	'The Law relating to Minors', by Sir E. J. Trevelyan, 6th edition, 1926.
Vaidyanatha Dikshitiyam.	Grantha edition; Kumbakonam, part translated in 6 M.L.J. Journal.
Varadaraja.	Varadaraja's Vyavahara Nirnaya (Burnell), 1872.
Vas.	Vasishtha, by Dr. Buhler, Max Muller's Sacred Books of the East, Vol. XIV.
V. Chand. or Vyav. Chand.	Vyavastha Chandrika, by Shyama Charan Sarkar, 2 volumes, 1878.
V. Darp. or Vyav. Darp.	Vyavastha Darpana, by Shyama Charan Sarkar, 2 volumes, 1883.
Vedic Index.	'Vedic Index of Names and Subjects', by Professor Macdonell and Dr. Keith, two volumes (1912).
Ves.	Vesey's (Junior) Reports, Chancery [1789-1817].
Ves. Sen.	Vesey's (Senior) Reports, Chancery, *tempore*, Lord Hardwicke [1746-1755].
Vidyarnava.	The Acharadhyaya of the Mitakshara, translated by Rai Bahadur Srisa Chandra Vidyarnava, Sacred Books of the Hindus Series (1918).
Vill. Com.	Maine's Village Communities [1871].
Viramit.	The Law of Inheritance as in the Viramitrodaya of Mitra Misra by Golap Chandra Sarkar Sastri, Calcutta, 1879; also reprinted in Setlur, II, 274-468.

Viramitrodaya-tika of Mitra Misra.	On the Smriti of Yajnavalkya. Translation by Mr. J. R. Gharpure
Visvarupa.	Commentary called 'Bala Krida' on Yajnavalkya by; translated by S Sitarama Sastri, Madras, 1900, Sanskrit text published in the Trivandrum Sanskrit Series, by Dr. T. Ganapati Sastri (1922).
Vishnu.	Vishnu translated by Jolly, Max Muller's Sacred Books of the East, Vol VII.
Viv. Chint.	Vivada Chintamani, by Vachaspati Misra. (Prosonno Coomar Tagore), 1865, Setlur, Vol. II, 243-274.
Vivada Ratna-kara.	Of Chandesvara. Translation by Golap Chandra Sarkar Sastri (1899); also edited in Setlur, Vol II, 159-212.
V. May.	Vyavahara Mayukha, translated by Borrodaile, by V N Mandlik, also by J R. Gharpure (1921), also in Setlur, Vol I, 62-118
W & B.	West and Buhler's Digest, Bombay, 4th ed., 1921.
Wharton.	Law Lexicon by Wharton, Eleventh edition, 1911.
Wilson.	'Glossary of Judicial and Revenue terms', by H. H. Wilson, 1855.
W.R.	Sutherland's Weekly Reporter (1864-1877).
W. R. Misc.	Weekly Reporter Miscellaneous Appeals.
W.R, P.C.	Weekly Reporter Privy Council Rulings.
W.R., Sp. No.	Weekly Reporter Special Number. Full Bench Rulings, July 1862 to July 1864.
W. MacN.	W. MacNaghten's Hindu Law, 1829.
Wigram.	A Commentary on Malabar Law and Custom, by Herbert Wigram, M C S., 1882.
Wym.	Wyman's Civil and Criminal Reports, Calcutta
Yajn.	Yajnavalkya, cited from translation, by V. N. Mandlik.

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P. 74, note (*y*), *for* Sarojin *read* Sanjivi.

P. 86, note *(l)*, *for* 'rules of English law and found applicable' *read* 'rules of English law if found applicable'.

P. 102, note (*d*), *for* N.W.N. *read* M.W.N.

P. 126, note *(y)*, *for* Vol. XXX *read* vol. XXIX.

P. 161, note *(m)*, *for* so ineligible *read* ineligibility.

P. 194, note *(p)*, *for* Putrasangra vidhi *read* Putrasangrahavidhi.

P. 231, line 15, *for* and to the duty *read* and the duty.

P. 270, note *(x)*, *for* 10 Pat. 642 *read* 12 Pat. 642.

P. 288, note *(w)*, *for* 7 W.R. 388 *read* 7 W.R., 338.

P. 371, note *(b)*, *for* Kedar Nath *v.* Pathan Singh *read* Kedar Nath *v.* Ratan Singh (1910) 37 I.A. 161, 32 All., 415

P. 376, note *(z)*, *for* 15 Bom., 301 *read* 15 Bom., 201

P 385, line 9, *for* 'a coparcener' *read* 'the karta'

P. 518, note *(b)*, *for* as reversioners *read* or reversioners.

P. 553, note *(n)*, *for* Act XXI of 1928 *read* Act XII of 1928.

P. 571, note *(f)*, *delete* (1875) 2 B H.C., 148 *supra.*

P 580, line 3 from bottom, *for* informaly *read* infirmity.

P. 634, line 9, *delete* 'collateral' before 'descendants'

P. 744, line 2, *for* as stridhana *read* as not stridhana.

P. 798, line 7, *for* vests *read* rests.

P. 988, line 7 from bottom, *for* 'appertion' *read* 'appertain.'

ADDENDA

P. 48, note *(v)*, *add* Aparaika was of the twelfth century.

P. 59, *add* to note *(r)*. The fourth point of difference mentioned below is now removed by Act XVIII of 1937.

P. 211, note *(a)*, and p. 905, note *(z)*. *Varada Narayana* v. *Vengu Ammal.* Reported also as *Narayana* v. *Vengu Ammal*, [1938] Mad., 621.

P. 238, note *(h)*, *add.* As to *Piare Lal* v. *Hem Chand* A.I.R. 1938 Lah., 539, see page 723 note *(q)*.

P. 310, note *(x¹)* and p. 402, note *(l¹)*, *after* A.I.R. 1938 P.C. 181, *add* 65, I.A., 213.

P. 374, note *(o)* and p. 376, note *(y¹)*, *after* (1938) 1 M.L.J 216, *add* [1938] Mad., 696.

P. 400, note *(e)*, *add at the end.* Dissenting from *Ragunathji* v. *The Bank of Bombay* (1909) 34 Bom., 72, a different view is expressed in *Nannu Shankar* v. *Bhashyam Ayyangar* (1938) 2 M.L.J. 256. If it means that the nature and degree of enquiry in the case of a loan taken for a trade or business and a loan borrowed by the manager of an ordinary joint family are in all respects the same, then it goes beyond the authorities cited in note *(c)* and this note. And 34 Bom., 72 has been followed in 35 Mad., 692, 695.

P. 496, note *(n)*, *after* A.I.R. 1938, Mad., 102, *add* [1938] Mad., 410.

P. 496, note *(l)*, p. 562, note *(m)* and p. 855, note *(j)*, *after* (1938) 1 M.L.J. 45, *add* [1938] Mad., 315.

P 732, note *(v)*, *add.* Except in the matter of successions before the Act, and of successions after the Act to religious offices and trusteeships, this question will not arise as to other disqualifications which are removed in the Mitakshara School. See § 595.

P. 756, note *(f)*, *after* A.I.R. 1938 All , 625, *add* [1938] All., 196.

P. 794, note *(t)* and p. 804, note *(o)*, *after* (1938) 1 M.L.J., 296, *add* [1938] Mad., 688.

P. 801, note *(a)*, *add.* *Challa Subbiah Sastri* v. *Paluri Pattabhiramayya.* (1908) 31 Mad., 446.

P. 835, note *(j)*, *after* A.I.R. 1937 Bom , 358, *add* [1938] Bom., 1.

HINDU LAW AND USAGE

CHAPTER I.

THE NATURE AND ORIGIN OF HINDU LAW

Earlier Views.

§ 1. Hindu Law is the law of the Smritis as expounded in the Sanskrit Commentaries and Digests which, as modified and supplemented by custom, is administered by the Courts. Till about the eighties of the last century, two extreme views were entertained as to its nature and origin. According to one view, it was legislation by sages of semi-divine authority or, as was put later, by ancient legislative assemblies (*a*). According to the other view, the Smriti law "does not, as a whole, represent a set of rules ever actually administered in Hindustan. It is, in great part, an ideal picture of that which, in the view of the Brahmins, *ought* to be the law" (*b*). The two opposed views, themselves more or less speculative, were natural at a time when neither the detailed investigation of the sources of Hindu law nor the reconstruction of the history of ancient India, with tolerable accuracy, had made sufficient progress. The publication of the complete editions and translations of the Smritis and the discovery and translation of Commentaries and Digests and the increase in the number of workers in the field marked an epoch in the study of the history of Hindu law.

Basis of Smritis.

As a result of the researches and labours of many scholars and the far greater attention paid to the subject, it has become quite evident that neither of the views stated above as to the nature and origin of Hindu law is, at all, correct. The Smritis were in part based upon actual usages existing at the time or theretofore and, in part, on rules framed by the Hindu jurists and rulers of the country. They did not however purport to be exhaustive and therefore provided for the recognition of the usages which they had not incorporated. The much later Commentaries and Digests were equally the exponents of the usages of their times in those parts of India

(*a*) P. C Tagore, Preface to Vivadachintamani; Sarvadhikari, 2nd Edn, 125-127.

(*b*) Maine, "Ancient Law," referring to the Code of Manu (12th Edn.) 17-18; Nelson's "View of Hindu Law," preface and Ch. I; Nelson's Scientific Study of Hindu Law (1881); Mr. Ellis says: "The law of the Smritis, unless under various modifications, has never been the law of the Tamil and cognate nations" (2 Stra. H. L. 163). Dr Burnell considers that the original Smritis might represent the actual laws, though of very limited application but that the Digests were merely speculative treatises (Burnell's Introduction to the Dayavibhaga, 13, 14).

where they were composed (*c*). And in the guise of commenting, they developed and stated the rules in greater detail, differentiated between the Smriti rules which continued to be in force and those which had become obsolete and incorporated also the new usages which had sprung up.

Their authority and composition.

§ 2. Both the ancient Smritis and the subsequent commentaries were evidently recognised as authoritative statements of law by the rulers and by the communities in the various parts of India. They were mostly composed under the authority of the rulers themselves or by learned and influential persons who were either their ministers or spiritual advisers. The Smritis and Digests were not private law books but were the recognised authorities in the courts and tribunals of the country. The Smritis or the Dharmasastras formed part of the prescribed courses of studies for the Brahmins and the Kshatriyas as well as for the rulers of the country (*d*). Obviously, the rules in the Smritis, which were sometimes all too brief, were supplemented by oral instruction in the law schools whose duty it was to train persons to become Dharmasastrins. And these were the purohits of the rulers and judges in the King's courts and were also to be found amongst his ministers and officials There can be no doubt that the Smriti rules were concerned with the practical administration of the law. And there is nothing very ideal in the actual rules of civil or criminal law as stated in the law books. We have no positive information as to the writers of the Smritis but it is obvious that as representing different Vedic or law schools, they must have had considerable influence in the community among whom they lived and wrote their works. The Kings and subordinate rulers of the country, whatever their caste, race or religion, found it politic to enforce the law of the Smritis which enjoined the people not to swerve from their duties, based as it was on the authority of the Vedas. It became a commonplace of statesmanship to uphold the system of castes and orders of Hindu society, with their rights and duties

Recognised manuals of instruction.

Their practical nature.

Enforced by rulers.

(*c*) "The truth is that commentaries and digests like the Mitakshara and Viramitrodaya owe their binding force not to their promulgation by any sovereign authority, but to the respect due to their authors and still more to the fact of their being in accordance with prevailing popular sentiment and practice Their doctrines may often have moulded usage but still more frequently they have themselves been moulded according to prevailing usage of which they are only the recorded expression." *Jogdamba Koer* v *Secretary of State for India in Council* (1889) 16 Cal. 367, 375; *Maharaja of Kolhapur* v. *Sundaram* (1925) 48 Mad. 1, 65, Ganapathi Iyer, 203. 204.

(*d*) Arthas. I., 5; Shamasastri, 10; Manu VII, 43; Yajn. I. 3; II. 2.

so as to prevent any subversion of civil authority (*e*). The Dharmasastrins and the rulers were therefore in close alliance. While the several Smritis were probably composed in different parts of India, at different times, under the authority of different rulers, the tendency, owing to the frequent changes in the political ordering of the country and to increased travel and interchange of ideas, was to treat them all as of equal authority, subject to the single exception of the Code of Manu. The Smritis quoted one another and tended more and more to supplement or modify one another.

Commentaries written by rulers and ministers.

§ 3. More definite information is available as to the Sanskrit Commentaries and Digests. They were either written by Hindu kings or their ministers or at least under their auspices and by their order (*f*). A commentary on the Code of Manu was written in the 11th century by Dharesvara or King Bhoja of Dhara in Malwa. A little later, Vijnanesvara wrote his Mitakshara on the Smriti of Yajnavalkya under the auspices of King Vikramarka or Vikramaditya of Kalyan in Hyderabad. King Apararka of Konkan, wrote his commentary on the Yajnavalkya Smriti in the 12th century. Jimutavahana, the author of the Dayabhaga, was, according to tradition, either a very influential minister or a great judge in the court of one of the Bengal Kings. Chandesvara, the author of the Vivada Ratnakara, was the chief minister of a King of Mithila in the 14th century. Madhavacharya, the great Prime Minister of the Vizianagaram Kings, wrote his Parasara Madhaviyam in the same century. About the same time, Visvesvarabhatta wrote his Subodhini, a commentary on the Mitakshara and a treatise Madana Parijata under the order of King Madanapala of Kashtha in Northern India who was also responsible for the recovery of the commentary of Medhatithi on Manu. Lakshmi Devi, a queen of Mithila, caused Misarumisra to compose his Vivadachandra just about the period. In the 15th century, Vachaspatimisra, who was himself a descendent of King Harasinha Deva of Mithila, wrote the Vivadachintamani under the auspices of King Bhairavendra, a ruler of Mithila. King Pratapa Rudra Deva of Orissa wrote the Sarasvati Vilasa. Nandapandita, the author of the Dattaka Mimamsa, wrote a commentary on the Vishnu Smriti, called the Vaijayanti under the auspices of an influential chief, Kesavanayaka alias Tammasanayaka. Nilakantha, the

(*e*) Manu. VII 31, 35-37; Yajn., I 360-361; Arthas, I, 3; Shamasastri, 8.

(*f*) Jolly T L.L. 27, 28, 32

author of the Vyavahara Mayukha, composed it under the orders of Bhagavanta Deva, a Bundella chieftain who ruled at Bhareha, near the Jumna. Mitramisra composed his Viramitrodaya by the command of Virasinha, the ruler of Orchcha and Datia.

Recognition during Muhammadan Rule.

§ 4 Much more significant and decisive is the fact, that, after the establishment of the Muhammadan Rule in the country, the Smriti law continued to be fully recognised and enforced. Two instances will serve In the 16th century, Dalapati, wrote an encyclopaedic work, on Dharmasastra, called the Nrisimha-prasada. He was a minister of the Nizamshah Dynasty of Ahmednagar which ruled at Devagiri (Dowlatabad) and wrote his work, no doubt, under the auspices of the Muhammadan ruler, who is extolled in several stanzas (*g*). Todaramalla, the famous finance minister of the Moghul Emperor Akbar, compiled an encyclopaedic work on civil and religious law known as Todarananda (*h*).

His Vyavahara Saukhya, Mr Kane says, deals with "several topics of judicial procedure, such as the King's duty to look into disputes, the *sabha*, judge, meaning of the word *Vyavahara*, enumeration of eighteen *vyavaharapadas*, time and place of *vyavahara*, the plaint, the reply, the agent of the parties, the superiority of one mode of proof over another, witnesses, documents, possession, inference, ordeals and oaths, grades of punishments and fines" (*i*) It relies not only on the Smritis but also on the Kalpataru, the Parijata, the Mitakshara, the Ratnakara and the Halayudha. During the Muhammadan rule in India, while Hindu Criminal Law ceased to be enforced, the Hindu Civil Law continued to be enforced amongst Hindus and the policy which was followed by the Muhammadan rulers was continued after the advent of the British.

Agreement with Hindu life and sentiment.

§ 5. It is plain that the earliest Sanskrit writings evidence a state of the law, which, allowing for the lapse of time, is the natural antecedent of that which now exists. It is still more obvious that the later commentators describe a state of things, which, in its general features and in most of its details, corresponds fairly enough with the broad facts of Hindu life; for instance, in reference to the condition of the

(*g*) Dr. Jolly and Mr. Kane who have examined this work say that the Benares Sanskrit College has a complete manuscript of this work. Kane, 406.

(*h*) This work is cited in the V. Mayukha, 22 (Mandlik's trans.).

(*i*) Kane, 421.

undivided family, the principles and order of inheritance, the rules regulating marriage and adoption and the like. There is ample proof of the latter assumption (*j*). If the law were not substantially in accordance with popular feeling, it seems inconceivable that those who are most interested in disclosing the fact should unite in a conspiracy to conceal it.

Hindu Law as territorial law.

§ 5-A. Again there can be little doubt that such of those communities, aboriginal or other, who had customs of their own and were not fully subject to the Hindu Law in all its details must have gradually come under its sway. For one thing, Hindu Law must have been enforced from ancient times by the Hindu rulers, as a territorial law, throughout the Aryavarta (*k*) applicable to all alike, except where a custom to the contrary was made out. This was, as will appear presently, fully recognised by the Smritis themselves. Customs, which were wholly discordant with the Dharma-sastras, were probably ignored or rejected. While on the one hand, the Smritis in many instances, must have allowed Custom to have an independent existence, it was inevitable that the customs themselves must have been largely modified, where they were not superseded, by the Smriti law. In the next place, a written law, especially claiming a Divine origin and recognised by the rulers and the learned classes would easily prevail as against the unwritten laws of less organised or less advanced communities, for, it is a matter of common experience that it is very difficult to set up and prove, by unimpeachable evidence, a usage against the written law.

'Hindus' an elastic term.

The assumption that Hindu law was applicable only to those who believed in the Hindu religion in the strictest sense has no basis in fact. Apart from the fact that Hindu religion has, in practice, shown much more accommodation and elasticity than it does in theory, communities so widely separated in religion as Hindus, Jains and Buddhists have followed substantially the broad features of Hindu Law as laid down in the Smritis. Indications are not wanting that Sudras also were regarded as Aryans for the purposes of

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(*j*) As regards Western India, we have a body of customs which cover the whole surface of domestic law, laboriously ascertained by local inquiry, and recorded by Mr. Steele, whilst many of the most important decisions in Borrodaile's Reports were also passed upon the testimony of living witnesses. As regards the United Provinces and the Punjab, we have similar evidence of the existing usages of Hindus proper, Jains, Jats and Sikhs, in the decisions of the courts of those provinces.

(*k*) The term Aryavarta is explained by Mitramisra in his Viramitrodayatika on Yajn. I, 2 as including the whole of Bharata-varsha (India) (Gharpure's trans. 8-9); Manu II, 22.

the civil law (*l*), for the Smritis took note of them and were expressly made applicable to them as well. A famous text of Yajnavalkya (II, 135–136) states the order of succession as applicable to all classes. The opposite view is due to the undoubted fact that the religious law predominates in the Smritis and regulates the rights and duties of the various castes But the Sudras who formed the bulk of the population of Aryavarta were undoubtedly governed by the civil law of the Smritis amongst themselves and they were also Hindus in religion. Even on such a question, as marriage, the fact that in early times, a Dvija could marry a Sudra woman shows that there was no sharp distinction of Aryans and non-Aryans and the offspring of such marriages were certainly regarded as Aryans The caste system itself proceeds upon the basis of the Sudras being part of the Aryan community. More significant perhaps is the fact that on such an intimate and vital matter as funeral rites, the issue of Vasishtha were assigned as manes or *pitrudevatas* for Sudras (*l*[1]).

Fusion of Aryans and Dravidians.

As regards Southern India, the original Dravidian people, who had a civilisation of their own, came under the influence of the Aryan civilisation and the Aryan laws and both blended together into the Hindu community and in the process of assimilation which has gone on for centuries, they have also adopted the laws and usages of the Aryans. They have retained some of their original customs, perhaps in a modified form Some of their deities have been taken into the Hindu Pantheon The enormous influence of the Itihasas and the Puranas and their translations and adaptations in the Dravidian languages spread the Hindu culture and Hindu law throughout Southern India where, as the inscriptions show, the Dravidian communities founded many Hindu temples and made numerous endowments They have been

(*l*) Manu II, 18, 24, Arthas III, 13, 1 (Dr. Jolly's Edn.); Shamasastri 222-223, Jayaswal, M & Y, 180; It is only the *pratilomajas* and the *patitas* that were excluded from the Aryan community. Dr. Jolly's statement (L & C, 95) that the Smritis were written by Brahmins for Brahmins is not correct The Smritis are generally made applicable to all the castes, while, for the religious rules, the words 'Dvija' and 'Arya' are treated as convertible terms, for all other purposes, the Sudra is included in the Aryan system. In many places, the term Brahmin, as the commentators point out, means a 'Dvija' and not only a Brahmin We must not forget the mixed character of the Smriti compilations dealing with different castes for different purposes and with all castes for many purposes and that, in the early days, the caste system was accepted without any demur.

(*l*[1]) Manu III, 197, these pitrus known as Sukalins were those who "complete, accomplish, sacrificial rites", Medhatithi, Jha, II, ii, p. 217.

as much Hindus in religion as the Hindus in the rest of India (*m*).

Reference may be made to the Thesawaleme, a compilation of Tamil customs, made in 1707, by the Dutch Government of Ceylon and the resemblances between the rules contained in it and the rules in Hindu Law are noticeable. It distinguishes between hereditary property, acquired property and dowry which closely correspond to the ancestral property, self-acquired property and stridhanam, though the incidents may not in all cases, be the same (*n*). **Thesawaleme.**

§ 6. Hindu law, as administered to-day, is only a part of the Vyavahara law of the Smritis and the latter, in its turn, is only a fraction of the rules contained in the Smritis, dealing with a wide variety of subjects, which have little or no connection with Hindu law as we understand it. According to Hindu conception, law in the modern sense was only a branch of Dharma which has the widest signification. Dharma includes religious, moral, social and legal duties and can only be defined by its contents (*o*). The Mitakshara mentions the six divisions of Dharma, of which the Smritis treat, as the duties of castes, the duties of orders or *asramas*, the duties of orders of particular castes, the special duties of kings and others, the secondary duties which are enjoined for transgression of prescribed duties and the common duties of all men (*p*). The Hindu Dharmasastras thus deal with the religious and moral law, the duties of castes and Kings as well as civil and criminal law. The statement in the Code of Manu that the Sruti, the Smriti, customs of virtuous men and one's own con- **Dharma and Positive Law.** **Mixed character of Smritis.**

(*m*) The influence of Kamba Ramayanam, which is an original work and not a translation, and the other best Tamil literature, in blending the two peoples and the two cultures must have been enormous. That the Aryan and Dravidian cultures fused together even during the first centuries of the Christian Era seems to be fairly clear so much so that the eight forms of marriages of the Aryan Code are also mentioned in the Sutras of the Tholkappiam (K. A N. Sastri 'The Colas', 75). The question who are Sumerians and who are Dravidians seems still to be an open question (Sir John Marshall, Mohenjo-Daro and the Indus Civilisation, I, 109-110).

(*n*) See Ganapathi Iyer, 35.

(*o*) Wilson's Glossary, p. 137; Dharma means law, virtue, legal or moral duty. See *Runchordas* v. *Parvati Bai* (1899) 26, I.A. 71, 23 Bom. 725, 735.

(*p*) Mitakshara on Yajn. I, 1 (Setlur's Edn., p. 4); Varnadharma, Asramadharma. Varnasramadharma, gunadharma, nimittadharma and sadharanadharma. The last is not the special dharma of any one caste but, being common to all, is naturally omitted in the fivefold division of varnadharma given by Medhatithi, Govindaraja and Kulluka in their comments on Manu II. 25.

science (self-approval) (*q*) with their widely differing sanctions, are the four sources of sacred law is sufficient to show the mixture of law, religion and morality in the Dharmasastras. But the Smriti writers knew the distinction between *Vyavahara* or the law the breach of which results in a judicial proceeding and the law in the widest sense. Yajnavalkya lays down that a violation of a rule of law or of an established usage results in one of the titles of law (*r*). Narada explains that "the practice of duty having died out among mankind, actions at law *(vyavahara)* have been introduced and the King has been appointed to decide them because he has the authority to punish" (*s*) Hindu lawyers generally distinguished the rules relating to religious and moral observances and expiation *(achara* and *prayaschitta)* from those relating to positive law *(vyavahara)* (*t*). From the researches of scholars as well as from the Smritis themselves, it is now abundantly clear that the rules of *Vyavahara* or civil law, relating to marriage, adoption, partition and inheritance in the Smritis were, in the main, drawn from actual usages, though, to an appreciable extent, they were modified or supplemented by the opinions of Hindu jurists.

Vyavahara law.

Moulded by usage and jurists.

Secular character of Vyavahara law.

Again and again, the Smritis declare that customs must be enforced and that they either overrule or supplement the Smriti rules (*u*). The importance attached by the Smritis to custom as a residual and overriding body of positive law indicates, therefore, that the Smritis themselves were largely based upon previously existing usages. Medhatithi, in his commentary on Manu, says that the Smritis are only codifications of the usages of virtuous men and that, codification being immaterial, customs are also included under the term Smriti (*v*). According to the Mitakshara, most texts are mere

(*q*) Manu II. 6, 12, Yajn I. 7 (Setlur, 8) adds as the fifth source of Dharma "the desire produced by a virtuous resolve" (Mandlik, 159).

(*r*) Yajn II. 5 (Setlur, 240, 241). Mandlik, 201.

(*s*) Narada S B. E Vol. 33, page 5.

(*t*) Yajnavalkya Smriti is arranged in three chapters Achara, Vyavahara and Prayaschitta The separation of the civil from the religious law was carried further by Narada and Brihaspati who confine themselves entirely to Vyavahara law Vyavahara means law in the modern sense, legal business, legal procedure, litigation, dispute. See also C.H.I., I, 281.

(*u*) Nar. I, 40 (S B.E Vol. 33, 15); Yajn. I, 156 (Mandlik 181); Manu VIII 3, 41; Brih. II 28; Katyayana's text cited in note 1 on page 3 of Dr. Jolly's 'L & C'.

(*v*) Jha, Medhatithi's Bhashya, Vol. I, part I, 211-212.

recitals of that which is notorious to the world (*w*). The Smritichandrika clearly says that Smritis like grammar and the like embody usages recognised from the earliest times and that the modes of acquisition by birth etc. referred to in the Smritis are the modes recognised by popular practice (*x*). The Vyavahara Mayukha states that the science of law, like grammar, is based upon usage (*y*). And the Viramitrodaya explains that the differences in the Smritis were, in part, due to different local customs (*z*).

Conclusive proof of the dependence of the Smritis on customary law is furnished by the reluctant recognition accorded by them to the Rakshasa, the Paisacha and the Asura forms of marriage. These could not have possibly derived from the religious law which censured them but must have been due only to usage. Similarly, six or seven of the secondary sons must have found their way into the Hindu system owing to the usages of a primitive age. So also a Brahmin, a Kshatriya or a Vaisya, taking wives from castes other than his own, was clearly not for the fulfilment of Dharma. The custom of marrying one's maternal uncle's daughter or paternal aunt's daughter, on the face of it contrary to the rule of prohibited degrees laid down by Yajnavalkya, was expressly recognised and mentioned by two Smritis as valid only by a special custom (*a*). The recognition by the Smritis of illegitimate sons of Dvijas and Sudras and their rights certainly rested on custom and not on religious law (*b*). The licensing of gambling and prize-fighting was not the result of any religious law but was probably due either to communal pressure or to King's law.

§ 7. In the Brahmana and Sutra periods, the Aryans were not wholly devoted to the performances of sacrifices, religious ceremonies and to metaphysical speculations but must have enjoyed an equally large secular life. It was usual for ancient Hindu writers to deal not only with Dharma but also with Artha, the second of the objects of human life **Arthasastras.**

(*w*) Mit. I. IV 14, S.H L.B, 387.

(*x*) See the Smritichandrika (trans.) I, 27.

(*y*) Mandlik 85; Jolly, L & C, 96.

(*z*) Viramit. Ch. II, part II, para 19; Sarkar's trans., 127; Setlur's pt., 2, 370.

(*a*) Baudh I. 1, 2, 1-6 (S.B.E. Vol. 14, 146, 147); Brih. II. 29 30 (S.B.E. Vol. 33, 287).

(*b*) Manu IX. 179; Yajn. II, 133; Mandlik, 219.

in Arthasastras or works dealing with the science of politics, jurisprudence and practical life (*c*).

Unfortunately, owing to the disappearance of such works, the distorted picture of an Aryan society wholly dominated by sacrifices and rituals remained with the writers on Hindu Law throughout the last century with the result that their views about the origin and nature of Hindu Law were materially affected by it But the recent discovery of Kautilya's Arthasastra has enabled scholars and others to arrive at a juster appreciation of ancient Hindu life and society (*d*). This treatise describes the complete Indian polity, probably of the Mauryan age, its land system, its fiscal system, its law and administration and its social organization, besides throwing unexpected sidelights on various aspects of life In the Cambridge History of India, Dr. F W. Thomas makes it the basis of a chapter on the social and political organization of the Mauryan empire under Chandragupta (c. 321 B.C. to 298 B.C) and his successors (*e*). While all are agreed as to the importance of the Arthasastra in describing early Hindu Society, opinions have differed as to its date and authorship. The authorship is ascribed, both in the work and by long tradition, to Vishnugupta whose patronymic was Chanakya and whose *nom de plume* was Kautilya (*f*). The early Jain.

Kautilya's Arthasastra.

(*c*) K V Rangaswami Iyengar's Ancient Indian Economic Thought, 12-22, Bharadwaja, Brihaspati, Prachetas Manu, Visalaksha and Usanas are mentioned among the authors on Arthasastra, Dandaniti or Rajaniti. The Smritichandrika refers to Arthasastras as manuals of popular usage XI, 1, 8

(*d*) Dr. Shama Sastri who discovered it has published both the Sanskrit text and an English translation separately and Dr Jolly and Dr. Schmidt have also edited the text with an introduction. Dr T Ganapathi Sastri has also published the text with a commentary of his own in Sanskrit (Trivandrum Sanskrit series).

(*e*) Vol I Ch XIX

(*f*) Dr Jolly's (Introdn. 29, 47) conjecture that a theoretician wrote it is purely subjective. The shrewd practical insight which it displays with its wealth of circumstantial detail indicates a man of action intimately connected with the system he is describing. Its beliefs in magic and witchcraft were the limitations of his age as of much later ages in all countries Dr Jolly, however, concedes that much of its matter and its leading doctrines may be older and even pre-Buddhistic "Its language is archaic and abounds in rare and difficult terms" (Jolly Introdn. 5). Dr. Keith doubts whether Chanakya would have referred to himself as Kautilya (crooked). The humorous use of a nickname evidently earned by his policy is in keeping with the use of the nicknames of his predecessors Kaunapadanta for Bhisma, Vatavyadhi for Uddhava, Pisuna for Narada and Bahudantiputra for Indra. According to Dr. Thomas, it can, with certainty be dated in or near the Mauryan period. (C.H.I. I. 482.) Dr. Charpentier and Professor Hopkins concede that it may possibly be the real work of Chanakya or Kautilya written about 300 B.C. (C H.I. I. 151. 294).

Buddhist and Hindu traditions agree that the last of the Nandas was dethroned by Chandragupta, the founder of the Mauryan dynasty, with the aid of Chanakya (*g*). The Vishnupurana, the Nitisara of Kamandaka (not later than 700 A.D. but possibly much earlier), the Panchatantra (3rd Century A.D.), Dandin (about the 6th Century A.D.) in his Dasakumaracharita, Bana (about 640 A.D.) in his Kadambari, and Medhatithi (825-900 A.D.) refer to him as Vishnugupta, Chanakya and Kautilya (*h*). While the references in the above works establish that Vishnugupta alias Chanakya or Kautilya was the author of an Arthasastra and was of the time of Chandragupta, the specific statements of Dandin that the Arthasastra was written in the interests of the Maurya and consisted of 6,000 slokas and the specimens he gives of some its details identify the extant text as the text before him. The severe and just condemnation by Bana of the work and its general trend makes the identification almost complete. Incidentally, these early references make it probable that some centuries must have elapsed between their dates and the composition of the Arthasastra (*i*). Dr. Jolly and Dr. Keith, the former provisionally, assign the work to the 3rd century A.D. (*j*); but on the whole the view taken by Dr. R. Shamasastri, Dr. Fleet, Dr. Jacobi, Dr. R. K. Mookerjee, Dr. Jayaswal and Mr. Kane that it was the work of Chanakya written about 300 B.C. must be held to be the better opinion (*j*[1]).

Law in the Arthasastra.

§ 8. The Arthasastra of Kautilya, whatever its authority in ancient times, cannot now be regarded as an authority in modern Hindu Law. It was finally set aside by the

(*g*) C H I. I, 164. The early Jain and Buddhist writers who state the tradition are referred to in Dr. Radhakumud Mookerjee's Introduction to N. N. Law's Ancient Hindu Polity, p. xii, xiii.

(*h*) Shamasastri, Introdn. Medhatithi quotes from Kautilya, Kane, 270

(*i*) Its cynical and ruthless state policy based on materialistic (Lokayata) philosophy which he advocates, its elaborate system of spies, disguises and stratagems, its methods for filling the King's Exchequer, and its detailed provisions regarding liquor, slaughter-houses and prostitutes, probably best accord with the conditions of Chandragupta's age and with his autocratic and highly organised rule. It is hardly likely to have been written or to have attained the vogue it did, after Buddhism with its high ethical teachings became practically a state religion or after the revival of Brahminism with its emphasis on Dharma and the increasing ascendency of the Vedantic atman theory when the Dharmasastra school held the field as against the Arthasastra school.

(*j*) Jolly, Arthas. Introdn. 29; Keith, H.S.L. 461.

(*j*[1]) Shamasastri, Introdn.; Kane, 99; N. N. Law's Ancient Hindu Polity, Introdn.

Dharmasastras (j^2). Its importance lies in the fact that it is not a Dharmasastra but a practical treatise, inspired by Lokayata or materialistic philosophy (k) and based upon worldly considerations and the practical needs of a state. There is no religious motive behind it. Books III and IV of the Arthasastra are of very great importance for the history of Hindu Law.

The former styled the 'Dharmasthiya' or the law of the courts deals with *Vyavahara* or positive law and the latter entitled 'The Removal of Thorns' with the prevention, trial and punishment of offences and regulations concerning artisans, merchants, physicians and others The outstanding facts that emerge from a study of Book III are that the castes and mixed castes were already in existence, that marriages between the castes were not uncommon and that the distinction between the approved and the unapproved forms of marriage was a real one. It recognises divorce by mutual consent except in respect of Dharma marriages It allows re-marriage of women far more freely than the later rules on the subject It contains detailed rules of procedure and evidence based on actual needs While it refers to the twelve kinds of sons, it places the aurasa son and the son of the appointed daughter on an equal footing and declares that the kshetraja and the adopted son as well as the other secondary sons are heirs "to him who accepts them as his sons" and not to his collaterals It recognises anuloma unions and shares are provided for the offspring of such unions but it disallows *pratiloma* unions A parasava son begotten by a Brahmin on a Sudra woman was entitled to one-third share. It did not recognise the right by birth in ancestral property, for, like Manu, it negatives the ownership of sons whose parents are alive (l) It provides that when there are several sons, brothers and cousins, the division of

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(j^2) Dr Jolly, Arthas Introdn 20, Jayaswal, M & Y, 68, 235; The plain meaning of Yajn II, 21 is that the Dharmasastras prevailed against the Arthasastras of Kautilya and his predecessors The laboured gloss of the Mitakshara, centuries later, is unconvincing and unhistorical Mit, Setlur Edn, 295-297

Kautilya's stringent rules against a person becoming an ascetic indicates that the book was probably pre-Asokan The view of Jayaswal (M & Y, 3, 62) and Kane 94, 95 that Yaj Smriti borrows from Kautilya's Arthasastra is to be preferred to Dr Jolly's suggestion that Kautilya borrows from Yajnavalkya It is really a matter of dates and Dr Ganapathi Sastri's view that Kautilya was of the Mauryan times but borrowed from Yajnavalkya whom he places far earlier than Kautilya affords no warrant for Dr Jolly's view

(k) Arthas I, 2 & 4, Shamasastri, 5-9

(l) Jayaswal, M & Y, 263.

property is to be made per stirpes. The grounds of exclusion from inheritance were already known. Its rules of inheritance are, in broad outline, similar to those of the Smritis; while the daughter is recognised as heir, the widow is not; and the sapindas and the sakulyas (*m*) and the teacher and the student are recognised as heirs. It does not recognise trial by ordeals.

The Arthasastra furnishes therefore very material evidence as regards the trustworthy character of the information given in the Dharmasastras. As Prof. Hopkins says, it agrees with the Smritis in a multitude of cases showing that the scheme of law arranged by the Brahmins was neither ideal nor invented but based upon actual life (*n*).

Early Judicial Administration.

§ 9. It is impossible to have a correct picture of the nature of Hindu Law without some idea of the administration of justice in early times. Both the Arthasastra and the Dharmasastras establish the fact that the King was the fountain of justice (*o*). In addition to the King himself as a court of ultimate resort, there were four classes of courts (*p*). The King's court was presided over by the Chief Judge, with the help of counsellors and assessors (*q*). There were three other courts of a popular character called Puga, Sreni and Kula (*r*). These were not constituted by the King. They were not, however, private or arbitration courts but customary tribunals which were part of the regular administration of justice and their authority was fully recognised (*s*). Puga was the Court of fellow-towns-

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(*m*) Sapindas refer to near agnates within three degrees; Sakulyas did not mean cognates but remoter Sapindas or Samanodakas. *cf.* Manu IX, 187.

(*n*) C.H.I. I, 294.

(*o*) Gaut. XI, 19-24; Manu, VIII, 13, Yajn. I, 360; II, 1; Mit., Setlur's Edn., 218, 226-229.

(*p*) In the Mauryan age, there were two classes of courts, the Dharmasthiya courts for the administration of civil justice and the Kantakasodhana courts for the trial of offences and crimes.

(*q*) Manu VIII, 9-10; Yajn. II, 1, 3; Nar. III, 4, 15, 17; (S.B.E. Vol. XXXIII, 36, 39, 46); Brih. I, 2-3; 4, 24; V. Mayukha (Mandlik's Edn. 3-4).

(*r*) Nar. Introdn. I, 7 (S.B.E. Vol. XXXIII, 7); Brih. I, 29-30 (S.B.E. Vol. XXXIII, 281).

(*s*) Dr. Jolly and Sir G. Banerjee call them private or arbitration courts but they really appear to have been customary courts recognised by law, from whose decisions appeals successively lay till the King's court was reached. Banerjee, M & S, 5th edn., 4, 7; Jolly L & C, 293; Sankararama Sastri, 38-43; C.H.I., I, 485: Panchayat Courts, permanent or constituted ad hoc. Offences against caste or religion were tried by committees of men well-versed in different branches of knowledge; Gaut. XXVIII. 49; Vas. III, 20; Baudh. I, i, 8; Manu XII, 111.

men or fellow-villagers, situated in the same locality, town or village, but of different castes and callings. Sreni was a court or judicial assembly consisting of the members of the same trade or calling, whether they belonged to the different castes or not. Kula was the judicial assembly of relations by blood or marriage (s^1) Kula, Sreni, Puga and the Court presided over by the Chief Judge *(pradvivaka)* were courts to which persons could resort for the settlement of their cases and where a cause was previously tried, he might appeal in succession in that order to the higher Courts (t). As the Mitakshara puts it, "In a cause decided by the King's officers, although the defeated party is dissatisfied and thinks the decision to be based on misappreciation, the case cannot be carried again to a Puga or the other tribunals. Similarly in a cause decided by a Puga there is no resort to Sreni or Kula In the same way in a cause decided by a Sreni, no recourse is possible to a Kula On the other hand, in a cause decided by Kula, Sreni and other tribunals can be resorted to In a cause decided by Sreni, Puga and the other tribunal can be resorted to And in a cause decided by a Puga, the Royal Court can be resorted to" (u). These inferior courts had apparently jurisdiction to decide all law suits among men, excepting violent crimes (v) An important feature was that the Smriti or the law book was mentioned as a 'member' of the King's court. Narada says, "Attending to the dictates of law book and adhering to the opinion of his Chief Judge, let him try causes in due order" (w) It is plain therefore that the Smritis were the recognised authorities both in the King's courts and in the popular tribunals Practical rules were laid down as to what was to happen when two Smritis disagreed. Either there was an option as stated by Manu or as stated by Yajnavalkya, that Smriti which followed equity as guided by the practices of the old prevailed. Rules of procedure and pleading were also laid down in great detail. They must have been framed by jurists and rulers and could not be due to any usage. Eighteen titles of law containing

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(s^1) Jnatis, sambandhis and bandhus

(t) Brih I, 29-30; (S B E Vol XXXIII, 281).

(u) Mit on Yajn. II 30 (Setlur's Edn 357-358) Sankararama Sastri 41.

(v) Brih. I, 2, 8; (S B E Vol XXXIII, 281).

(w) Nar Introdn 1-15, 35, (S B E Vol XXXIII, 8, 14) Brih I, 4; (S B E XXXIII, 277) Dr Jolly refers to a note of Asahaya that the Smritis mean the composition of Manu, Narada, Visvarupa and others Apparently, the Visvarupa referred to is the commentary of Visvarupa on the Yajn. Smriti. See also Kane, 247-248.

detailed rules are mentioned by Manu and other writers. They are (1) non-payment of debts (2) deposit and pledge (3) sale without ownership (4) concerns among partners (5) resumption of gifts (6) non-payment of wages (7) non-performance of agreements (8) rescission of sale and purchase (9) disputes between the owner and his servants (10) disputes regarding boundaries (11) assault (12) defamation (13) theft (14) robbery and violence (15) adultery (16) duties of man and wife (17) partition and inheritance and (18) gambling and betting (*x*). These titles and their rules appear to have been devised to meet the needs of an early society (*y*). While the rules as to inheritance and some of the rules relating to other titles appear to have been based only on usage, the other rules in most of the titles must have been framed as a result of experience by jurists and officials in the ancient Indian states. The law of crimes, punishments and fines was obviously a matter concerning the ruler and they could not have been framed by the Dharmasastrins without reference to the requirements of the rulers and their ministers. A bare perusal of the eighteen titles of law is sufficient to show the composite character of ancient Hindu Law: it was partly usage, partly rules and regulations made by the rulers and partly decisions arrived at as a result of experience. This is frankly acknowledged by the Smritis themselves. Brihaspati says that there are four kinds of laws that are to be administered by the King in the decision of a case. "The decision in a doubtful case is by four means, *Dharma, Vyavahara, Charitra* and *Rajasasana*" (*z*). *Dharma* refers to moral law or rules of justice, equity and good conscience. *Vyavahara* refers to civil law as laid down in the *Smritis*. *Charitra* refers to custom and *Rajasasana* refers to King's edicts or ordinances. That this is the correct meaning of Brihaspati's text appears from four verses of Katyayana quoted in the Smritichandrika (*a*). Both the Naradasmriti

Eighteen titles of law.

Composite Nature of the Smritis.

Four sources of Vyavahara law.

(*x*) Manu VIII, 4-7.

(*y*) "This classification seems to have been taken directly from actual life and fully corresponds to the necessities of the life of those days" Jolly., L & C, 35.

(*z*) Brih., II, 18.

(*a*) Smritichandrika, Vyavaharakanda, 21, 22 (Mysore Edn.). The difficulty in understanding the exact meaning of this rather obscure verse (Brih. II, 18), without the light thrown upon it by Katyayana's verses is to be seen in the different attempts at interpretation made by Dr. Shamasastri, Mr. Jayaswal and Mr. N N. Law. [Arthas, III, 1, 51 (Dr. Jolly's Edn.). Shamasastri, 185; Jayaswal, M & Y, 72, 80; N. N. Law 'Ancient Hindu Polity', 122-123. See also C.H.I., I, 485.] The verses of Katyayana are "Where an offender is convicted and

and the Arthasastra of Kautilya state substantially the same four kinds of laws (*b*). According to Narada and Kautilya, these four, *Dharma, Vyavahara, Charitra* and *Rajasasana,* are the bases of legal proceedings, each succeeding one superseding the previous one. The rules of justice, equity and good conscience give way to the *Vyavahara* law of the Smritis, which, in its turn, gives way to customary law and the King's equity prevails over all. The conclusion is therefore irresistible that *Vyavahara* or positive law, in the broad sense, was shaped by the rules in the Dharmasastras, by custom and by the King's ordinances It is also evident that, in the absence of rules in the Smritis, rules of equity and reason prevailed. Kautilya adds that whenever the sastra or sacred law is in conflict with the *Dharmanyaya, i.e*, King's law based upon equity or reason, then the latter shall be held to be authoritative, for there the original text on which the sacred law is based loses its force The Arthasastra fully describes the King's edicts in Chapter X of Book II from which it is fairly clear that the edicts proclaimed laws and rules for the guidance of the people. Where they were of permanent value and of general application, they were probably embodied in the Smritis

Limits of Religious Influence.

§ 10 The religious element in Hindu Law has been greatly exaggerated. Rules of inheritance were probably closely connected with the rules relating to the offering of funeral oblations in early times It has often been said that he inherits who offers the *pinda* It is truer to say that he offers the *pinda* who inherits (*c*) The nearest heirs mentioned in the Smritis are the son, grandson and great-grandson They were the nearest in blood and would take the estate No doctrine of spiritual benefit was necessary to entitle them to the inheritance The rule in Manu IX, 187 "Always to that relative within three degrees who is nearest to the deceased sapinda, the estate shall belong" carries the matter no further. The duty to offer *pindas* in early times must have been laid on those who, according to custom, were

where money is adjudged in favour of the owner, the decision in such a litigation is said to be by means of *Dharma.* Where, in the judicial settlement of disputes, is applied a Smriti rule propounded by the seers of Dharma, the adjudication is said to be by *Vyavahara.* Whatever is done in consonance with justice or opposed to it, constantly by reason of a territorial usage is called *Charitra* The rule which a king establishes in supersession of *Dharma, Vyavahara* and provincial usage is valid, and it is known as the King's command." Sankararama Sastri, 149 154.

(*b*) Narada Introdn. I 10, 11; (S B E. Vol XXXIII, 7); Arthas. III, I, 51; Shamasastri, 185.

(*c*) Vishnu XV, 40; "Pinda *follows* the family name and the estate". Manu IX, 142.

entitled to inherit the property. In most cases, the rule of propinquity would have decided who was the man to take the estate and who was bound to offer the *pinda*. When the right to take the estate and the duty to offer the *pinda*—for it was only a religious duty, were in the same person, there was no difficulty. But later, when the estate was taken by one and the duty to offer the *pinda* was in another, the doctrine of spiritual benefit must have played its part. Then the duty to offer *pinda* was confounded with the right to offer it and to take the estate (*d*). But whichever way it is looked at, it is only an artificial method of arriving at propinquity. As Dr. Jolly says, the theory that a spiritual bargain regarding the customary oblations to the deceased by the taker of the inheritance is the real basis of the whole Hindu law of Inheritance, is a mistake (*d*[1]). Even in the Bengal school, where the doctrine of spiritual benefit was fully applied and Jimutavahana deduced from it practical rules of succession, it was done as much with a view to bring in more cognates and to redress the inequalities of inheritance as to impress upon the people the duty of offering *pindas*. When the religious law and the civil law marched side by side, the doctrine of spiritual benefit was a living principle and the Dharmasastrin could co-ordinate the civil right and the religious obligation. But it is quite another thing, under present conditions, when there are no longer legal and social sanctions, for the enforcement of religious obligations for courts to apply the theory of religious benefit to cases not expressly covered by the commentaries of the Dharmasastrins. For, to apply the doctrine, when the religious duty is no longer enforceable, is to convert what was a living institution into a legal fiction. Vijnanesvara and those that followed him, by explaining that property is of secular origin and not the result of the Sastras and that right by birth is purely a matter of popular recognition, have helped to secularise Hindu Law enormously. Equally Vijnanesvara's revolutionary definition of sapinda relation as one connected by particles of body, irrespective of any connection with pinda offering, has powerfully helped in the same direction.

Application of Hindu Law in the present day.

§ 11. Hindu Law is now applied only as a personal law (*e*) and its extent and operation are limited by the vari-

(*d*) E.g., while the duty of agnates to offer pindas continued, the recognition of the daughter's son as heir was followed by imposing the same duty upon him.

(*d*[1]) Jolly, T.L.L. 168.

(*e*) *Mitar Sen* v. *Maqbul Hasan Khan* (1930) 57 I.A., 313, 315, 35 C.W.N., 89.

ous Civil Courts Acts. As regards the three Presidency Towns of Calcutta, Madras and Bombay, it is governed by S 223 of the Government of India Act, 1935, which embodies S. 112 of the Act of 1919 (*f*). The Courts are required to apply Hindu Law in questions regarding succession, inheritance, marriage or caste or any religious usage or institution (*f*[1]). Questions relating to adoption, minority and guardianship, family relations, wills, gifts and partitions are also governed by Hindu Law though they are expressly mentioned only in some of the Acts and not in the others They are really part of the topics of succession and inheritance in the wider sense in which the Acts have used those expressions Liability for debts and alienations, other than gifts and bequests, are not mentioned in either set of Acts, but they are necessarily connected with those topics and are equally governed by Hindu law. The differences in the several enactments do not mean that the social and family life of Hindus should be differently regarded from province to province. Some of the enactments only reproduced the terms of still earlier regulations to which the Company's Courts had always given a wide interpretation and had indeed added by administering other rules of personal law as rules of justice, equity and good conscience (*g*)

(*f*) Under the charters of the High Courts, in the exercise of their ordinary original civil jurisdiction, Hindu Law is to govern the right of parties, in all matters of contract and dealing, among Hindus except where such matters have been the subject of legislative enactments (S. 112 of the Act of 1919) The rule of Damduput, under the Hindu Law of contract, according to which the interest exceeding the amount of principal cannot be recovered at any one time [*Shah Mukhum* v. *Baboo Sree Kishen* (1886) 12 M I A, 157, 187] has been recognised to be still in force in Bombay and Calcutta cities *Sundarabai* v. *Jayavant* (1897) 24 Bom 114, This rule applies to mortgages also even after the enactment of the Transfer of Property Act, *Jeewanbai* v. *Manordas* (1911) 35 Bom, 199, *Kunjalal* v. *Narasambal* (1915) 42 Cal, 826, as to the mofussil of Bombay, the Damduput rule originally applied by Bom Reg V of 1827 is still in force. *Khushalchand* v *Ibrahim* (1866) 3 Bom, H C A C J, 23, *Narayan* v *Satvaji* (1872) 9 Bom H C 83, *Nobin Chunder* v *Ramesh* (1887) 14 Cal, 781, *Mahamaya* v. *Abdur Rahim* [1937] 1 Cal, 450. It is not in force in Madras Mofussil nor does it appear to have been applied in the City of Madras. *Annaji* v. *Ragubai* (1871) 6 M.H C, 400, *Madhwa Siddhanta Onnahini Sabha* v. *Venkataramanjulu* (1903) 26 Mad, 662

(*f*[1]) The Madras Civil Courts Act III of 1873, S. 16, Bengal, Agra and Assam Civil Courts Act, 1887, S. 37; The Punjab Laws Act, 1872, S. 5, Bombay Reg IV of 1827, S. 26, The C P Laws Act, 1875, S. 5; The Oudh Laws Act, 1878, S. 3

(*g*) *Sabir Hussain* v. *Farzand Hasan*, 42 Cal. W N 353, A I R 1938 P C 18 approving *Zohoroodeen* v. *Baharoollah* (1864) W R, 185.

CHAPTER II.

THE SOURCES OF HINDU LAW.

Sources of Hindu Law.

§ 12. The sources of Hindu Law are (1) the Smritis or the Dharmasastras (2) the Commentaries and the Digests and (3) Custom. The enactments of the legislature declaring or altering rules of Hindu Law have now become an additional source. Where the Smritis and the Commentaries are silent or obscure, the principles of justice, equity and good conscience are now, as in ancient Hindu Law, available within limits to supplement the rules of Hindu Law. Decisions of courts have sometimes been referred to as an additional source but, strictly speaking, courts do not make laws but only ascertain them (*a*).

Sruti.

The *Sruti* (that which has been heard) is in theory the primary and paramount source of Hindu Law and is supposed to be the language of divine Revelation (*a*[1]). By the term *Sruti*, the four Vedas namely the Rik, the Yajus, the Saman and the Atharva, along with their respective Brahmanas are meant (*b*). The *Sruti*, however, has little or no legal value. It contains no statements of law, as such, though its statements of facts are occasionally referred to in the Smritis and the Commentaries as evidence of legal usage. The Vedas contain passages alluding to the Brahma, Asura and Gandharva forms of marriage, to the necessity for a son, to the Kshetraja, the Dattaka, and the son of the appointed daughter, to partition amongst sons and to exclusion of women from inheritance (*c*). The sources of Dharma as mentioned by Manu and Yajnavalkya are not the sources of *Vyavahara* law alone but the sources of Dharma in the wider sense. But as far as *Vyavahara* or Hindu Civil law is concerned, the Smritis of Narada and Brihaspati, as explained in the last chapter, have stated its sources as Smritis, Custom, King's ordinances and equity and reason.

Smritis.

Rules, as distinct from instances, of conduct are, for the first time, embodied in the Smritis. The Smritis or tradition are of human origin and refer to what is supposed to

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(*a*) Per Coutts Trotter J., in *Pudiava* v. *Pavanasa* (1922) 45 Mad., 949, 967, 968 F.B.

(*a*[1]) Manu II, 12; Yajn. I, 7.

(*b*) Medhatithi on Manu II, 6 cited in Jha. (H.L.S.) I, 22.

(*c*) Kane, 4 to 7.

Puranas.

have been remembered by the sages who were the repositories of the Revelation. They are the Dharmasastras (*d*). The *Itihasas* and *Puranas* are sometimes included in the term 'Smriti' in its most comprehensive sense and "are reckoned as a supplement to the Scripture, and as such, constitute a fifth Veda (*e*)". They are mentioned in the Chandogya Upanishad, the Brihadaranyaka Upanishad and the Gautama Dharmasutra. They have been referred to in the decisions of courts and occasionally in some of the Commentaries and Digests (*e*[1]) While the *Puranas* may perhaps be received in illustration of the rules contained in the Smritis, they have little value in the domain of civil law (*f*). Mitramisra, in his commentary on the Yajnavalkya Smriti says that the *Puranas* are not authoritative on law (*g*).

List of lawgivers.

§ 13. The Smriti of Yajnavalkya gives a list of twenty sages as lawgivers "Manu, Atri, Vishnu, Harita, Yajnavalkya, Usanas, Angiras, Yama, Apastamba, Samvarta, Katyayana, Brihaspati, Parasara, Vyasa, Sankha, Likhita, Daksha, Gautama, Satatapa and Vasishtha, these are the propounders of the Dharmasastras" (*h*). The Mitakshara explains that the enumeration is only illustrative and that the Dharmasutras of Baudhayana and others are not excluded (*i*) Little is known of the authors and it is impossible to ascertain when they lived. Many of the names are probably mythical

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(*d*) Visvarupa and Vijnaneswara on Yajn. I, 7, say that Smritis and Dharmasastras are synonymous See also *Balusu's* case (1899) 26 I A, 113, 131, 22 Mad, 398, 411. The Smritis have authority as based on the Veda either because the persons are the same that performed the actions laid down in the Veda or are the same that learnt and studied the Veda, Jha's Mimamsa Sutras, Part I, 56-57.

(*e*) Per Mahmood, J, in *Ganga Sahai* v. *Lekraj Singh* (1887), 9 All, 253, 389 Jha (H.L.S) I, 29

(*e*[1]) The Ramayana is referred to in *Muttuvaduga* v. *Doraisinga* (1878) 3 Mad, 309, 326

(*f*) The relevant verse in the Yajnavalkya Smriti on the sources of law is I. 7 and not I 3 and while the former, which follows Manu II. 12, excludes the *Puranas*, the latter refers to them not as Dharmasastras but as one of the fourteen sources of knowledge and Dharma. The *Puranas* on their own showing, give an account of the creation of the universe, of dynasties, of gods, sages and kings, especially of the two great dynasties and contain mythological and didactic stories.

(*g*) Yajn. Smriti with Viramitrodayatika, (Gharpure's trans.) 29; Sarkar, H.L. 7th Edn. 22, and Prof. Wilson think that while they are not authoritative, they can be received in explanation or illustration.

(*h*) Yajn. Smriti I, 4, 5; Vidyarnava's trans. p. 10.

(*i*) Mit Vidyarnava's trans p. 10 For a complete list, see Preface to Digest, xiii, W & B 13-32, 1 Morley's Digest 196, Stokes, H L B 5, Mandlik, xiv, Kane, H D S, passim, see also the list given in the Viramitrodayatika, 22-23 (Gharpure's trans.); also the lists in Jha, H.L.S. I, 30-32.

Uncertain chronology.

The greatest difficulty that meets one at the threshold of our enquiry is the want of a reliable chronology; even the ascertainment of sequences of these works is often equally difficult. Another problem which confronts us is the existence of conflicting rules in the different Smritis and even in the same Smriti itself. Maxims, which have long since ceased to correspond with actual life, are reproduced, either without comment or with a non-natural interpretation. Extinct usages are detailed, without a suggestion that they are extinct, from an idea that it is sacrilegious to omit anything that has once found a place in the Holy Writ. The most probable explanation of the apparent divergencies between the Smritis appears to be that they were not from the beginning, of universal application throughout Hindu India but, with the exception of the Manusmriti, were much circumscribed in their local application or expressed the views of the particular school to which they belonged. Another inference is reasonably plain that while some Smritis modified their rules to provide for later usages and altered conditions, other Smritis repeated the previous rules which had become obsolete, side by side with the later rules.

Dharmasutras.

§ 14. The Brahmins whose duty it was to study and recite the Vedas became divided into various *sakhas* or branches. Owing to the adoption of different readings and interpretations, sects or schools for the different recensions of the same Veda were formed, headed by distinguished teachers who taught from such recensions (*j*). To facilitate their teaching, they formed *sutras* or strings of aphorisms, chiefly in prose which formed rather a *memoria technica* by which the substance of the oral lessons might be recalled, than a regular treatise on the subject. Every department of the Vedas had its own *sutras*. When *sutras* began to be composed on matters of ritual, instruction on matters connected with the daily life of the people dealing with social, moral and legal precepts came to be included in the *sutras* which served in some measure as rudimentary texts of law. *Sutras* of this kind were distinguished as *Dharmasutras* from those dealing with the more formal and domestic ritual, the *Srautasutras* and the *Grihyasutras*, the whole being regarded as one *Kalpasutra* (*j*[1]). Professor Max-Muller and Professor Hopkins place the Sutra period roughly as ranging from 600 to 200 B.C. (*k*). The *Dharmasutras* are

Their age.

(*j*) See MaxMuller's letter to Morley, 1 M. Dig., Introdn., 196.

(*j*[1]) Keith, H.S.L., 437.

(*k*) C.H.I. Vol. I, 249; A.S. Lit. 244.

generally works, written in terse prose or in mixed prose and verse; the other Dharmasastras are the metrical Smritis. Professor MaxMuller and Dr. Buhler consider that the Dharmasastras which are wholly in verse to be metrical versions of pre-existing *Dharmasutras*, a view which cannot be said to be established (*l*). The *Dharmasutras* of Gautama, Baudhayana, Apastamba and Vasishtha (*m*) are considered by Dr. Buhler, Dr. Jolly and Mr. Kane to be the most ancient of the lawbooks These three scholars, on a consideration of the internal evidence, follow the general Indian tradition and place them in the order named (*n*). Of course, the reference in all these cases is to the books in their extant form, for, as Mr Kane points out, works on Dharmasastras existed even before the period 600–300 B.C (*o*)

Gautama.

Gautama is the most ancient, being quoted by Baudhayana. He belonged to the Samaveda He declares that, in partition, there is an increase of spiritual merit, that sapindas and sagotras, including those descended from the same *rishi*, and the wife shall share the estate of a person who dies without male issue or an appointed daughter. According to him, a woman's stridhan property goes to her unmarried daughters, and in default, to unendowed married daughters, the son of a Brahmana by a Kshatriya wife shares equally with his younger brother born of a Brahmin wife, and the son by a Sudra wife receives a provision for maintenance out of the estate of a Brahmin who dies without other male issue.

Commentator Haradatta.

Haradatta (c 12th century A D.) wrote a commentary called the Mitakshara on the Gautama Dharmasutra. His views on the prohibited degrees of marriages are referred to by later writers (*p*)

Baudhayana.

Baudhayana belonged to the Black Yajurveda and was probably an inhabitant of the eastern coast in the Andhra country (*q*). He refers to the twelve kinds of sons including the Kshetraja, whom he declares to belong to both the

(*l*) Mr Kane dissents from this view, 10, 80-85

(*m*) All these have been translated by Dr Buhler S B.E series, Vols. II & XIV

(*n*) While Dr Buhler, Dr Jolly and Prof. Macdonell consider the Dharmasutras of Gautama and Baudhayana to be of higher antiquity than the Apastamba-Dharmasutra, Dr. Jayaswal places them between 350 B C and 200 B.C , Jayaswal, M & Y, 4.

(*o*) Kane, 9

(*p*) Kane, 347, 351, 352 Kamalakara in the Nirnaya Sindhu and by Balambhatta

(*q*) Dr Buhler, S B.E , Vol. XIV, Introdn XLIII.

families with a right to give funeral oblations and to inherit the properties of both the fathers. He divides the twelve sons into two classes, one being entitled to share the inheritance and the other to be members of the family only.

Apastamba. Apastamba, like Baudhayana, belonged to the Black-Yajurveda and was also probably a native of the Andhra country (*r*). He refers to Svetaketu who appears as a Vedic teacher even in the Satapatha Brahmana and in the Chandogya Upanishad, as an *avara* or a man of recent times (*s*). On this and other evidence, Dr. Buhler, Dr. Jolly and Mr. Kane assign the Apastamba Dharmasutra to the fourth or the fifth century B.C. (*t*). Professor Hopkins and Dr. Keith suggest the second century B.C. as the more probable date (*u*). Dr. Jayaswal agrees with Dr. Jolly and assigns the work to the fifth century B.C. (*v*). Apastamba is remarkable for the uncompromising vigour with which he rejects certain practices recognised by the early Hindu Law such as the *Niyoga*. He recognises only six marriage rites and omits the Paisacha and the Prajapatya. He does not recognise the secondary sons, not even the adopted son. He prohibits the gift or sale of a child. He recognises the nearest sapindas, the spiritual preceptor, the pupil and lastly the daughter as heirs. Haradatta (c. 12th Century A.D.) has written a commentary called the Ujjvala on the Dharmasutra of Apastamba (*w*).

Vasishtha. Dr. Jolly thinks that the Vasishtha Dharmasutra should be placed several centuries before Christ as it was connected with the Rigveda and belonged to Northern India (*x*). Mr. Kane says that the work must be much earlier than the beginning of the Christian era and that the earliest date may be 300 B.C. (*y*). Vasishtha says that the customs of the country of the Aryavarta must be everywhere acknowledged as authoritative (I-10); he does not allow a Dvija to take a Sudra wife, recognises only six marriage rites and omits all mention of the Paisacha and the Prajapatya rites. The Rakshasa and the Asura marriages in the other Smritis are referred to by him as Kshatra and Manusha rites

(*r*) S B.E, Vol II, Introdn. 33, 34, Jolly, L & C, 6.
(*s*) Jolly, L & C, 5.
(*t*) S.B.E., Vol. II, Introdn. 46; Jolly, L & C, 5, Kane, 45.
(*u*) C.H.I. I, 250; Keith, H.S.L., 438.
(*v*) Jayaswal, M & Y, 3, 53, 54.
(*w*) Kane, 45, 347.
(*x*) Jolly, L & C, 13.
(*y*) Kane, 59.

indicating that the former was common among the Kshatriyas and the latter among the Vaisyas and Sudras. He permits the remarriage of virgin widows (XVII, 74). The rate of interest prescribed by him, that is, fifteen per cent. per annum, known as the Vasishtha rate of interest is famous in the Smritis and is noticed by Manu (y^1). He states how a legal *parishad* or assembly of ten should be constituted for settling disputes (III, 20). As to inheritance, he merely says that sapindas are to inherit and in default, the spiritual teacher and the pupil. He is eloquent on the need for gifts, especially when the gift is of learning (Ch XXIX). He recognises the twelve sons and classifies six of them as heirs and kinsmen and declares that the others are only kinsmen but not heirs. By his time, the dattaka son had become very important. Differing from Apastamba, Vasishtha says that the father and the mother have power to give or sell their son and even to abandon him.

Vishnu

The Dharmasastra which bears the name of Vishnu or the Vishnusmriti, partly in aphoristic style and partly in verse, ranks with the other ancient Dharmasutras and appears to be closely connected with the Manusmriti and next to it with the Yajnavalkya smriti (z). The existing recension of the Vishnusmriti cannot, according to Dr. Jolly, be assigned to a period earlier than the third century A.D. But he considers that portions of the work, both in style and structure, bear the mark of extreme antiquity and that Vasishtha and Baudhayana probably borrow from it (a). The Vishnusmriti is referred to as one of the authoritative Smritis by Yajnavalkya (b) and cannot be later than the Yajnavalkya-smriti, the date of which is shown to be not later than first or second century A D. Vishnu, differing from Manu, draws a distinction between the self-acquired property of the father and the property of the paternal grandfather and, like Yajnavalkya, declares the equal right of the father and the son in property inherited from the paternal grandfather (c) and provides for reunion. He gives the eighth rank to the adopted son. He recognises the son begotten on a widow or a wife by a near relation and appears to place him even

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(y^1) Vas II, 51; Manu VIII, 140.

(z) Jolly, L & C, 15, S.B.E., Vol. VII, 22, 25, Mr. Kane points out that 160 verses of the Manusmriti are found in this (Kane, 63)

(a) S B.E, Vol VII, Introdn, 18, 19, 22, 32.

(b) Yajn. I, 4.

(c) Vishnu, XVII, 2.

before the son of the appointed daughter. He recognises the wife, the daughter, her son, the father, the mother and the brother as the heirs in order, to a man who dies without male issue. He denounces atheism and the study of irreligious books. He deals with crimes, punishments and ordeals at some length. He devotes far more attention to the religious law than to the civil law.

Haritasmriti is stated by Dr. Jolly to be an extensive work. The Dharmasastras of Baudhayana and Vasishtha quote him as an authority and Apastamba quotes him more frequently than any other author (*d*) but the quotations from Harita by Apastamba and Baudhayana are not to be found in the copy of the manuscript discovered at Nasik (*e*). For the present, we must be content with the quotations from the Haritasmriti available in the other Smritis or in the Digests and the Commentaries. Like Vasishtha, he refers to the Kshatra and the Manusha marriages. Harita speaks of two classes of women *Brahmavadinis* and *Sadyovadhus* and states that the former were entitled to have the *upanayanam* performed, to keep the sacred fire and to study the Vedas (*f*). Harita, Hiranyakesin, Usanas, Kasyapa, Sankha, Likhita and Paithinasi, all of whom are quoted in Jagannatha's Digest and by the commentators, are also of the Sutra period. Of these, Harita is earlier than Baudhayana and Hiranyakesin is later than Apastamba (*g*). Harita.

§ 15. The Code of Manu (*h*) has always been treated by Hindu sages and commentators, from the earliest times, as of paramount authority (*i*). The personality of Manu, the ancestor of mankind, is, of course, mythical. In the Veda itself, the pre-eminence of Manu is declared; 'whatever Manu says is medicine' (*j*). The paramount authority of the Manu.

(*d*) Kane, 70; Jolly, L & C, 15-18.

(*e*) Jolly, L & C, 15.

(*f*) Kane, 73.

(*g*) S B E. Vol. II, Buhler's Introdn. 24, 25, 28.

(*h*) This has been translated by Dr. Buhler S.B.E., Vol. XXV; also by Sir William Jones, Dr. Jha has translated it together with Medhatithi's commentary. Mandlik has published the Sanskrit text with the commentaries of Medhatithi, Kulluka and four others.

(*i*) "The most revered of all the Rishis or sages is Manu" per Lord Hobhouse in *Sri Balusu's* case (1899) 26, I.A., 113, 129; 22 Mad. 398, 409; "Manu's Code has always been regarded as of paramount authority." *Amarendra's* case (1933) 60 I.A., 242, 248, 12 Pat., 642. Manu may properly be referred to when it is necessary to resort to first principles. *Ramalakshmi* v. *Sivanantha* (1872) 14 M.I.A. 570, 591.

(*j*) Kane. 136-137.

Manusmriti is proclaimed by the sages, Brihaspati and Angirasa and they declare that where there is a conflict between the code of Manu and another smriti, the former is to be accepted (*k*). The Institutes of Manu are supposed to be recited by Bhrigu at Manu's command (*l*) In the Narada Smriti, Sumati, son of Bhrigu is said to have abridged a much longer work (*l*[1]). Not only has Manu been revered by Hindu lawyers from very early times but he is referred to as of supreme weight by even Buddhist writers of Java, Siam and Burma (*m*). The age of the work in its present form is placed by Professor Monier Williams at about the sixth century B C. (*n*) Professor MaxMuller would apparently place it at a date not earlier than 200 B C (*o*). The present Smriti purports, on its face, to be an abridgment (*o*[1]) Further, we also find a Vriddha or old Manu as well as a Brihat or large Manu The terms Brihat and Vriddha have been shown by Mr Mandlik to be convertible terms and Dr. Buhler and Mr. Mandlik were of opinion that when the words Vriddha or Brihat are prefixed to works, they were by different authors (*p*) Dr Buhler, after many fluctuations of

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(*k*) Smritichandrika and Viramitrodaya cited in Jha, H L S. I, 17, 43, 44

(*l*) Manu, I, 59, 60, 119, VIII, 204, XII, 2

(*l*[1]) S B E Vol XXXIII, 2, 3, also Dr Buhler's Introdn to Manu, S B E Vol XXV, p 95

(*m*) Jolly, L & C, 29, 89 to 94 The earliest law book in Burma, the Dhammathat compiled under the orders of Wareru (1287-1296 A D) owed its origin to the code of Manu which was taken by the Hindu colonists who went to Burma about the 3rd century A.D (C H I, Vol III, 551), Also Jha, H L S, I, 18

(*n*) Monier Williams "Indian Wisdom" 215

(*o*) A S L, 61 and 244 One of his reasons for the view, *i e*, that the continuous slokas in which it is written did not come into use until after that date has been shown not to be beyond doubt as Professor Goldstucker has established their existence at an earlier period. West and Buhler, 39

(*o*[1]) Medhatithi (c 825 A D) commenting on Manu V, 13, refers to the Manu Smriti "as the work of a human author having been composed by him with great care and labour for the purpose of supplying in brief all the information contained in another voluminous work containing a hundred thousand verses" (Vol. III, i, p 19) See also Medhatithi on Manu I, 58

(*p*) Dr Buhler, S B E, Vol. XXV, Introdn 96-97 Mandlik, Introdn, 23 24 Mandlik says that their being named after the same author is due to the one being an expansion or an epitome of the other The Viramitrodaya, however, following Sulapani says that "Vriddha Manu, Vriddha Vasishtha, Vriddha Satatapa, Laghu Harita, Yogi Yajnavalkya and the like, being the same Manu and the rest who got special names indicative of the different periods of life, have not been separately mentioned in the list." (Mandlik, Introdn., 24). This is obviously fanciful.

opinion, disagreeing with Professor MaxMuller, concludes that the present Bhrigusamhita is the first and most ancient recast of a Dharmasastra attributed to Manu, which, however he thinks must be identified with a hypothetical Manava-dharma-sutra (*q*) and that the Bhrigu Samhita such as we know it, certainly existed in the second century A.D. and seems to have been composed between that date and the second century B.C. Both Dr. Jayaswal and Mr. Kane, the latter on a categorical review of the entire evidence, are clearly of opinion that there was no such work as Manava Dharma Sutra (*r*). Professor Hopkins considers that the Manu Smriti in its present form, is earlier than any other Dharmasastra and the date now currently assumed is too late and that the Manava Code belongs rather to the time of our era or before it, than later (*s*). Dr. Jayaswal suggests, without plausibility, that the extant Manu Smriti came into existence under the rule of the Sungas (184 B.C. to 72 B.C.) when there was the revival of Brahminism and he places it about 150 B.C. for all practical purposes (*t*). But Dr. Keith points out that the Smriti is an early attempt at composition, whence its defects, while the larger texts were writings up of a popular original, that the Brahminical revival of the first or the second century B.C. was not of sufficient duration and that the later Brahminical revival under the Gupta Empire of the fourth century is rather late for the composition of this work (*u*). These decisive factors, coupled with its agreement in many matters with the Arthasastra of Kautilya and its paramount authority, indicate that the Manu Smriti as a whole, apart from verses here and there, must in all probability, be at least as early as second century B.C. Mr. Kane thinks it could not be much earlier than the third century B.C. (*v*). He also states that numerous verses are common to the Dharmasutras of Vasishtha and Vishnu and the Manusmriti and that Kautilya's Arthasastra also exhibits remarkable agreement with the Manusmriti in phraseology and doctrines (*w*). The Code of Manu declares the eighteen

Its date.

(*q*) S.B.E., Vol. XXV, Buhler's Introdn, passim.

(*r*) Jayaswal, M & Y, 48; Kane, 79-85; Keith (H.S.L., 441) points out that no strict proof of Dr. Buhler's theory is possible.

(*s*) C.H.I., I, 279

(*t*) Jayaswal, M & Y, 26, 50.

(*u*) Keith, H.S.L., 441, 442.

(*v*) Kane, 151. The reference to Sakas and Pahlavas in Manu X, 44 does not appear to be conclusive as more than one explanation is possible.

(*w*) Kane, 140.

heads of legal proceedings which were followed by Yajnavalkya, Narada and Brihaspati (*x*). These divisions and their order make no pretensions to a scientific system; they were probably due to the practical needs of society and testify to the greater frequency and intricacy of some kinds of disputes than of others

Yajnavalkya

§ 16. Next to Manu in authority is Yajnavalkya. No Sutras corresponding to it have been discovered and the work is considered by Professor Stenzler to have been founded on that of Manu. It has been the subject of numerous commentaries, the most celebrated of which is the Mitakshara and is practically the starting point of Hindu Law for those provinces which are governed by the latter. Yajnavalkya belonged to the White Yajurveda and is intimately connected with the Brihadaranyaka Upanishad and his home is stated in the Smriti itself as Mithila (North Bihar). According to the Mitakshara, some pupil of Yajnavalkya abridged and recited the Institutes of Yajnavalkya (*y*). Professor Wilson points out that "passages taken from it have been found on inscriptions in every part of India, dated in the 10th and 11th centuries. To have been so widely diffused and to have then attained a general character as an authority, a considerable time must have elapsed, and the work must date therefore long prior to those inscriptions."(*y*[1]). Dr Jolly and Dr. Keith consider that his date may be approximately about 300 A.D. (*z*). This is based partly on the view that the Smriti shows an acquaintance with the planets and therefore Greek astronomy and on the fact that it mentions a coin Nanaka, which is said to be Nana or Naneya, the coins of Kanishka. It is now almost certain that the Kushana Emperor Kanishka's reign began in A.D. 78 (*a*). This would not justify the ascription of the Smriti to the third or fourth century A.D. but only to the 1st or 2nd century A.D. Nor is it by any means decisive Dr Jayaswal points out that the reference

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(*x*) The Arthasastra of Kautilya does not refer to the 18 titles as such but deals with them as well as others of public or administrative law in a different order. For the eighteen titles, see ante § 9.

(*y*) Dr. Buhler, in accordance with his hypothesis which is no longer accepted, conjectures that the Yajnavalkya Smriti may have been based on Sutras of the school which followed the Vedic author or even of that author himself. A. S. Lit, 329, W & B, 43 As in the case of Manu, a Vriddha and a Brihat Yajnavalkya are spoken of, evidencing possibly the existence of enlarged editions of the same work.

(*y*[1]) Wilson's Works III, 87, 90, IV, 89. A S L, 330.

(*z*) Jolly, L & C, 43, 44, Keith, 446, Hopkins C H.I., I, 279.

(*a*) C H.I, I, 582-3. Dr. Jayaswal's article in 17 C W N., cclx.

by Yajnavalkya to the *grahas* or planets is of no significance. He cites the opinion of Dr. Buhler that it is not proved that a work having reference to Greek astronomy must be dated the fourth century A.D. 'The publication of fresh Babylonian tablets has destroyed the old argument that Ptolemy was the founder of the so called Greek astrology (*sic*)' (*b*). What is more, the Baudhayana Dharmasutra not only knows the *grahas* or planets but places them in the same order as Yajnavalkya with the same addition of Rahu and Ketu (*c*); and the Baudhayana Smriti must admittedly be ascribed to some centuries before Christ. The reference to Ganesa or Ganapati worship does not warrant any later date for the Yajnavalkya Smriti as Baudhayana also knows the Ganesa worship (*d*). Dr. Jayaswal, however, places the Yajnavalkya Smriti, with reference to the coin Nanaka, at about 150 to 200 A.D. (*e*). In *Ramachandra's* case, Mr. Ameer Ali refers to Yajnavalkya as belonging to 2nd Century A.D. (e^1). Passages from Yajnavalkya are found in the Panchatantra (c. 3rd century A.D.). It seems therefore fairly certain that the work is nearly two thousand years old, though an exact date is impossible. Mr. Mandlik does not consider that Yajnavalkya had any importance outside his own *sakha* and attributes its present position to the publication of the Mitakshara in 1813 and to Mr. Colebrooke's translation of the Dayabhaga portion of it as an official publication (*f*). It must have been selected by Mr. Colebrooke because of its great importance. That from early times, commentators from all parts of India such as Visvarupa, Vijnanesvara, Apararka, Sulapani and Mitramisra, not to speak of other commentators, selected the Yajnavalkya Smriti as the basis of their commentaries, that passages from the Smriti appeared in the Panchatantra and in the inscriptions of the 10th and 11th centuries A.D. and were incorporated

Its age.

(*b*) Jayaswal, M & Y, 59, 61. The opinion of Dr. Jacobi, according to the note of the translator of Dr. Jolly is controverted by Losch on the ground that the Babylonian heptagram might have been directly derived from Babylon and not through the Greeks and this is rendered easily the more probable by the recent discoveries in the Indus Valley. Jolly's L & C, 43, Note 3 of translator.

(*c*) Baudh. II, 5, 9, 9.

(*d*) Baudh. II, 5, 9, 7.

(*e*) Jayaswal, M & Y, 59-61; Mr. Kane places the Yajnavalkya Smriti between the 1st century B.C. and 3rd century A.D. (Kane, 184). Dr. Jayaswal is of opinion that the Yajnavalkya Smriti is based upon Manu, Vishnu, and the Arthasastra, 59.

(e^1) (1914) 41 I.A., 290, 299; 42 Cal., 384, 406.

(*f*) Mandlik, Introdn., 49.

wholesale in the Agnipurana which is earlier than the 10th century A.D as well as the unusual importance of the Mitakshara from the eleventh century onwards—these appear to be a sufficient refutation of Mr Mandlik's views. The Yajnavalkyasmriti is concise, more systematic and better arranged than the Manusmriti and the correspondence of Yajnavalkya's words with the text of Manu is in most cases very close (*g*).

Narada

§ 17 The last of the complete metrical Dharmasastras which we possess is the Naradasmriti (*h*). The work, as usual, is ascribed to the divine sage Narada and purports to have been abstracted by him from the second abridgment of Manu in 4,000 verses Yajnavalkya does not mention Narada as the author of a Smriti but Visvarupa commenting on Yajnavalkya cites a verse of Vriddha Yajnavalkya which refers to Narada, Baudhayana and Saunaka (*h*[1]). Narada seems to have been a native of Nepal (*i*) and is 'the first to give us a legal code unhampered by the mass of religious and moral teaching, characteristic of the earlier Dharmasastras' According to Narada, laws were proclaimed by Kings and royal ordinances could overrule the Smriti law. It is remarkable for its rules of procedure and pleading and it fixes the age of discretion or majority. His work is based essentially upon Manu and Yajnavalkya though he differs in many respects from Manu. His age is so much earlier than that of Medhatithi (ninth century A D) and Vijnanesvara, the author of the Mitakshara (eleventh century A D) that he is not only quoted throughout their works but quoted as one of the inspired writers Dr. Jolly would place him in the 4th or 5th century A D, as the term *dinara*, mentioned by Narada, could not have come into existence before the 2nd century A.D. (*j*) Mr. Kane, however, cites Dr. Keith to the effect that the introduction of the *dinaras* into India need not be later than the beginning of the Christian era and that the Indo-Scythian coins, equal in weight to the *dinara*, were prevalent from the 1st century B.C. and places Narada between 100 to 300 A.D. (*k*). This view receives support from Dr. Jolly's statement, in his introduction to Brihaspati, that the 1st century A.D. is the period to which belongs the earliest Indian

(*g*) Kane, 172, 176

(*h*) Dr. Jolly has translated it, S B E., Vol. XXXIII.

(*h*[1]) Visvarupa (Triv ed.), p. 10.

(*i*) C H I, I, 280. Jolly L & C, 49, Vol. XXXIII, Introdn.

(*j*) Jolly's Introdn., S.B E., XXXIII, p. xviii; Jolly L & C, 48.

(*k*) Kane, 203 205.

gold coins, corresponding in weight to the *denarius* of the Romans (*l*). There would therefore appear to be no necessity to refer Narada or Brihaspati to the 5th century A.D. Probably they belonged to the 4th century, the golden age of Classical Sanskrit under the earlier Gupta Emperors, when there was a distinct revival of Brahminism and a reassertion of Indian nationality (*m*). Narada allows remarriage of widows and declares the father's absolute right to distribute the property among his sons as he pleases. He does not appear to recognise the widow as an heir in any case. He places the adopted son as the ninth in rank and excludes him from the list of collateral heirs. These differences are, in all probability, attributable to the customs of the part of India with which he was more familiar.

Asahaya on Narada.

Asahaya has written a commentary upon this Smriti, of which a fragment alone is available (*n*). He appears to have been one of the most ancient commentators and lived not later than the 8th and not earlier than the 6th century A.D. (*o*). On the question whether the great-grandson is liable for his ancestor's debts, he holds that he is, and gives a report of the case of *Sridhara* v. *Mahidhara*, an ancient action decided at Pataliputra, in his comment on Narada I, 6 (*p*).

Brihaspati.

The rules of Civil Law propounded by Brihaspati, though the complete Smriti has not been recovered, are available in fragments. They are described by Dr. Jolly as among the most precious relics of the early legal literature of India. The close connection between Manu and Brihaspati is evident. Brihaspati, like Narada, allows gambling in public places. Differing from Yajnavalkya, he agrees with Manu in condemning the practice of *Niyoga* and refusing to recognise the Kshetraja and other sons (*q*). He declares that only the aurasa son and the son of the appointed daughter shall be

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(*l*) Jolly's Introdn, S B E, Vol. XXXIII, 275.

(*m*) Keith, H.S.L., 74, 75

(*n*) Kane, 247.

(*o*) Jolly, L & C, 48, Kane, 250.

(*p*) For Asahaya's report of the case, see Ghose, Vol. II, 36-37. Jolly's note in S.B.E, Vol. XXXIII, page 43; see, Jayaswal, M & Y, 195-196. Both Balambhatta and Dr. Sarvadhikari made a mistake by treating the term 'asahaya' in Mit. I, vii, 13 as an adjective meaning 'peerless' or 'incomparable' and applied it to Medhatithi; Sarvadhikari, 2nd edn., 249-250, Visvarupa, the Vivada Ratnakara and the Sarasvati Vilasa read it accurately as referring to Asahaya. Jolly, T.L.L., 4-5; Colebrooke's note on Mit. I, vii, 13; Kane, 250; Ganapathi Iyer, 206-207.

(*q*) Brih. XXIV, 12, 14.

heirs to the father's wealth and that all the others have only a claim to maintenance (*r*). Brihaspati follows Yajnavalkya in declaring the equal rights of the father and the son in ancestral property. He holds enlightened views on the subject of women's rights and declares the rights of the widow, the daughter and the mother as heirs (*s*) and provides for reunion of separated co-parceners. Many of his rules are even more rational and advanced than those to be found in Narada. Brihaspati was probably the first jurist to make a clear distinction between Civil and Criminal justice. Of the eighteen titles of law, he distinguishes fourteen titles as cases of property and the other four as cases of wrong (*t*). He gives, like Narada, detailed rules of procedure and pleading. Though Narada and Brihaspati agree very closely on many matters, Brihaspati follows Manu still more closely. Mr. Kane thinks that Brihaspati is not later than Narada and places him between 200-400 A.D (*u*). He was considered an inspired writer by very early commentators like Medhatithi and it appears that the coincidences between Brihaspati and the Burmese Dhammathats are numerous and striking (*v*). Brihaspati, unlike Narada, is one of the writers referred to by Yajnavalkya.

Katyayana.

Katyayana is a Smriti writer mentioned by Yajnavalkya. The Smriti, however, has not yet been recovered wholly and only quotations from Katyayana contained in a dozen works from Visvarupa to Mitramisra are available (*w*). Katyayana appears to follow Narada and Brihaspati, both in the order and treatment of subjects and in the spirit in which he approaches *Vyavahara* or Civil Law. The special feature of Katyayana is his treatment of stridhana. He defines the several kinds of stridhana and declares the women's power of disposal over them and prescribes the lines of devolution in respect of them. It appears that the Smriti Chandrika alone cites about 600 verses of Katyayana, out of an approximate total of 900 verses of his on *Vyavahara*, found scattered through the several treatises. As Visvarupa and Medhatithi regarded Katyayana as having equal authority with Narada

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(*r*) Brih. XXV, 35, 39, 40.

(*s*) Brih. XXV, 49, 55, 63.

(*t*) Brih. II, 5 to 9. Kane, 208, C H.I, 1, 281.

(*u*) Kane, 210; Dr. Jolly's date of 6th or 7th century is too late for the treatment accorded to Brihaspati by Visvarupa and Medhatithi.

(*v*) Jolly, Introdn, S B.E, Vol XXXIII, 276.

(*w*) Kane, 213, 214.

and Brihaspati, they may all be regarded as belonging more or less to the same period (*x*).

Fragmentary Dharmasastras.

§ 18. Fragments of other Dharmasastras, either in sutra or in metrical form which are now lost, are to be found scattered in the Commentaries and Digests. The Smritis of Angiras, Atri, Daksha, Devala, Laugakshi, Prajapati, Pitamaha, Pulastya, Yama, Vyasa, Samvarta and Satatapa come under this head. That they are really extracts from, or modern versions of, more extensive treatises and not forgeries, as has been supposed, seems to follow from the fact that some of the verses quoted by the older commentators, such as Vijnanesvara and Apararka from the works of Angiras and others are actually found in them. On the other hand, many verses quoted by the commentators are not traceable in them. Some of the names in the above list are actually enumerated by Yajnavalkya as original sources of law. They must therefore have existed, though not in their present shape, before his time. Dr. Jolly treats it as certain that the most recent of the metrical fragments must be older than the 9th century A.D. when many of them are quoted by Medhatithi (*y*).

The Smritisangraha.

A work called the Smritisangraha or Sangraha, whose author is not known, is frequently cited in the Mitakshara, the Smritichandrika, Apararka and other works. Mr. Kane says that the quotations from it on *Vyavahara* are copious. The author of the Sangraha held that ownership arose from the dictates of the Sastras and that property was not temporal. According to it, partition only and not a right by birth, creates ownership in the son as regards paternal wealth. It gives the order of succession as widow, the daughter, who is a *putrika*, mother, paternal grandmother, father, full brothers, half-brothers, then the lines of the father, grandfather and great-grandfather, other sapindas, sakulyas, the preceptor, pupil and a fellow-student. Mr. Kane thinks that the Smritisangraha was compiled between the 8th and the 10th centuries A.D. (*z*).

Legal rules or moral precepts?

§ 19. In interpreting and applying the rules contained in the Smritis and the Commentaries and treatises founded upon them, the principal question is whether a particular rule is a rule of positive law or a religious or a moral precept. The necessity for caution on this point has been repeatedly

(*x*) Jayaswal, M & Y, 64; Kane, 218.

(*y*) Jolly, T.L.L., 68.

(*z*) Kane, 241.

emphasised by the Privy Council. "Their Lordships had occasion in a late case (*a*) to dwell upon the mixture of morality, religion and law in the Smritis. They then said 'All these old text-books and commentaries are apt to mingle religious and moral considerations, not being positive laws with rules intended for positive laws' They now add that the further study of the subject necessary for the decision of these appeals has still more impressed them with the necessity of great caution in interpreting books of mixed religion, morality and law, lest foreign [and Indian] lawyers accustomed to treat as law what they find in authoritative books, and to administer a fixed legal system, should too hastily take for strict law precepts which are meant to appeal to the moral sense, and should thus fetter individual judgments in private affairs, should introduce restrictions into Hindu society, and impart to it an inflexible rigidity, never contemplated by the original lawgivers" (*b*).

Principles of exegesis.

On the other hand, it should be remembered that the Hindu Law contains its own principles of exposition, and that questions arising under it cannot be determined on abstract reasoning or analogies borrowed from other systems of law, but must depend for their decision on the rules and doctrines enunciated by its own lawgivers and recognised expounders (*c*). The conflict between one smriti and another smriti text or the conflict between two texts in the same smriti has often occasioned difficulty. The possibility of such conflicts was recognised in the smritis themselves. Of course commentators make every possible effort to reconcile conflicting texts, it being an established rule of construction that no conflict should be admitted to exist where it is possible to find an interpretation which would avoid it. But where the conflict is clear, they have made some provision as to how it should be resolved One rule, which has not always been observed, is that where the Code of Manu and other Smritis conflict, Manu's view prevails as against the other Smritis (*d*). Another rule is that where two conflicting texts provide two courses of

(*a*) *Rao Balwant Singh* v. *Rani Kishori* (1898) 25 I.A., 54, 69, 20 All, 267.

(*b*) *Sri Balusu Gurulingaswami* v *Sri Balusu Ramalakshmamma* (1899) 26 I A., 113, 136, 22 Mad, 398, 415, 416, *B. G Tilak* v. *Shrinivas Pandit* (1915) 42 I A., 135, 149, 39 Bom, 441. The words in square brackets are the editor's.

(*c*) *Ramachandra Martand* v. *Vinayek V. Kothekar* (1914) 41 I A, 290, 299; 42 Cal, 384.

(*d*) *Sri Balusu's* case (1899) 26 I A., 113, 129, see the Smriti-chandrika (Samskara, 16-17) and the Viramitrodaya cited in Jha, H.L.S., I, 17, 43, 44 where the texts of Angirasa and Brihaspati are quoted.

action, either can be followed at one's option (*e*). This can apply only to *achara* and not to *vyavahara* or civil law. A third rule is that where there is a conflict between two smriti texts, preference is given to the text which is more consonant with equity and reason as guided by the practices of the old. This rule is expressly made applicable to *vyavahara* by Yajnavalkya (*f*). Yet another method of dealing with the texts is to declare that certain rules in the Smritis have become obsolete. The discontinuance of particular usages or the disapprobation of them by the people at large given effect to by the commentators made many rules rightly obsolete (*g*). But as held in *Pudiava Nadar* v. *Pavanasa Nadar*, this process is no longer possible and a positive rule of law as contained in the authoritative commentaries can only be abrogated by evidence of custom in derogation of it (*h*). In many cases, however, the conflict between two texts in the same Smriti is more apparent than real. The Smritis, like the later commentaries, sometimes state at first the opposite view, then give reasons against it and finally state their conclusions, as for instance, in the case of the Kshetraja son, the additional share for the eldest son, the marriage of a Brahmin with a Sudra woman, etc. The overlooking of this feature has been mainly responsible for reading more conflicts into the Smritis than are really to be found. The commentators, however, bound as they were by the orthodox rule to treat every text in the Smriti as equally valid, were obliged to adopt a different process of reconciliation by treating some as *arthavada* and others as relating to different subjects and so on (*i*).

§ 20. The question has sometimes been debated whether the Mimamsa rules of interpretation which undoubtedly apply Mimamsa.

(*e*) Manu, II, 14 as interpreted by Medhatithi and Kulluka; Gaut. I, 4.

(*f*) Yajn, II, 21; Nar, I, 40, S.B.E., Vol. XXXIII, 15; Sen, 14, 15; see also Jayaswal, M & Y, 80.

(*g*) Jolly, L & C, 96.

(*h*) (1922) 45 Mad., 949, 962 "A law does not cease to be operative because it is out of keeping with the times. A law does not become obsolete because it is an anachronism or because it is antiquated or because the reason why it originally became the law would be no reason for the introduction of such a law at the present time." Per Schwabe C. J.

(*i*) Jolly, T.L.L., 34; "Elsewhere than in India, too, it has been found easier to explain an old law away than to abolish it, and tricks of interpretation analogous to those invented by the Indian pandits have been resorted to by the jurists of several European countries." See *Jagdish* v. *Sheo Partab* (1901) 28 I.A., 100, 109; 23 All., 369, 381-2; and *Bai Kesserbai* v. *Hunsraj* (1906), 33 I.A., 176, 196; 30 Bom., 431, 451, where similar ways of reconciliation were adopted.

to the exposition of the Vedas should be applied in the interpretation of the Smriti texts as well. They are in theory no doubt applicable and have in practice been so applied by all the commentators (*j*). The Mimamsa of Jaimini 'consists chiefly of a critical commentary on the Brahmana or ritual portion of the Veda in its connection with the Mantras' It provides 'a correct interpretation of the ritual of the Veda and the solution of doubts and discrepancies in regard to Vedic texts caused by the discordant explanations of opposite schools' Its only claim to the title of a philosophy consists in its mode of interpretation, the topics being arranged according to particular categories (such as authoritativeness, indirect precept, etc.), and treated according to a kind of logical method commencing with the proposition to be discussed, the *Purvapaksha* or prima facie and wrong view of the question, the *Uttarapaksha*, a refutation of the wrong view and the *Siddhanta*, or conclusion (*k*) The Mimamsa is referred to as one of the fourteen sources of knowledge by Yajnavalkya (*l*) and one versed in the Mimamsa must be a member of the *parishad* of ten according to Manu, Baudhayana and Vasishtha (*m*). Jaimini's exact age is unknown but he must admittedly be of the Sutra period (600 B.C.). Dr. Jha says that he must have lived long before the 5th century B.C. as his Sutras have been the subject of well known commentaries from about the time of the Christian era (*n*) and Jaimini is referred to in the Panchatantra as the author of the Mimamsa

Jaimini's age.

(*j*) Jolly, L & C, 66

(*k*) Indian Wisdom, 108, Mimamsa means the investigation of the meaning of the Veda. Ibid 214 note, Jaimini's treatise is also spoken of as the Purva or earlier Mimamsa in opposition to the Uttara or later Mimamsa by Vyasa. K L Sarkar, Mimamsa, 268. The Mimamsa Sutras are finally divided into adhikaranas or topics, each taking up one doubtful point and by a series of reasonings arriving at the right conclusion The five limbs of every adhikarana are (1) a *vishaya-vakya* (a vedic sentence) as to which there is (2) *samsaya* (doubt as to its correct meaning); (3) *purvapaksha* (a prima facie view put forward by the objector), (4) *uttarapaksha* (refutation of the prima facie view), and (5) *siddhanta* (conclusion). Kisori Lal Sarkar, Mimamsa 62, Jha's Mimamsa Sutras, Introdn

(*l*) Yajn, I, 3.

(*m*) Manu, XII, 111; Baudh, I. 1, 1, 8, Vas., III, 20. The duty of the *Parishad* was to declare the law where no rule is given in the Smritis and to decide doubtful points of law, Gaut. XXVIII, 48; Manu XII, 108-112. Apastamba also refers to those learned in Mimamsa (II, 4, 8, 13).

(*n*) Jha, H.L.S., I, 9.

(*o*). Though primarily intended for the exposition of the Vedas, the Mimamsa rules of interpretation have been considered by later writers as authoritative in reconciling apparently conflicting Smriti texts and in interpreting and giving effect to them (*p*), for instance, by Vijnanesvara in the Mitakshara (*q*) and by Medhatithi, Apararka, Jimutavahana, Devannabhatta, Kulluka, and Nilakantha (*r*). Mr. Colebrooke says, 'the logic of the Mimamsa is the logic of the law; the rule of interpretation of civil and religious ordinances.' (*r*[1]).

Rules of interpretation.

Mr. Kisori Lal Sarkar, in his work on the subject (*s*) has, at great length, discussed the Mimamsa rules. Some of the rules are such as would be applied by any lawyer in the construction of a statute or a document, for instance, an apparent contradiction of texts is to be ascribed to their applying to different subjects or by supposing that the one contains a general rule and the other a special one. So also the rule that words which have been defined in the Smritis ought to be taken in that sense or the rule that the same word or sentence should not be understood in two different senses in the course of the same discussion (*t*) or the rule that the singular includes the plural or the masculine includes the feminine or the greater includes the less or the primary sense of a word should be preferred to its secondary sense—all these are intelligible enough. Equally, the maxim that a special rule prevails over the general or the principle that where there is an exception to a general rule, the exception should

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(*o*) K. L. Sarkar, Mimamsa, 510. In *Beni Prasad* v. *Hardai Bibi* (1892) 14 All., 67, 73, Sir John Edge was wrongly informed by Counsel that Jaimini lived in the 13th Century A.D.; that mistake was the foundation of an erroneous statement by Lord Hobhouse in *Sri Balusu's case*, 26 I.A., 113, 146.

(*p*) Colebrooke's Trans. of the Royal Asiatic Society, II, 457; Sarkar Sastri, Adoption, 2nd Edn, 74; cited in 14 All., 71 supra

(*q*) Mit., I, 1, 10; I, 1, 11, II, 1, 34.

(*r*) K. L. Sarkar, Mimamsa, 59.

(*r*[1]) *ib.*, 5.

(*s*) Tagore Law Lectures (1905), "The Mimamsa Rules of Interpretation as applied to Hindu Law." The rules are also given in Bhattacharya's Commentaries on Hindu Law (1893), 2nd Edn., Chap. II, III and IV; Ganapathi Iyer, Chap. VII; J. C. Ghose, I, Chap. XIV; Dr. Jha's Mimamsa Sutras (Panini Office: 1916).

(*t*) *Gangadhar* v. *Hiralal* (1916) 43 Cal., 944, 967; *Tukaram* v. *Narayan Ramachandra*, (1912) 36 Bom., 339, 356 F.B.; *Meenakshi* v. *Muniandi* (1915) 38 Mad., 1144, 1150, 1151; K. L. Sarkar, Mimamsa, 276; *Gajadhar Prasad* v. *Gauri Shankar* (1932) 54 All., 698 F B.

be confined within strict limits (*u*) or the rule that a mere recital of a reason for an injunction *(arthavada)* neither adds to nor detracts from the rule itself—these are common to all systems of law. Another principle is that, from express texts dealing with one subject, a rule can be deduced by analogy *(Atidesa)* applicable to another subject of the same class when there is no impediment (*v*). An enumeration of persons or objects may be illustrative and not exhaustive (*w*). In a different category, however, stand the artificial ways of interpreting particles like '*api*' (even), '*Va*' (or), '*Cha*' (and) for deducing new rules Some of the so-called Mimamsa maxims are not Jaimini's rules but popular maxims *(loukikanyayas)* like the maxim of the staff and the cake which occurs so often in the Commentaries and the Digests, or the maxim of the cattle and the bull, or the Matsyanyaya or the maxim of the bigger fish eating the smaller which last is the basis of the Kautilya's Arthasastra (*w*[1]). There is nothing very recondite about many of the Mimamsa rules except the terminology, the manner of statement and the illustrative references to the details of Vedic sacrifices and rituals (*x*) But there are several rules which appear special and peculiar to the Mimamsa system (*x*[1]) Distinguished Hindu jurists have differed in their application of the Mimamsa rules to the texts of Hindu Law On the crucial question, whether property or ownership is temporal or spiritual, by the application of the Mimamsa rules,

Their special and peculiar nature.

(*u*) *Gangadhar* v *Hiralal* (1916) 43 Cal, 944, 970, The Mimamsa rule of Pathakrama was said to be an arbitrary canon of construction and was not accepted in *Pedda Ramu Reddi* v. *Gangi* (1925) 48 Mad, 722, 741

(*v*) For instance, the right of a sister to succeed to a female prostitute was, on the analogy of her right to succeed to the Sapratibandha daya of a male, deduced from the text of Manu, IX, 187. *Narayan Pundalik* v *Laxman* (1927) 51 Bom, 784, see also *Dattatraya* v *Matha Bala* (1931) 58 Bom, 119, *Visvanatha* v *Doraiswami* (1925) 48 Mad, 944, 959. Per Bhashyam Iyengar J. in *Ramalinga Muppan* v *Pavadai Goundan* (1902) 25 Mad, 519, 524, Per Kumarasami Sastri J in *Subramanya Iyer* v *Ratnavelu Chetty* (1918) 41 Mad, 44, 74, *Ramasami* v *Sundaralingasami* (1894) 17 Mad, 422, 435-436 There cannot be an *atidesa* upon an *atidesa*, a remote analogy upon a remote analogy or a fiction upon a fiction *Gangadhar* v. *Hiralal* (1916)43 Cal, 944, 966.

(*w*) *Rajani Nath* v *Nityachandra* (1921) 48 Cal, 643, 686 (compare the enumeration of Bandhus)

(*w*[1]) K. L. Sarkar, Mimamsa, 354 *et seq.;* J C Ghose, I, 1027.

(*x*) K L Sarkar has traced the resemblances of many of these Mimamsa rules with the rules of interpretation in Maxwell (lecture XI).

(*x*[1]) E g, the Holaka maxim, see Daya Bh II, 40; Sankararama Sastri, 146-9, K. L. Sarkar, Mimamsa, 254-5, the *dvayoh pranayanti* maxim, K. L. Sarkar, ib., 398-405; Mit. II, 1, 34, Daya. Bh. XI, v, 16.

Vijnanesvara comes to the conclusion that it is by popular recognition and Jimutavahana arrives at the opposite result (*y*). Nilakantha and Nandapandita, in connection with the adoption of a daughter's or a sister's son, resorted to the Mimamsa principles of interpretation and arrived at opposite results (*z*). Again, when Vijnanesvara, in construing the word 'parents' in the text of Yajnavalkya, preferred the mother to the father in the succession to one dying without male issue, applying his own grammatical rules of interpretation, the Smritichandrika by applying Mimamsa and other rules came to the opposite conclusion that the father should be preferred to the mother. Madhava construed the term 'parents' as meaning that both should share the estate. Jimutavahana applying his rules of interpretation preferred the father. The Viramitrodaya, differing from the Mitakshara and characterising it as thoughtless, gives a divided opinion based on their relative merits in each case (*a*). The commentaries are full of instances where applying rules of Mimamsa they differ from one another (*a*[1]).

Jaimini's Rule as to assignment of reason.

In one case, a rule of Jaimini assumed great importance. The text to be interpreted was that of Vasishtha: 'Let no man give or receive an only son, since he must remain to raise up a progeny for the obsequies of ancestors.' In reference to this text, Mr. Mandlik says (p. 499): "It is a rule of the Purva Mimamsa that all the texts supported by the assigning of a reason are to be deemed not as *vidhi* (an injunction) but simply as *arthavada* (recommendatory). When a text is treated as an *arthavada*, it follows that it has no obligatory force whatever"(*b*). Accordingly in the case which turned upon this text, it was treated as having no binding authority. When the Judicial Committee had to deal with this matter in

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(*y*) Vijnanesvara applies the Lipsa Sutras of Jaimini as interpreted by the heterodox Guru Prabhakara (Mit., I, 1, 10) and Jimutavahana applies the fundamental precept '*Svargakamo yajeta*' (sacrifice for heaven), (Dayabhaga, Ch. I). K. L. Sarkar, Mimamsa, 390-395.

(*z*) K. L. Sarkar, Mimamsa, 417-428. Mandlik 490, Gharpure's Trans., 72-74.

(*a*) Viramit., III, iv, 46 (Setlur's ed., 417-418); Mit., II, iii, 2; Smritichandrika, XI, 5, 9, Burnell, Dayavibhaga, § 38 (page 27); Dayabhaga, IX, 36.

(*a*[1]) See *Moni Ram Kolita* v. *Kerri Kolitani* (1880) 7 I.A., 115, 5 Cal., 776, 786

(*b*) The illustrative text is "He sacrifices by the winnowing basket because food is prepared by it." The sacrifice has to be made with the winnowing basket, whether food is prepared by it or not. K. L. Sarkar, Mimamsa, 176. It is called the *Hetuvannigadadhikarana.*

appeal, they said of Jaimini's rule: "That, if sound, would be conclusive as to Vasishtha's text. But it is rather startling, and a very intimate acquaintance with the Smritis would be needed before admitting its truth. It has not been brought forward in any case prior to this case from Allahabad. It may, however, fairly be argued that one who, having the power to give an absolute command, gives an injunction not expressed in unambiguous terms of absolute command, but resting on a reason, is addressing himself rather to the moral sense of his hearers than to their duty of implicit obedience" (*c*). The doubt expressed by the Judicial Committee as to the meaning of Jaimini's Rule is amply justified. Mr. Kisori Lal Sarkar, setting out the sutra, explains that the rule relating to the descriptive clause in the shape of reason distinguishes an *arthavada* or recital from a *vidhi* or an imperative rule of law and that it only means that the reason should not be taken as an essential part of the *vidhi*, the obligatory nature of the *vidhi* text remaining unaffected by the assignment of the reason (*d*); for, according to the Mimamsa, it is only a corrupt reason that vitiates but neither a good nor an indifferent reason invalidates it. Dr. Ganganath Jha, a great Mimamsa scholar, states that 'the principle deduced under the *Hetuvannigadadhikarana* is that "when an injunction is followed by the statement of a reason—this *statement of reason* has no mandatory force", certainly this does not vitiate the mandatory nature of the injunction itself' (*e*). Vijnanesvara himself treats the assignment of a reason as not invalidating a *vidhi* or positive rule of law. Commenting upon the verse of Yajnavalkya which prohibits the marriage of a Sudra wife by a Brahmin, adding the reason 'because out of her, he is himself born,' Vijnanesvara says "Here by assigning the reason that, out of her he is born himself, the author prohibits a marriage with a Sudra woman for one who is desirous of begetting a *Naityaka* (necessary) son", thus giving full effect both to the reason and to the *vidhi*. So also Madhavacharya treats an uncontradicted *eulogium (arthavada)* as equivalent to an ordinance *(vidhi)* (*e*[1]).

(*c*) *Sri Balusu's* case (1899) 26 I.A., 113, 146; 21 All., 460; 22 Mad., 398.

(*d*) K. L. Sarkar, Mimamsa, 175, 451-453; Ganapathi Iyer, 292; Ghose, Vol. I, 1032.

(*e*) Jha, H L S., II, Preface iv; Sankararama Sastri, 66-68; Jha's Mimamsa Sutras, pp. 40-43.

(*e*[1]) Mit. on Yajn., I, 56; Vidyarnava's trans., 120; Setlur's ed. of Parasaramadhaviyam, 552.

§ 21. Another rule which is conveniently summed up in the maxim *factum valet* is that a violation of a rule, which regulates mere matters of form and is only directory in its nature and does not go to the essence of a transaction does not, if the act, for instance, adoption or marriage, has been completed, result in its invalidity. If the act is void in law, there is no room for the application of the maxim. In *Sri Balusu's* case, the Privy Council point out that the two parts of the maxim *Quod fieri non debet factum valet* (e^2) "apply to two different departments of life. Many things which ought not to be done in point of morals or religion are valid in point of law." And the principle is only applied where a rule has already been reduced by independent reasoning to a moral precept or to a directory rule, falling short of an imperative rule of law (*f*). The maxim is indeed one on the borderland between morals and positive law. Jimutavahana's statement that 'a fact cannot be altered by a hundred texts' is, no doubt, striking (*g*) but, it is not, as was once supposed, peculiar to the Bengal School (g^1). Factum Valet.

While therefore, according to the orthodox view, the Mimamsa rules of interpretation have been applied and are applicable in the interpretation of Hindu law, they are of very doubtful utility in the present day administration of Hindu Law. Many of the rules are a reduplication of common sense or trained reasoning. Such of them as are peculiar to the Mimamsa scheme of interpretation are clearly difficult of application. To enable one to apply Jaimini's rules safely and correctly, mere knowledge of Sanskrit and of the Mimamsa rules of interpretation is not enough; an extensive and practical knowledge of the details of the Vedic sacrifices and rituals and a specialised training as a Mimamsaka are indispensable (*h*). Almost all the difficulties due Mimamsa rules now of doubtful utility.

(e^2) "What ought not to be done is valid when done," Wharton's Law Lexicon, p. 708.

(*f*) *Sri Balusu's* case (1899) 26 I.A., 113, 149; 21 All., 460, 487; 22 Mad, 398, 423, *Kunwar Basant* v. *Kunwar Brij* (1935) 62 I A., 180, 194, 195; 57 All., 494.

(*g*) Dayabhaga, II, 30, Jolly, T L.L., 113; Dr. Wilson points out that even Jimutavahana never applies this principle except to cases, where in his view of the law, a person is doing that which he is strictly entitled to do, though the exercise of the right violates a moral obligation to others. (Dr. Wilson's Works V, 71-74.)

(g^1) *Wooma Daee* v. *Gokoolanund* (1878) 5 I.A., 40, 53, 3 Cal, 597, 601.

(*h*) J. C. Ghose (Vol. I, 1026) discusses these rules and concludes: "The rules of Jaimini were meant for sacrifices and ceremonial observances but in regard to *Vyavahara* or positive law, they seem to have little application."

to conflicts, obscurities and lacunae in the Smritis, have been more or less removed by the Commentaries and Digests of Hindu lawyers from the 8th Century onwards and by the decisions of Courts. Any fresh interpretation of the Smritis without the aid of the established Commentaries and Digests by an independent application of the Mimamsa rules, would, in most cases, be unsafe.

The Commentaries and the Digests

§ 22. All the works which come under the head of Smritis agree in this—that they claim and are admitted to possess an independent authority But while the authority of the precepts contained in the Smritis is beyond dispute, their meaning is open to various interpretations and has been and is the subject of much dispute which must be determined by ordinary process of reason (*i*) Such determination, however, can only be within very narrow limits and confined to points neither covered nor made clear by the Commentaries and Digests to be presently mentioned Every Smriti did not cover the whole ground of law and even such of the rules as they laid down were not always expressed in sufficient detail and there were conflicts and obscurities in them Naturally the law as contained in the Dharmasastras formed the subject of frequent exposition by learned Hindu lawyers which took the form either of Commentaries on particular Smritis or Nibandhas or Digests of the entire body of Smriti material The authors of the Commentaries and Digests assume that the Smritis constitute a single body of law, one part of which supplements the other, and every part of which, if properly understood, is capable of being reconciled with the other. They discarded much of what had become obsolete either with a simple statement to that effect or on the ground that they were no longer admissible in the present age of sins (Kaliyuga) (*j*). They modified and supplemented the rules in the Smritis, in part by means of their own reasoning and in part in the light of usages that had grown up (*k*). They did their work so well that their Commentaries and Digests have in effect superseded the Smritis, at any rate, in very large measure. The duty of a Judge, therefore, as pointed out by the Judicial Committee (*l*) 'is not so much to enquire whether a disputed doctrine is fairly deducible from

(*i*) *Sri Balusu's* case (1899) 26 I.A., 113, 131; 22 Mad, 398.

(*j*) Jolly, L & C, 96

(*k*) *Jogdamba* v *Secretary of State* (1889) 16 Cal, 367, 375; *Chandika Buksh* v. *Muna Kunwar* (1902) 29 I A, 70, 24 All, 273, 280, *Minakshi* v. *Ramanada* (1888) 11 Mad, 49, 52, F.B.

(*l*) *The Collector of Madura* v. *Moottoo Ramalinga Sathupathy* (1868) 12 Moo. I.A., 397, 436.

the earliest authorities as to ascertain whether it has been received by the particular school which governs the district with which he has to deal and has there been sanctioned by usage.' The concluding words of this observation give "no countenance to the conclusion that, in order to bring a case under any rule of law laid down by recognised authority for Hindus generally, evidence must be given of actual events to show that in point of fact the people subject to that general law regulate their lives by it" (*m*). In a very recent case, the Judicial Committee observe that "the commentators, while professing to interpret the law as laid down in the Smritis, introduced changes in order to bring it into harmony with the usage followed by the people governed by the law; and that it is the opinion of the commentators which prevails in the provinces where their authority is recognised" (*n*). After referring to their observation in *Bhyah Ram Singh* v. *Bhyah Ugar Singh* (*o*) that the Mitakshara "subordinates in more than one place the language of texts to custom and approved usage," they emphatically lay down that "in the event of a conflict between the ancient text writers and the commentators, the opinion of the latter must be accepted" (*p*).

Commentaries on the Code of Manu.

§ 23. The Code of Manu has been the subject of numerous commentaries. Of these, the most renowned are those of Medhatithi, Govindaraja and Kulluka. It appears that a much earlier writer, Asahaya, commented upon it but his work is not available.

Medhatithi.

Medhatithi's work is the earliest of the commentaries extant on Manu and is frequently referred to as of high authority and mentioned in the Mitakshara and the Smriti-chandrika (*q*). His date is probably between 825—900 A.D. It is not certain whether Medhatithi's home was Kashmir or Southern India (*r*). His commentary was secured by

(*m*) *Bhagwan Singh* v. *Bhagwan Singh* (1899) 26 I.A., 153, 165, 21 All, 412, *Ganga Sahai* v. *Lekhraj Singh* (1886) 9 All., 253.

(*n*) *Atmaram Abhimanji* v. *Bajirao Janrao* (1935) 62 I.A., 139, 143; 39 C W N, 646, 68 M L J., 673.

(*o*) (1870) 13 Moo I A, 373, 390.

(*p*) *Atmaram Abhimanji* v. *Bajirao Janrao* (1935) 62 I.A., 139, 143.

(*q*) Mandlik has published the commentary. Also Gharpure, Dr. Jha has translated the whole Bhashya of Medhatithi in the Calcutta University series.

(*r*) S.B.E, Vol. XXV, Buhler's Introduction, 123; Kane, 269, 270; Jolly L & C, 66 says that very probably his native country is to be sought in Kashmir, although already in early times he is quoted in South Indian works. Ganapathi Iyer thinks that he belongs to South India, p. 208. At page 6 (T.L. Lectures) Dr. Jolly apparently took the view that he is a Southerner as Kamalakara speaks of him as a Southerner (Kane, 270).

King Madanapala of Kashtha in the 14th century A.D. (*s*); but was not recast as Mr. Colebrooke and Dr. Sarvadhikari, following him, thought (*t*).

Govindaraja. Govindaraja belonged to the eleventh or twelfth century A.D. (*u*). He is referred to by Jimutavahana, Kulluka and by the polymath Hemadri (13th century A.D.). According to Dr. Jolly (*v*), the Manutika of Govindaraja is very useful for the interpretation of the text as it contains a full paraphrase of the text and is marked by conciseness of expression and philological accuracy.

Dharesvara. King Bhoja of Dhara (1000 to 1055 A.D.) who was a man of encyclopaedic learning and varied literary activities apparently wrote a commentary on the Manu Smriti which is lost (*w*). His views appear to have generally agreed with those of the author of the Smritisangraha. He is quoted by Vijnanesvara and Jimutavahana.

Kulluka. Kullukabhatta's commentary is the best known and the most renowned of all the commentaries. He refers to Medhatithi and Govindaraja. In *Pedda Ramappa* v. *Bangari Seshamma* (*x*), the Privy Council cite Sir William Jones's eulogy upon Kulluka's work as one "of which it may perhaps be said very truly that it is the shortest yet the most luminous, the least ostentatious yet the most learned, deepest yet the most agreeable, commentary ever composed on any author, ancient or modern." Dr. Jolly does not agree with this (*y*). Sir Asutosh Mookerjee A.C.J. says: "Kullukabhatta is however remarkable for the narrowness of his views and his importance is by no means commensurate with his popularity which was due in a large measure to his brevity" (*z*). Mr. Kane's estimate (*a*) that Kulluka's commentary, though not original, is concise and lucid and his remarks are always to the point is just. Though Sir William Jones's eulogy is exaggerated. Kulluka's exposition on the whole, is better than the involved comment-

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(*s*) Kane, 388 See colophon to Medhatithi on Manu Smriti, ch II. (Jha, Vol. I, pt. II, 540.)

(*t*) T.L.L., 6-8; Sarvadhikari, 249.

(*u*) Kane, 315.

(*v*) Jolly, L & C, 66.

(*w*) Jolly, L & C, 68, Kane, 275-279

(*x*) (1880) 8 I.A., 1, 2 Mad., 286, 291

(*y*) Jolly, T.L.L., 11; L & C, 67

(*z*) *Rajani Nath* v. *Nitai* (1921) 48 Cal, 643, 691, F.B.

(*a*) Kane, 359.

aries of others. He belonged to Bengal and composed his commentary in Benares. Dr. Buhler (*b*) and Sir Asutosh Mookerjee A.C.J. (*c*) place Kulluka in the 15th century A.D. but it appears that the Rajaniti Ratnakara of Chandesvara (c. 1314 A.D.) quotes Kulluka on Manu. Mr. Kane therefore places his work about 1250 A.D. (*d*).

Commentaries on the Yajnavalkya Smriti. Visvarupa.

§ 24. Equally numerous are the commentaries on the smriti of Yajnavalkya. The earliest commentary on it is that of Visvarupa. It is known as Balakrida (*e*). On examining the whole evidence, Mr. Kane considers it as fairly established that Visvarupa is identical with Suresvara, a pupil of the great Sankaracharya (788-820 A.D.) and therefore places him about the beginning of the 9th century A.D. Visvarupa's commentary was first discovered in Malabar and the text and translation of Visvarupa's commentary on Inheritance was published by S. Sitarama Sastri of the Madras and Pudukotta bar (*f*). In *Pudiava Nadar* v. *Pavanasa Nadar* (*g*), Coutts-Trotter J. declined to act upon it on the ground that it had not been scrutinised by a competent critic of Sanskrit texts. The entire commentary has been recently edited and published by Dr. T. Ganapathi Sastri in the Trivandrum Sanskrit series. On a comparison of the text of Visvarupa with the citations from it in several other works, Mr. Kane comes to the conclusion that it is in the main genuine but that, in few cases particularly in the *Vyavahara* section it is corrupt or deficient (*h*). There can therefore be no doubt as to its importance or genuineness (*i*). Though on the central question of the origin of proprietary right, both Visvarupa and Vijnanesvara agree, they differ on many other points (*j*).

(*b*) S.B.E., Vol. XXV, Introdn., 131.

(*c*) *Rajani Nath Das* v. *Nitai Chandra Dey* (1921) 48 Cal., 643, 688, F.B.

(*d*) Kane, 362, 363. Other commentators on Manu of lesser importance are Sarvajnanarayana, Raghavananda, Nandana and Ramachandra.

(*e*) It appears from Visvarupa's commentary that there were earlier commentaries on Yajnavalkya which are not available. Devabodha has also commented upon the Yajn. Smriti: the Prakasa is another commentary.

(*f*) Visvarupa, Preface (1900); J. C. Ghose; Hindu Law, Vol. II, 1-19.

(*g*) (1922) 45 Mad., 949, 974.

(*h*) Kane, 259.

(*i*) The commentary of Asahaya on Narada (Introdn. Chapter I, 15) as edited by Kalyanabhatta, mentions Visvarupa along with Manu and Narada as one of the law books to be consulted in Courts. It refers to Visvarupa's commentary on the Yajn. Smriti. (Kane, 247-248.)

(*j*) Eleven points of difference between the two are noticed by Kane, 259.

Vijnanesvara.

Next, in point of time but by far the most celebrated and authoritative of all the commentaries on the Yajnavalkya smriti, is the Mitakshara by Vijnanesvara or Vijnana Yogin (*k*). The age of Vijnanesvara has been fixed by recent research to be the latter part of the 11th century (*l*). "The work of this great jurist whose logical acumen, judging from his work seems to have been remarkable" (*m*) became a standard work at an early date in the Dekhan and also in Benares and a great part of Northern India (*n*). He belonged to the order of ascetics and his age is fixed with reference to his contemporary and patron the Chalukya King Vikramaditya of Kalyan in Hyderabad (1076-1126 A.D.). His treatise must therefore be placed about the end of the 11th century or the beginning of the 12th century A.D. According to Dr. Jolly, Vijnanesvara is called a southern author in the Madanaratna (*o*). From his long and anxious discussion on the son's right by birth, on the widow's right of succession and on the sapinda relation so as to prefer the mother and to bring in the bandhus and from his insistence on 'the compact series of heirs', it is quite evident that Vijnanesvara found the

His early importance.

(*k*) The portion of the work which treats of inheritance is familiar to students through Mr Colebrooke's translation. The portion on Judicial Procedure has been translated by Mr W. MacNaghten and forms the latter part of first volume of his work on Hindu Law. A table of contents of the entire work will be found at the end of the first volume of Borrodaile's Reports (folio 1825). The Acharadhyaya with the Viramitrodayatika of Mitramisra is translated by J. R. Ghaipute (1936). The Mitakshara with the gloss of Balambhatta (Acharadhyaya) is translated by Srisa Chandra Vidyarnava (1918). The Prayaschittadhyaya is translated by S. N. Naraharayya [Sacred laws of the Aryas series (1913)].

(*l*) W. & B., 5, Macdonell, S.L. 429.

(*m*) Per Mr Ameer Ali in *Buddha Singh* v. *Lalta Singh* (1915) 42 I.A., 208, 220, 37 All., 604, *Bhyah Ram Singh* v. *Bhyah Ugur Singh* (1870) 13 M.I.A., 370, 390. Mr Kane says that Vijnanesvara is described in the Dwaitanirnaya of Sankarabhatta of Benares (c. 16th century A.D.) as the most eminent of all writers of nibandhas (Kane, 247). Dr Jha's statement (H.L.S., I, 17) that no Hindu lawyer of the old school will admit that "the Mitakshara—and the Mitakshara alone—represents the authoritative law for Northern India" means little as the Viramitrodaya is based upon it and closely follows it. Mr Colebrooke (Strange's H.L., 4th edn., 317) refers to the formula employed by Indian judges prior to the institution of Adawluts in their references to Pandits for opinion "to consult the Mitakshara" which demonstrates that it was implicitly followed in the city and province of Benares. The widespread influence of the Mitakshara from the beginning is attested by its being made the subject of an influential commentary in the court of King Madanapala in the fourteenth century, if not earlier.

(*n*) Jolly, L. & C., 68.

(*o*) Jolly, L. & C., 68; the date of the Madanaratna is the 15th century A.D. (Jolly, L. & C., 80), according to Kane (1425-1450 A.D.) page 393.

law in a very unsettled condition. This far-seeing jurist and statesman, by practically freeing Hindu Law from its religious fetters and making it readily acceptable to all communities in all parts of India, established it on new foundations.

The Mitakshara in its turn has been the subject of several commentaries (*p*). Amongst them, the best known are the Subodhini of Visvesvarabhatta (1360-1390 A.D.) (*q*) and the Balambhatti said to be written by Balakrishna alias Balambhatta in the name of his mother Lakshmidevi towards the end of the 18th century A.D. (*q*[1]).

The authority of the Mitakshara is supreme throughout India except in Bengal (*r*) where it is superseded by the Dayabhaga of Jimutavahana on principles and points on which they differ; but in other matters, it is of high authority even there. In Gujerat, in the island of Bombay and also in the North Konkan, however, its authority is controlled by the Mayukha on the very few points on which they differ (*s*), the general principle however being to construe the Mitakshara and the Mayukha so as to harmonise them as far as it is reasonably possible (*t*). Its authority is supreme in the city and province of Benares and it stands at the head of the works referred to as settling the law in the South and West of India and it is the law of the Mithila school except in the few matters in respect of which the latter has departed from the Mitakshara (*u*).

Another commentator on the Yajnavalkyasmriti is Apararka or Aparaditya, a king of Konkan, belonging to the

Apararka.

(*p*) Kane, 290.

(*q*) Kane, 389. Vyavahara adhyaya is translated by J. R. Gharpure (1930), See *Buddhasingh's* case (1915) 42 I A, 208, 223, 226, 37 All., 604.

(*q*[1]) Balambhatti has been published by Mr. J. R. Gharpure.

(*r*) *Collector of Madura* v. *Mootoo Ramalinga Sathupathy* (1868) 12 Moo. I.A., 397, 432, 433, 435. *Ramachandra's* case (1914) 41 I.A., 290; 42 Cal, 384, *Buddhasingh* v. *Laltu Singh* (1915) 42 I.A., 208, 216, 225; 37 All., 604.

(*s*) Colebrooke's note, 1 Stra. H.L., 317; W & B, 10; *Krishnaji* v. *Pandurang* 12 B.H.C., 65.

(*t*) *Bai Kesserbai* v. *Hunsraj Morarji* (1906) 33 I.A., 176; 30 Bom., 431 approving *Gojabai* v *Shahajirao* (1892) 17 Bom., 114.

(*u*) *Bhagwandeen* v. *Mynabae* (1867) 11 Moo. I.A., 487, 507, 508; *Girdhari Lall Roy* v. *The Bengal Govt.* (1868) 12 Moo. I.A., 448; *Sourindra Mohan Sinha* v. *Hariprasad* (1926) 52 I.A., 418; 5 Pat., 135, 155; *Kamlaprasad* v. *Murli Manohar* (1934) 13 Pat., 550, 570.

dynasty of Silaharas (*v*). His work is of paramount authority in Kashmir and is referred to with respect in many of the later Digests. His commentary has been published in two volumes. A part of it, stating the order of succession has been translated in the Madras Law Journal (*w*). Apararka is quoted in the Smritichandrika, the Madanaparijata, the Dattaka Mimamsa and the Sarasvati Vilasa. As observed by the Privy Council, Apararka's authority is acknowledged by the expounders of the school of the Mitakshara (*x*).

Sulapani.

Sulapani, a Bengal writer (c. 1375-1460 A.D.) wrote a commentary called Deepakalika on the Yajnavalkyasmriti. He is referred to by Raghunandana, another Bengal writer and in the Viramitrodaya (*y*).

Viramitrodaya.

Mitramisra has written a commentary on the Smriti of Yajnavalkya and also a separate treatise or *nibandha,* both of them being called the Viramitrodaya (*z*). The age of these two works is somewhere between 1610-1640 A.D. (*a*). Dr. Jolly refers to the commentary as an elaborate and valuable work (*b*). Mitramisra wrote the Digest as well as the commentary on the Smriti of Yajnavalkya under the orders of Bundela Virasimha, his patron and friend, who was a ruler at Orccha. Mr. Kane says that the *nibandha,* Viramitrodaya, is the largest known on the Dharmasastras. Mitramisra has certainly handled his matter competently and with a wealth of learning, with great attention to detail and a careful consideration of opposite views. The text of the Dayabhaga portion was published by Golapchandra Sarkar Sastri (1879) with an English translation. Throughout the Mitakshara jurisdiction, Mitramisra's treatise, the Viramitrodaya, which closely follows the Mitakshara, is of high authority. It is declaratory of the law of the Benares School especially on points left doubtful

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(*v*) Jolly, L & C, 70, Jolly, T.L.L, 13; Kane, 333, W & B, 19.

(*w*) Translated in 21 Mad L J (journal) 10, 49, 93, 150, 196, 254, 305, 365, 432, 483, Ghose, H L, II, 238-272, Sarvadhikari (2nd ed., 329-332) gives only an abridgement

(*x*) *Buddha Singh* v. *Laltu Singh* (1915) 42 I.A., 208, 221, 37 All., 604, 617, 618.

(*y*) For a translation of the chapter on Inheritance, see Ghose, H.L., Vol. II, 542-549. Dayatatva XI, 56; Setlur, 512, Viramit, IV, 7, p. 433.

(*z*) A translation of the latter has been published by Mr. Setlur also (Part II, 275-469) Part of his commentary on the Mitakshara-Achara adhyaya has been translated by Gharpure in "the Collection of Hindu Law Texts" series.

(*a*) W & B, 21, 29, Kane, 446.

(*b*) Jolly, L & C, 70.

by the Mitakshara (*c*). As far as Southern India and Western India are concerned, while it was originally left out of consideration in the *Ramnad* case (*d*), its high authority is now fully recognised. "It supplements many gaps and omissions in the earlier commentaries and illustrates and elucidates with logical preciseness the meaning of doubtful prescriptions" (*e*). In *Buddha Singh's* case (*f*), the views of the Viramitrodaya were preferred to those of the Smritichandrika and the Subodhini. "The Viramitrodaya may also like the Mitakshara be referred to in Bengal where the Dayabhaga is silent" (*g*).

Authorities in Southern India.

§ 25. The Mitakshara is supplemented in Southern India by the Smritichandrika, the Dayavibhaga in Parasaramadhaviya, the Sarasvati Vilasa and the Vyavahara Nirnaya (*h*).

Smriti-chandrika.

The Smritichandrika is by Devannabhatta or Devanandabhatta, a Southern author. Its date is about 1200 A.D. (*i*). It has often been stated to be a work of great authority in Southern India and as next to the Mitakshara. Dr. Jolly says that it is remarkable for its originality (*j*). Devannabhatta's treatise is conspicuous for its method, clear-sightedness, erudition and the ease with which he moves through his

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(*c*) *Girdharilal* v. *the Govt. of Bengal* (1868) 12 Moo. I.A., 448, 466; *Girja Bai* v. *Sadashiv* (1916) 43 I.A., 151, 159, 160, 43 Cal., 1031; *Buddhasingh* v. *Laltusingh* (1915) 42 I.A., 208, 227, 228, 37 All., 604, *Ramachandra Marthand Waikar* v. *Vinayek V. Kothekar* (1914) 41 I.A., 290, 42 Cal., 384, *Jatindranath Roy* v. *Nagendranath Roy* (1931) 58 I.A., 372, 59 Cal., 576.

(*d*) *Collector of Madura* v. *Moothoo Ramalinga Sethupathy* (1868) 12 Moo. I.A., 397, 432, 438; *Lulloobhai* v. *Cassibai* (1880) 7 I.A., 212, 230, 5 Bom., 110, 118.

(*e*) *Vedachala Mudaliar* v. *Subrahmanya Mudaliar* (1921) 48 I.A., 349, 361, 44 Mad., 753, 764; *Baluswami* v. *Narayana* (1897) 20 Mad. 342, 349; *Muthuswami* v. *Muthukumaraswami* (1893) 16 Mad., 23, 30; *Girjabai* v. *Sadashiv* (1916) 43 I.A., 151, 159, 43 Cal., 1031, 1047 *Jagannath Prasad Gupta* v. *Rangitsingh* (1897) 25 Cal., 354, 367. *Bindra* v. *Mathura* 6 Luck., 456; A.I.R., 1931 Oudh, 17 F.B.

(*f*) *Buddhasingh* v. *Laltusingh* (1915) 42 I.A, 208, 226, 227, 37 All., 604.

(*g*) *Moniram Kolita* v. *Keri Kolitani* (1880) 7 I.A., 115, 153, 5 Cal., 776, 788, 789.

(*h*) *Collector of Madura* v. *Mootoo Ramalinga* (1868) 12 Moo. I.A., 397

(*i*) Jolly, L & C, 75; Kane, 346; The Dayabhaga portion of the work has been translated by Krishnaswami Ayyar in 1867; also by J. C. Ghose, Vol. II, 328-420; Setlur, Part I, 212-316. For its authority in Northern India, see *Deo Kishan* v. *Budh Prakash* (1883) 5 All, 509, 511 F.B.

(*j*) Jolly, T.L.L., 20.

subject. In *Vedachala*'s case (*k*), on the general question raised, whether spiritual benefit was a test of preference among bandhus of the same class in the Mitakshara school, the Privy Council thought that the Smritichandrika ranked as the most authoritative commentary on Vijnanesvara's work and held in Southern India a parallel position to the Mayukha in Bombay. In *Buddhasingh's* case (*l*) which overruled the decisions of the Madras High Court based on the Smritichandrika, a different estimate was given. The Judicial Committee, after pointing out that the Smritichandrika admittedly differs from the author of the Mitakshara in several essential rules of law, said "it seems, to say the least, doubtful whether an enunciation in the Smritichandrika can be safely applied except perhaps by way of analogy to explain a dubious or indeterminate phrase or term in the Mitakshara". In other cases where its authority on specific questions in respect of inheritance to stridhana was tested, its views were not followed (*m*). Again while the Mitakshara gives the preference to the mother on the ground of propinquity, the Smritichandrika gives the preference to the father (*n*). The authority of the Smritichandrika must therefore be confined to questions where the Mitakshara is silent and the reasoning of the Smritichandrika is consistent with the rules in the Mitakshara. There can however be little doubt that its general authority is fairly high on points on which it does not come into conflict with the Mitakshara. It is a work which is referred to throughout India with great respect by Nilakantha, Mitramisra and others.

Madhava-charya

The Parasaramadhaviya was written by the great Madhavacharya or Vidyaranya, the prime minister of the kings of the Vijayanagara dynasty. His date is between

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(*k*) *Vedachala* v. *Subramania* (1921) 48 I A, 349, 44 Mad. 753.

(*l*) (1915) 42 I A, 208, 223, 37 All, 604, 612, overruling *Surayya* v. *Lakshminarasamma* (1882) 5 Mad, 291, and *Chinnaswami Pillai* v. *Kunju Pillai* (1912) 35 Mad, 152, *Soobramiah Chetty* v. *Nataraja Pillai* (1928) 53 Mad, 61, follows 42 I A, 208. See also *Woomadevi* v. *Gokoolanund Das* (1878) 5 I A, 40, 46, 3 Cal, 587, 594.

(*m*) *Simmamiammal* v. *Muttammal* (1880) 3 Mad, 265, 269, *Muthappudayan* v. *Ammani Ammal* (1898) 21 Mad, 58, *Salemma* v. *Lutchmanna Reddi* (1898) 21 Mad, 100, *Venkatasubrahmanya Chetti* v. *Thayarammal* (1898) 21 Mad, 263, *Raju Gramani* v. *Ammani Ammal* (1906) 29 Mad., 358.

(*n*) XI, 3, 9, Kristnaswami Iyer's translation, 182. The administration of Hindu law in Madras during the earlier period owed most to the Smritichandrika.

1330-1385 A.D. (*o*). The extant Parasarasmriti contains no chapter on *Vyavahara* but Madhavacharya has written his manual dealing with it also as part of his commentary on the Parasarasmriti. Dr. Burnell has published a translation of the Dayavibhaga portion of the work (*p*).

Sarasvati Vilasa.

The Sarasvati Vilasa is another work of authority in Southern India. It was written by Prataparudradeva, a King of Orissa. Dr. Jolly, Mr. Foulkes and Mr. Kane place the work in the beginning of the 16th century (*q*). It is referred to in several cases (*r*).

Varadaraja.

Varadaraja's Vyavaharanirnaya (*s*) is also an authority in Southern India and its views are treated with respect by the expounders of the Benares School (*t*). He lived at the end of the 16th century or the beginning of the 17th century (*u*).

Vaidyanatha Dikshita.

Another popular South Indian digest is the Smriti Muktaphala of Vaidyanatha Dikshita (c. 1600 A.D.) (*v*). It deals with all topics. It is referred to as a work of authority in several cases (*w*).

Authorities in Western India

§ 26. The works which supplement the Mitakshara in Western India are the Vyavahara Mayukha, the Viramitrodaya

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(*o*) Jolly, L & C, 71; Kane, 380. As to its authority, see the *Ramnad case* (1868) 12 M.I.A., 397, 436, 473, *Muttuvaduganadha* v. *Dorasinga* (1881) 8 I.A., 99, 109, 3 Mad., 290, 302.

(*p*) For other translations, see 1 Madras Law Journal, 442, 509, 573, 641, Ghose, Hindu Law, Vol II, 614-643, Setlur, Part I, 317-354; an abstract is given by Sarvadhikari, II edition, 350-354. For its authority in South India see *Bhugvandeen* v. *Myna Baee* (1867) 11 M.I.A., 487, 508, *Collector of Madura* v. *Mootoo Ramalinga* (1868) 12 M.I.A., 397

(*q*) Jolly, L & C, 82, Foulkes' Preface to Sarasvati Vilasa, xvi, xvii; Kane, 413; The Rev. Mr. Foulkes has published the text and a translation. Also J. C. Ghose, II, 990-1020; Setlur, Part I, 119-211.

(*r*) *Vedachala* v. *Subrahmania* (1921) 48 I.A., 349, 363, 44 Mad., 753, *Pedda Ramireddi* v. *Gangireddi* (1925) 48 Mad., 722, 731, *Jatindranath Roy* v. *Nagindranath Roy* (1931) 58 I.A., 372, 376, 59 Cal., 576, 581; *Krishna* v. *Sami* (1886) 9 Mad., 64 F.B., 72.

(*s*) Dr. Burnell has translated it.

(*t*) *Buddhasingh's case* (1915) 42 I.A., 208, 222, 37 All., 604, 618

(*u*) Jolly, L & C, 86.

(*v*) Jolly, L & C, 86, text printed in Chidambaram and Kumbakonam in Grantha characters.

(*w*) *Venkata* v. *Subhadra* (1884) 7 Mad., 548; *Vayidinatha* v. *Appu* (1886) 9 Mad., 44, 49, 52, 55; *Viraraghava* v. *Ramalinga* (1886) 9 Mad., 148, 162; *Brindavan* v. *Radhamony* (1889) 12 Mad., 72, 80; *Visvasundara* v. *Somasundara* (1920) 43 Mad., 876, 892, translated in part in 6 M.L.J., 373, Setlur 544.

and the Samskara Kaustubha (*x*). The Mitakshara ranks first and paramount in the Maratha country and in Northern Kanara and Ratnagiri while in Gujerat, in the island of Bombay and in North Konkan (*y*) the authority of the Mitakshara is subject to the authority of the Mayukha where the latter differs from it. But as laid down by Telang J. and approved by the Privy Council, the general principle is to construe the Mitakshara and the Mayukha so as to harmonise one another whenever and so far as it is reasonably possible (*z*). The so-called differences between the Mitakshara and the Mayukha are more due to case-law than to actual differences of opinion which, though striking, are confined to a few points (z^1). In Ahmednagar, Poona and Khandesh, the Mitakshara is construed in doubtful cases in the light of the Mayukha which is apparently of almost equal authority (*a*). The Mayukha has been translated by Mr Borrodaile, by Mr. V. N. Mandlik and by Mr. J R Ghaipure (*b*).

Vyavahara Mayukha

The author of the Vyavahara Mayukha is Nilakanthabhatta who belonged to a famous Maharashtra family of writers that had settled in Benares Nilakantha's treatment of his subjects shows conspicuous ability, neatness and lucidity He generally omits irrelevant discussions and takes a practical view of things and he is certainly entitled to be regarded as the founder of a school of Hindu Law. His work belongs to the beginning of the 17th century (*c*) He wrote a number of other works of which the Samskara Mayukha is also treated as an authority.

(*x*) *Collector of Madura* v *Mootoo Ramalinga* (1868) 12 M I A, 397, 436, 438, *Bhagirathe Bhai* v *Kahnuji Rao* (1887) 11 Bom., 285, 293, 294 F B

(*y*) W & B, 13, 14, *Krishnaji* v. *Pandurang* (1875) 12 Bom **H.C.**, 65, *Lallubhai* v *Mankuvarbhai* (1878) 2 Bom., 388, 418; *Sakharam* v *Sitabhai* (1879) 3 Bom., 353, *Balkrishna* v. *Lakshman* (1890) 14 Bom, 605, *Jankibai* v *Sundra* ibid, 612, 623, *Narhar* v. *Bhau* (1916) 40 Bom, 621, *Bhimabai* v *Gurunath Gouda* (1932) 60 I A., 25; 57 Bom., 157, 162

(*z*) *Bai Kesserbai* v *Hunsraj Morarji* (1906) 33 I.A., 176, 30 Bom, 431, 442, approving *Gojabhai* v *Shrimant Shahajirao* (1893) 17 Bom, 114, 118, *Bhagwan* v *Warubai* (1908) 32 Bom, 300.

(z^1) e g, father preferred to mother, IV, viii, 14, nephew to half-brother, IV, viii, 16, sister to grandmother, IV, viii, 19, and the joint successions which are not recognised, IV, viii, 20, and succession to stridhana

(*a*) *Bhagirathi Bhai* v *Kahnujirav* (1887) 11 Bom, 285, 294, F.B.

(*b*) Mr Kane has also published the text (Poona, 1926).

(*c*) Kane, 440, Jolly L & C, 84.

The Samskara Kaustubha was written by Anantadeva in the latter half of the 17th century. It is part of a digest called Smriti Kaustubha (*d*). Anantadeva.

§ 27. In Mithila (or Tirhut and North Bihar) (*e*), the authority of the Mitakshara prevails except in a few matters in respect of which the law of the Mithila School has departed from the Mitakshara. The Vivada Chintamani is treated as a work of highest authority in the Mithila School (*f*). It was written in the 15th century by Vachaspati Misra under the patronage of King Bairavendra alias Harinarayana of Mithila (*g*). The Vivadachintamani has been translated by Prossonno Coomar Tagore (*h*). An earlier work of authority in the Mithila country is the Vivada Ratnakara by Chandesvara (*i*) in the beginning of the 14th century. Chandesvara was the minister of King Harasimhadeva who conquered Nepal for his master (*j*). A third authority in the Mithila School is the Vivada Chandra of Misarumisra (*k*) written under the order of Princess Lakshmi Devi of Mithila about the end of the 14th century (*l*). Mithila Authorities. Vivada-chintamani. Ratnakara. Misarumisra.

The Madanaparijata, composed by Visvesvarabhatta, under the auspices of King Madanapala of Kastha is a work of authority in Mithila, whether its date is about 1360-1370 A.D. as Dr. Jolly and Mr. Kane would have it or whether it was written about 1175 A.D. as the Patna High Court holds (*m*). Madana-parijata.

(*d*) Kane, 447. The text has been published both in Bombay and Baroda.

(*e*) Mithila represents the modern districts of Dharbanga, Champaran and North Muzzaffarpur (Hunter, Imperial Gazetteer, Vol. VII, 208).

(*f*) *Rutchepathy* v. *Rajunder* (1839) 2 M.I.A., 134, 146; *Mt. Thakur Deyhee* v. *Rai Baluk* (1866) 11 M.I.A., 139, 174-5. *Baccha Jha* v. *Jugmon Jha* (1886) 12 Cal., 348, 351; *Balwant Singh* v. *Rani-kishori* (1898) 25 I A., 54, 69, 20 All., 267, 290; *Sourindramohan Sinha* v. *Harprasad* (1926) 52 I.A., 418, 5 Pat., 135, 155, *Kamla Prasad* v. *Murli Manohar* (1934) 13 Pat., 550, 570.

(*g*) Jolly, L & C, 78; Kane, 405. J. C. Ghose (Vol. II, Introdn., xiv and xv) places him in the early part of the 16th century A.D.

(*h*) Setlur, Part II, 243-274.

(*i*) The Dayabhaga portion is translated by Sarkar Sastri; J. C. Ghose, II, 555-589; Setlur, Part II, 159-242.

(*j*) Jolly, L & C, 77; Kane, 366.

(*k*) Two editions of the text have been published by Ramakrishna Jha and Priyanath Misra of Patna.

(*l*) Jolly, L & C, 78; Kane, 399.

(*m*) Jolly, L & C, 78; Kane, 389, for a translation, see Ghose, II, 515-530; Setlur, Part II, 515-541, see also *Kamla Prasad* v. *Murli Manohar* (1934) 13 Pat., 550, 578.

Kalpataru.

The Kalpataru of Lakshmidhara which is frequently referred to in the Sarasvati Vilasa and the Viramitrodaya as well as in the works of the Mithila school is another authority in that school and was written about the first half of the twelfth century (*n*)

Authorities in Bengal

§ 28 In Bengal, the Mitakshara and the treatises which follow it give place to the Davabhaga of Jimutavahana on all matters on which they disagree That celebrated treatise (*o*)

Jimutavahana

is the starting point in Bengal just as the Mitakshara is elsewhere. The school of thought which Vijnanesvara sought so elaborately to refute found a powerful exponent in Jimutavahana Dr Jolly says it is one of the most striking compositions in the whole department of Indian Jurisprudence. It is certainly remarkable for its logic, lucidity and power. The Davabhaga has been translated into English by Mr. Colebrooke. Dr. Jolly places Jimutavahana in the 15th century (*p*). According to Golapchandra Sarkar Sastri and Mr. Panchanan Ghose, Jimutavahana was a minister of Vishvaksena, a King of Bengal, both place him with reference to another work of his called Kalaviveka towards the end of the 11th century or the beginning of the 12th century (*q*). Mr. Kane, while agreeing with Sarkar Sastri as to the date, does not accept the tradition as to his descent and position (*r*) But though the current tradition may be wrong in its date and details, there can be little doubt that he must have been a jurist or minister of great influence in the Court of a Bengal ruler Jimutavahana quotes the commentary of Govindaraja whose date is the 12th century (*s*). two generations at least must separate them (*t*) Chandesvara, the author of

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(*n*) Jolly, I & C, 74, Kane 317, for a translation, see Ghose, H L II, 483-502 The views of Lakshmidhara are summarised in Sarasvati Vilasa, §§ 627-709.

(*o*) Jolly, T L L, 21

(*p*) Jolly, L & C, 79, T L L, 22

(*q*) It appears to contain some astronomical details of 1092 A D See an article by Mr Panchanan Ghose in 26 C L J (Journal), 17 J C Ghose says that he was an ordinary Bengal Brahmin who lived in the beginning of the 15th century (Vol I, Introdn, XVI) For the two views of Mookerjee J, see *Rajaninath* v *Nitai Chunder* (1921) 48 Cal, 643, 687, F B, where the date is stated as eleventh century and *Pitamber* v *Nishikant* (1919) 24 C.W N., 215, 218, where it is stated as the 14th century

(*r*) Kane, 326

(*s*) Jolly, L & C, 67, according to Kane, Govindaraja's date is between 1050 A.D and 1100 A D or 1140 A D. (Kane, 315).

(*t*) Kane, 326

the Vivada Ratnakara (1314 A.D.) refers (*u*) to Halayudha (c. 1100 A.D.) and Kullukabhatta (c. 1250 A.D.), both Bengal writers, as well as to the Mitakshara, the Prakasa, the Parijata, the Kalpataru, Medhatithi and Visvarupa, but does not refer to Jimutavahana who must therefore have been his contemporary or lived a little earlier. For, Sulapani (1375 to 1460 A.D.) quotes Jimutavahana's Kalaviveka and it may be taken that two generations at least separated them. The fact that no writer on Dharmasastras, including Bengal writers, of the 12th and the 13th centuries refer to him appears to outweigh the *prima facie* inference that is drawn from the Kalaviveka.

It is safer therefore to assign the composition of the Dayabhaga of Jimutavahana to the 13th century which would agree with Dr. Jolly's earlier estimate in his Tagore Law Lectures (*v*).

Dayabhaga Commentaries.

The Dayabhaga has been the subject of several commentaries. The names of Acharya Chudamani, of Achyuta, Maheswara and Sri Krishna Tarkalankara are referred to in Mr. Colebrooke's preface to the Dayabhaga. Many portions of the Dayabhaga are supposed to be a refutation of the Mitakshara. Jimutavahana's authority must have been paramount as no attempt seems ever to have been made to question his views except in minute details.

Dayatatva

The Dayatatva of Raghunandana who lived in the 16th century is another work of authority in the Bengal School. The Dayatatva as well as the Vyavaharatatva form part of his encyclopædic work Smrititatva, and it closely follows the Dayabhaga (*w*). Raghunandana, unlike Jimutavahana, refers to the Mitakshara and with a view to reconcile both the systems, holds that succession is to be determined as well by proximity of birth as by religious efficacy (*w*[1]). His work has been translated by Golapchandra Sarkar Sastri (*x*).

Dayakramasangraha

The Dayakramasangraha is the work of Sri Krishna Tarkalankara. A translation of it was published in 1818 by Mr. Wynch (*y*). It follows and develops the views of the Dayabhaga.

(*u*) Kane, 369

(*v*) Jolly, T L L, 22. The Dayabhaga is only a part of his larger work, Dharmaratna. Jolly, L & C, 79. He wrote also Vyavaharamatrka.

(*w*) Kane, 417

(*w*[1]) Dayatatva, XI, 63 (Setlur's trans., 513).

(*x*) Setlur, Part II, 469-514.

(*y*) Setlur, Part II, 109-158.

Works on Adoption

§ 29. The Dattaka Mimamsa and the Dattaka Chandrika are two special works on adoption. Nandapandita, the author of the former has also written commentaries both on the Mitakshara as well as on the Institutes of Vishnu which latter work is called the Vaijayanti. His commentary on the Mitakshara is available only in fragments but his Vaijayanti has been used by Dr. Jolly in editing the Institutes of Vishnu (y^1). The Vaijayanti is one of the leading authorities in the Benares school (z) and has been recently relied upon by the Privy Council in *Buddha Singh's* case (a). Both the Dattaka Mimamsa and the Dattaka Chandrika were translated very early by Mr. Sutherland (b) The Dattaka Chandrika purports to be written by one Kubera, a Bengal author Shyama Charan Sarkar, in his Vyavasthachandrika (c) refers to the tradition among Bengal pandits that it was really written by Raghumani Vidyabhushana, the spiritual adviser of the Raja of Nuddea and a distinguished pandit who flourished in the latter half of Jagannatha's life, and who is also said to have assisted Mr. Colebrooke in the preparation of his translations of the Dayabhaga and the Mitakshara (d). Mr. Sutherland in his translation substituted on his own responsibility the name Devanandabhatta, the author of the Smritichandrika, for *Kubera* which occurred in the manuscripts he was translating. It is established, beyond dispute, that it is not the work of Devanandabhatta (d^1). Mr. W. H. MacNaghten says of both the works (e): "In questions relating to the law of adoption, the Dattaka Mimamsa and the Dattaka Chandrika are equally respected all over India; and where they differ, the doctrine of the latter is adhered to in Bengal and by the Southern jurists while the former is held to be the infallible guide in the provinces of Mithila and Benares". This statement

Dattaka Mimamsa.

Dattaka Chandrika.

(y^1) Jolly, L & C, 83, Kane, 423.

(z) *Jogdamba Koer* v *Secretary of State* (1889) 16 Cal, 367, 372.

(a) *Buddha Singh* v. *Laltusingh* (1915) 42 I.A., 208, 222, 37 All, 604

(b) For translations see Ghose, H L. Vol III, Setlur, Part I, 355-449.

(c) Preface to Vol. I, xxi.

(d) The tradition cannot be true as Shyama Charan Sarkar's statement that the Dattaka Chandrika was believed to be the basis of Nandapandita's more elaborate work is inconsistent with it, as Nandapandita wrote his work in the 17th century. Mr Mandlik holds it to be the work of Bhatta Kubera, a Bengali writer.

(d^1) Mandlik, 516, Jolly, T.L.L, 22.

(e) W. H. MacN., Preface, xxiii and p. 74.

was accepted by the Judicial Committee in the *Ramnad* case(f). The controversy as to the authority of the two works, has been settled by the Privy Council in two cases. "Their Lordships cannot concur with Knox J. in saying that their authority is open to examination, explanation, criticism, adoption. or rejection like any scientific treatises on European Jurisprudence. Such treatment would not allow for the effect which long acceptance of written opinions has upon social customs, and it would probably disturb recognised law and settled arrangements. But so far as saying that caution is required in accepting their glosses where they deviate from or add to the Smritis, their Lordships are prepared to concur with the learned Judge" (*g*). "Both works must be accepted as bearing high authority for so long a time that they have become embedded in the general law" (*h*).

Other Authorities.

Nirnaya Sindhu

§ 30. The Nirnaya Sindhu of Kamalakara Bhatta (1610-1640 A.D.) is an authority on religious and ceremonial law and is referred to more or less in all the schools. It enumerates the persons entitled to offer *sraddha* and states their order, incidentally throwing light on questions of succession(*i*). It is not only followed in Bombay, Benares and Bihar (*j*) but also in Southern India, particularly in the Andhra country (*k*). The Vivadatandava of Kamalakara has also been frequently referred to and is an authority of the Benares School on questions of succession (*l*). The Dharmasindhu of Kasinath (c. 1790 A.D.) is a work of repute in the Benares School and its authority on ceremonial matters is held

Dharmasindhu.

(*f*) *The Collector of Madura* v *Mootoo Ramalinga* (1868) 12 M.I.A., 397 at p. 437; see also *Rungamma* v. *Atchamma* (1846) 4 M.I.A., 1, 27.

(*g*) *Sri Balusu's case* (1899) 26 I.A., 113, 132, 22 Mad., 398, 21 All., 460.

(*h*) *Bhagwan Singh* v. *Bhagwan Singh* (1899) 26 I.A., 153, 161, 21 All., 412; see also *Perrazu* v. *Subbarayudu* (1921) 48 I.A., 280, 44 Mad., 656, 667.

(*i*) W & B, 2nd edn, 11; Sarvadhikari, 2nd edn., 96, 310, 311; Kane, 437. *Gopal Narhar Saffray* v. *Hanmanth Ganesh* (1879) 3 Bom., 273, 281; *Kushal Chand Lalchand* v. *Bai Mani* (1887) 11 Bom., 247, 254; *Sakaram Narayan* v. *Balakrishna* (1925) 49 Bom., 739, 757.

(*j*) *Ananda Bibi* v. *Nownit Lal* (1883) 9 Cal., 315, 324.

(*k*) *Pedda Ramireddi* v. *Gangireddi* (1925) 48 Mad., 722, 737; *Viswasundara Row* v. *Somasundara Row* (1920) 43 Mad., 876, 892.

(*l*) Sarvadhikari, 2nd edn, 314; for a translation, see J. C. Ghose, II, 1129 to 1145. *Dwarka Nath Roy* v. *Sarat Chandra* (1912) 39 Cal., 319, 331, 332. The Sudra Kamalakara by the same author is a standard treatise on the different religious ceremonies of the Sudras. Kane, 435.

Southern works.

in high respect (*m*). The Smriti-Muktapala of Vaidyanatha Dikshita already referred to and the Suddhi Vilochana of Tholappa are authorities specially on ceremonial matters and are frequently consulted in the Tamil Districts (*n*).

Halhed

Jagannatha

"§ 31. Halhed's Gentoo Code, the translation of the Vivadarnavasethu, compiled at the request of Warren Hastings is of no value. Of great value is the Vivadabhangarnava compiled at the instance of Sir William Jones by Jagannatha Tarkapanchanana and translated by Mr. Colebrooke who was not only a great Sanskrit scholar but a great Sanskrit lawyer. It is generally spoken of as Jagannatha's or Colebrooke's Digest. Mr. Colebrooke himself criticised the Digest as discussing together the discordant opinions without distinguishing which of them is the received doctrine of each school or whether any of them actually prevailed at present. On the other hand Mr. Justice Mookerjee observes: "there can be no question as to the weight to be attached to an opinion expressed by Jagannatha Tarkapanchanana who, as stated by Dwaraka Nath Mitter, J., in *Kerri Kolitani* v. *Moniram Kolita* (13 B L.R. 1, 49), was one of the most learned pandits that Bengal had ever produced and whose authority on questions of Hindu law ranks only next to Jimutavahana, Raghunandana and Sri Krishna" (*o*). As a repertory of ancient texts, it is simply invaluable.

Shyama Charan Sarkar

The Vyavastha Chandrika and the Vyavastha Darpana are two digests of Hindu Law, the former of the Mitakshara and the latter of the Dayabhaga School by Vidya Bushana Shyama Charan Sarkar who occupied for sometime the chair of Tagore Law Professor in the Calcutta University. "They have been referred to occasionally as works of some authority (*p*).

Only two main schools of law

§ 32. The term 'school of law' as applied to the different legal opinions prevalent in different parts of India seems to

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(*m*) Kane, 464, (1920) 43 Mad, 876, 892, *supra*, (1925) 48 Mad, 722, 736, *supra*

(*n*) *Vaidinatha* v *Appu* (1886) 9 Mad, 44, 49, (1920) 43 Mad, 876, 892, *supra*, Ganapathi Iyer, 214

(*o*) *Retki* v *Luchpat* (1914) 20 C W.N, 19, 23, *Kerri Kolitani* v *Moniram* 13 Beng L R, 1, 49, 19 W R, 394 where similar high praise is given

(*p*) *Bhola Nath Roy* v *Rakhal Dass* (1884) 11 Cal., 69, 71; *Bai Kesserbai* v *Hunsraj Morarji* (1906) 33 I A, 176, 30 Bom, 431, 447, *Ramchandra Marthand* v *Vinayak V Kothekar* (1914) 41 I A, 290, 300, 42 Cal., 384, *Buddhasingh* v *Laltusingh* (1915) 42 I A, 208, 222, 37 All, 604, for the earlier view see *Akhoychunder Bagcchi* v. *Kalapahar* (1855) 12 I A., 198, 12 Cal., 406, 413, where the Privy Council refers to it though not as an authority.

have originated with Mr. Colebrooke (*q*). There are in fact only two main schools, the Mitakshara and the Dayabhaga. Undoubtedly, there are fundamental differences of doctrine between the Mitakshara and the Dayabhaga schools. Any one who compares the Dayabhaga with the Mitakshara will observe that the two works differ in the most vital points, and that they do so from the conscious application of completely different principles (*r*). These will be discussed later in their appropriate places, but may be shortly summarised here

Salient points of difference.

First. the Dayabhaga lays down the principle of religious efficacy as the ruling canon in determining the order of succession, consequently it rejects the preference of agnates to cognates, which distinguishes the other system, and arranges and limits the cognates upon principles peculiar to itself.

Secondly: it wholly denies the doctrine that property is by birth, which is the corner-stone of the joint family system. Hence it treats the father as the absolute owner of the property, and authorises him to dispose of it at his pleasure. It also refuses to recognise any right in the son to a partition during his father's life.

Thirdly: it considers the brothers, or other collateral members of the joint family, as holding their shares in quasi-severalty, and consequently recognises their right to dispose of them at their pleasure, while still undivided.

Fourthly: whether, as a result of the last principle, or upon independent grounds, it recognises the right of a widow in an undivided family to succeed to her husband's share if he dies without issue, and to enforce a partition on her own account

Their probable origin

From the earliest times, there have been two conflicting principles of law, one favouring the perpetual integrity and the fixed succession of family property and the other, the free use of such property for the circumstances of the day (*s*). From the Mitakshara itself, it is evident that these two schools of thought existed even before Vijnanesvara wrote it. One school represented by the author of the Smritisangraha and Dharesvara (Bhoja) held that ownership arose from the dictates

(*q*) 1 Stra. H.L., 315. As to the mode in which such divergencies sprang up, see the remarks of the Judicial Committee in *the Ramnad case* (1868) 12 M.I.A., 397, 435.

(*r*) This is quoted by Mahmood J. in *Gangasahai* v. *Lekhraj Singh* (1887) 9 All., 253, 292.

(*s*) Per Lord Hobhouse in *Rao Balwantsingh* v. *Rani Kishori* (1898) 25 I.A., 54, 71, 21 All., 412.

of the *sastras*, that the son had no pre-existing ownership and that partition alone was the cause of ownership (*t*). The other school represented by Visvarupa and Medhatithi, who lived long before Vijnanesvara held that sons had an equal right before partition in ancestral property and that partition was on the basis of an existing right (*u*). Vijnanesvara's original definition of sapindaship, however, stands on a different footing. It was a distinct departure from the earlier theory of sapindaship as being 'community of funeral oblations' (*v*); for, Visvarupa and Medhatithi, define sapinda relation only in terms of *pinda* offerings. The Davabhaga exposition of sapinda relation followed the earlier orthodox view to its logical completeness.

Sub-divisions of the Mitakshara School

It is usual to subdivide the Mitakshara school of Hindu law into four schools (*w*) namely the Benares, the Mithila, the Maharashtra, and the Dravida schools. The subdivision was once carried even to the extent of dividing the Dravida into a Tamil, a Karnataka and an Andhra school for which there was no justification (*x*). The variances between the subdivisions of the Mitakshara school are comparatively few and slight. Except in respect of the Maharashtra school, this division serves no useful purpose nor does it rest upon any true or scientific basis. It is to a certain extent misleading as it conceals the fundamental identity of doctrine between the so-called Mithila, Benares, Maharashtra and Dravida schools and suggests that there are more differences than do really exist.

No scientific basis

One reason which used to be given for this division is that "the glosses and commentaries upon the Mitakshara are received by some of the schools but are not received by all" (*y*). At a time when the opinions of

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(*t*) On the authority of the texts of Manu (IX, 104) and Narada (XIII, 15)

(*u*) On the authority of the texts of Brih, XXV, 2, 3, Yajn., II, 121, Vishnu, XVII, 2, Visvarupa, 244 (Triv ed.) Medhatithi on Manu IX, 209 (Jha Vol. V, 173) is not quite definite

(*v*) This is the view of Nilakantha in his Samskara Mayukha as seen from the passage translated in *Lallubhai* v. *Mankuvarbai* (1878) 2 Bom., 388, 418, 425, 426.

(*w*) *Bhugwandeen Doobey* v *Myna Baee* (1867) 11 M.I.A., 487, 507, 508. *The Ramnad case* (1868) 12 M.I.A., 397, 435.

(*x*) 1, Mor. Digest, Introdn., 221, *the Ramnad case* 2 M.H.C., 206, (1868) 12 M.I.A., 397, 435, *Narasammal* v *Balaramacharlu* (1868) 1 M.H.C., 420.

(*y*) *Collector of Madura* v *Mootoo Ramalinga Sethupathy* (1868) 12 M.I.A., 397, 436. See the remarks of Mahmood, J., in *Ganga Sahai* v *Lekhraj Singh* (1887) 9 All., 253, 291, 292.

pandits who were only conversant with a few text-books in each province guided the decisions of Courts, it was natural to assume that the text books they most frequently referred to were the special authorities in particular provinces. With much wider knowledge and far greater attention to Sanskrit law books, it is clear that the assumption then made is no longer correct (y^1). The commentaries that generally follow the Mitakshara are not the particular property of any one school. They have been and can be cited in all the schools. The Smritichandrika and the Parasara Madhaviya are referred to in the northern treatises (y^2) as well as in the Mayukha. The Viramitrodaya, which follows the Mitakshara more closely than other treatises and is fuller than others, is referred to in all the schools. The Subodhini of Visvesvarabhatta is referred to not only in the Benares but also in the Dravida school. The Kalpataru and the Madanaparijata are referred to in the Benares and the Mithila schools and also in the Sarasvati Vilasa. • The references in the Digests and the Commentaries to one another clearly show that all the treatises are the common property of all the schools.

Another reason given for this division into schools is that the commentaries in a particular province which follow the Mitakshara put a particular gloss on it and are agreed upon it among themselves. This is hardly correct. To take the so-called Dravida school, for instance, the Smritichandrika, far from putting a particular interpretation upon the Mitakshara, expressly differs from it on some essential points and agrees more with the northern treatises, though its views on other points have been followed. While the Mitakṣhara prefers the mother to the father as heir, the Smritichandrika prefers the father to the mother. Differing from the Mitakshara, it says that a childless widow inherits only to the movable property of her husband and not to his immovable property (z). It excludes the barren daughter from inheritance on the ground that she confers no spiritual benefit. According to it, a father's mother inherits before the brother of the deceased (a) and after quoting the Mitakshara, it expressly differs from it on the definition of gotrajas. The heirs to stridhana are given quite differently in the Smritichandrika

(y^1) In *Ramchandra's case* (1914) 41 I.A., 290, 42 Cal., 384, and *Buddhasingh's case* (1915) 42 I.A., 208, 37 All., 604, the authorities of all the schools were examined to settle questions of Hindu law which are necessarily common to all the schools

(y^2) Particularly in the Viramitrodaya, a leading Benares authority.

(z) Smritichandrika XI, i, 27.

(a) ib., XI, iv, 16-17.

and its views on that matter have not been accepted in Madras. Its definition of sapinda relationship as community through *pinda* oblations directly contradicts the Mitakshara According to the Parasara Madhaviyam, both the parents take the inheritance together. it defines sapinda relation both as participation in the same *pinda* offering and as connection with the same body While the Viramitrodaya and the Madanaparijata not only follow the Mitakshara more closely but accept its doctrines and differ less from it, it cannot be said that the Benares authorities are agreed among themselves or that the Southern authorities are agreed amongst themselves. It is therefore clear that the differences are differences from the Mitakshara which have generally not been given effect to in many cases Thirdly the differences between the Benares, Mithila (*b*) and Dravida schools are now only minor variations on very few points and are due more to the courts in each province giving effect to their own earlier decisions on the principle of *stare decisis* or to the differences in judicial opinion which tend to become minimised both as a result of the pronouncements of the Privy Council and otherwise (*c*)

As regards the right of a widow to adopt a son to her deceased husband, there is however a variance in the law of the different provinces In Mithila no widow can adopt. In Bengal and Benares, she can with her husband's permission. In Southern India, and in the Punjab, she can adopt even without his permission, by the consent of his sapindas. In Western India, she can adopt without any consent But this important difference on one point of Hindu law is not sufficient to justify a division into four schools of the Mitakshara law (*d*).

(*b*) "The law of the Mithila School is the law of the Mitakshara except in a very few matters" *Sourendra Mohan* v *Hari Prasad* (1925) 52 I A, 418, 437, 5 Pat, 135, 155.

(*c*) Indian Legislation, e g, Inheritance (Amendment) Act, 1929 and Hindu Law of Inheritance (Removal of Disabilities) Act, 1928 recognises only two schools Differences due to the special, local, caste or family usages in any one province are more than the differences between the so called schools, e g, Punjab Customs.

(*d*) No doubt, writers including Vijnanesvara refer to the Southerners, the Northerners, the Mithila lawyers and so on They refer either to different practices in matters of *achara* or ritual and marriage, e g, to different *sraddha* usages amongst Southerners and Northerners (Mit on Yaj, I, 256, Vidyarnava's trans, p 353) When discussing *Vyavahara* law, they refer compendiously to the writers in different parts of India, instead of naming them each time The references to the Eastern writers stand on a different footing Dr Sarvadhikari thinks much of this subdivision of the Mitakshara school It is hardly justified.

Maharashtra School.

The case of the Maharashtra school is however different. The differences between it on the one hand and the three other schools on the other hand are, though not numerous, sufficiently important and can be attributed to a difference in doctrine in one particular. On the right of females to inherit, the nature of their estate, and the rules as to the stridhana and its devolution, it materially differs from the Mitakshara. Moreover, the interpretation of the Mitakshara is clearly influenced by the Mayukha and in some places, it is controlled by it. The Maharashtra therefore can fairly be regarded as a branch of the Mitakshara school.

CHAPTER III.

THE SOURCES OF HINDU LAW.

CUSTOM

Custom binding.

§ 33. The third source of Hindu law is Custom (*a*). As has already been pointed out, the Smritis and Digests were largely based upon customary law (*b*). On topics and matters not covered by the Smritis and Commentaries, usage supplements the law laid down in them. But where a custom exists in derogation of the law laid down in the Smritis, it is none the less a source of law governing the Hindus. The Smritis repeatedly insist that customs must be enforced and that they either override or supplement the Smriti rules. Manu declares that it is the duty of a king to decide all cases which fall under the eighteen titles of *Vyavahara* or Civil law according to the principles drawn from local usages and from the Institutes of Sacred law (*c*), and that "a king who knows the sacred law must inquire into the laws of castes, of districts, of guilds and of families and (thus) settle the peculiar law of each" (*d*). Narada, who deals only with Civil law says, "custom decides everything and overrules the sacred law" and one of the earliest writers, Asahaya (c. 7th century) commenting upon that verse cites a text. "immemorial usage of every country (or province) handed down from generation to generation can never be overruled on the strength of the

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(*a*) Manu, II, 12, Yajn., I, 7

(*b*) See *ante* §§ 6, 22

(*c*) Manu, VIII, 3

(*d*) Manu, VIII, 41 Sir William Jones's translation of the verse in Manu, I, 108, that "immemorial usage is transcendent law" which appeared in former editions of this work and which was cited by Dr. Sarvadhikari (II edition, 854) and by Mookerjee J. in *Rajani Nath* v *Nitai* (1921) 48 Cal, 643, 715 F.B and by others is an error. (Ganapathi Iyer, 297, Bhattacharya, 2nd edn, 50). The correct translation is given by Dr Buhler and Dr Jha "The rule of conduct is transcendent law whether it be taught in the revealed texts or in the sacred tradition hence a twiceborn man who possesses regard for himself should be always careful to follow it" (Dr Buhler, S B E, Vol 25, 27) "Morality (right behaviour) is highest dharma, that which is prescribed in the Sruti and laid down in the Smriti. Hence the twiceborn person, desiring the welfare of his soul should be always intent upon right behaviour" (Dr. Jha, Manu Smriti, Vol I, Part I, 149). The reference is to right behaviour or conduct as laid down in the Vedas and in the Smritis and not to any customs or usages of the world Verses 107 to 110 read together establish the correctness of the above translations and have nothing to do with custom or usage in the modern sense.

sastras" (*e*). Yajnavalkya also emphasises this view when he says that "one should not practise that which, though ordained by the Smriti, is condemned by the people" (*f*). Manu is also to the same effect: "what may have been practised by the virtuous, by such twiceborn men as are devoted to the law, that he shall establish as law, if it be not opposed to the (customs of) countries, families and castes" (*g*). Brihaspati, who like Narada, is dealing with civil law alone, lays down emphatically that "the time honoured institutions of each country, caste and family should be preserved intact". He refers to customs which according to him are contrary to the *Sastras* and which nevertheless must not be interfered with, and after referring to certain customs in connection with marriage, etc, which were contrary to the *Sastras*, he declares that the men who follow those customs are neither subject to the rules of penance nor to punishment (*h*). Katyayana expressly recognises a local custom as valid, whether it is in consonance with law or in derogation of it (*i*). As referred to already, usage is expressly declared to overrule the Smriti law in the decision of cases, according to the texts of Narada and Brihaspati (*j*). Speaking of a newly subjugated country, Yajnavalkya says: "whatever the custom, law and usages, those should be observed and followed by the monarch, as before" (*k*).

Sadachara.

The Sanskrit word for custom which is used by Manu and Yajnavalkya is *Sadachara* or the usage of virtuous men. This term has been defined by Manu himself as "the custom handed down in regular succession since time immemorial among the four chief castes (*varna*) and the mixed races of the country" (*l*). So *sadachara* or approved usage only means

(*e*) Nar., I, 40 and comment S.B E., Vol. XXXIII, p. 15.

(*f*) Yajn, I, 156.

(*g*) Manu, VIII, 46 See also IV, 178 "Let him walk in that path of holy men which his fathers and his grandfathers followed: while he walks in that, he will not suffer harm." The Mitakshara cites this as deciding that family usage should be followed. Mit. on Yajn., I, 254, Vidyarnava, 344.

(*h*) Brih., II, 28-31. See also Parasara-Madhaviya, Setlur's ed, 552-553.

(*i*) Smritichandrika, Vyavaharakanda, 21, 22 (Mysore edn.); Sankararama Sastri, 149-151, Katyayana says further. The customary law should be recorded in books and as much care should be taken in respect of them as in respect of sacred law (Text cited in Note 1 on page 3 of Jolly's, L & C). See also the Viramitrodaya, Setlur's ed., 370; Vas., I, 17.

(*j*) Brih., II, 18, S.B.E., Vol. 33, p. 7, note. Narada, I, 40.

(*k*) Yajn., I, 342-343, Vidyarnava's trans., 415.

(*l*) Manu, II, 18.

that it should not be contrary to Dharma. No doubt, Gautama says: "the laws of countries, castes and families which are not opposed to the sacred records have also authority" (*m*). Vijnanesvara and Kulluka, commenting respectively on Yajnavalkya and Manu state that the customs should not be repugnant to the Vedas or the Smritis (*n*). On this point, there is a difference between the religious and the civil law in the Smritis and the general requirement that usage should not be opposed to the Vedas and the Smritis is confined to the rules relating to religious observances *(achara)* and does not apply to the rules of Civil Law *(vyavahara)* as to which, the texts of Narada, Brihaspati and Katyayana, recognising the distinction between the two, are decisive (*o*). All that Vijnanesvara and Kulluka mean is that custom should not be immoral or criminal or opposed to public policy, in which case, it will cease to be the conduct of virtuous men.

Custom overrides Smriti.

§ 31. While the writers on the Mimamsa do not recognise local or tribal customs in respect of religious matters, local or tribal customs of a secular nature fall according to them outside the scope of positive injunctions of universal application (*p*). Further the requirement that it should not be opposed to the Smritis means that it should not be contradicted by an obligatory text. It is enough if it is not positively condemned by the Smritis (*q*). There are very few cases in which express prohibitions in the Smritis are contravened by a custom. In most of those cases, the prohibitions themselves are not imperative, but are only monitory Positive rules of succession which are varied by custom cannot be read as prohibitions preventing a different rule from being established by custom In any event, it is clear that any condemnation in the Smritis, express or implied, will not affect the validity of custom as a matter of Civil Law (*r*) The exact legal position of custom as itself a rule of Smriti which has been emphatically

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(*m*) Gaut, XI, 20

(*n*) Mit on Yajn, I, 342, 343, Vidyarnava's trans., 415, Kulluka on Manu, VIII, 41, "The Digest (Mitakshara) subordinates in more than one place the language of texts to custom and approved usage" per Sir Robert Phillimore in *Bhyah Ram Singh* v *Bhyah Ugur Singh* (1870) 13 M I A, 373, 390

(*o*) Brih, II, 18, 28, Nar, I, 40, for Katyayana's verses see note (*a*) to § 9 *ante*

(*p*) K. L Sarkar, Mimamsa, 258; Jha, Mimamsa Sutras, 80-84.

(*q*) K. L Sarkar, Mimamsa, 247-248, Colebrooke's Misc Essays, p. 338 Compare Jaimini's rule "Without reference to causes, usages prevail," K. L. Sarkar, Mimamsa, 444.

(*r*) P. N. Sen, 10.

laid down by Medhatithi, the commentator of Manu (*s*), is almost conclusive on this question. And the Mitakshara quotes texts to the effect that even practices expressly inculcated by the sacred ordinances may become obsolete and should be abandoned if opposed to public opinion (*t*).

Recognized by modern law.

§ 35. The fullest effect is given to custom both by Courts and by legislation. The Judicial Committee in the *Ramnad* case said: "Under the Hindu system of law, clear proof of usage will outweigh the written text of the law" (*u*). And all the Acts which provide for the administration of the law dictate a similar reference to usage, unless it is contrary to justice, equity or good conscience, or has been actually declared to be void (*v*). Customs are of various descriptions: customs of castes, tribes and classes, local or territorial customs and customs of families (*w*).

Records of local customs.

There is no comprehensive digest of all local or tribal customs prevailing in different parts of India, prepared and published under authority. Records of limited scope are, however, available. In the Punjab and in the United Provinces, most valuable records of village and tribal customs, relating to the succession to, and disposition of, land have been collected under the authority of the settlement officers, and these have been brought into relation with the judicial system by an enactment that the entries contained in them should be presumed to be true (*x*). For instance, the Riwajiam is a

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(*s*) Medhatithi on Manu, II, 10, Jha, Vol. I, Part I, 211-212; (Practices of cultured men should also be taken as included under the term Smriti), Sankaracarya Sastri, 146-147.

(*t*) Mit., I, iii, 4, Mandlik, Introdn., 43, 70, The text referred to in the Mitakshara is the text of Yajnavalkya, I, 156. The remark in the note (at page 382, Stokes, H.L.B.) that it is not found in Yajnavalkya Smriti, is incorrect.

(*u*) *Collector of Madura* v. *Mootoo Ramalinga* (1868) 12 M.I.A., 397, 436; *Palaniappa Chetti* v. *Alagan Chetti* (1921) 48 I.A., 539, 547, 44 Mad, 740; *Shibaprasad* v *Prayag Kumari* (1932) 59 I.A., 331, 352, 59 Cal, 1399, 1421.

(*v*) See, as to Bombay, Bom. Reg. IV of 1827, s. 26; Act II of 1864, s. 15. As to Burma, Act XVII of 1875, s. 5. Central Provinces, Act XX of 1875, s 5. Madras, Act III of 1873, s. 16. Oudh, Act XVIII of 1876, s. 3 Punjab, Act XII of 1878, s. 1. See *Sundar* v. *Khuman Singh* (1879) 1 All, 613.

(*w*) Manu, VIII, 3, 41; Yajn., II, 192 (the same law prevails in the case of usages of Srenis, Naigamas, Pakhandins and Ganas); Brih., II, 28.

(*x*) These records are known by the terms, Wajib-ul-arz (a written representation or petition) and Riwazi-i-am (common practice or custom). See Punjab Customs, 19; Act XXXIII of 1871, s. 61; XVII of 1876, s. 17. *Lekraj Kuar* v. *Mahpal Singh* (1880), 7 I.A., 63,

public record prepared by a public officer in the discharge of his duties under Government rules and is admissible to prove the facts entered therein, subject to rebuttal The statements therein may be accepted, even if unsupported by instances. Manuals of customary law, in accordance with the Riwajiam have been issued by authority for each district and stand on much the same footing as the Riwajiam itself (*y*) Reference may also be made to the following works: Steele's 'Law of Castes and Tribes in the Dekhan', C L Tupper's 'Punjab Customary Law' (1881); C Boulnois and W. H. Rattigan's 'Notes on the Customary Law of the Punjab', Bolster's 'Customary Law of the Lahore District'. The district manuals and the census reports of the several provinces contain useful information on the usages and customs, especially of aboriginal and other tribes in the various parts of India, for instance, E Thurston's 'Castes and Tribes of Southern India', Nelson's Madura Manual, Logan's Malabar Manual, Dr. Maclean's 'Manual of the Administration of the Madras Presidency', Risley's 'Tribes and Castes in Bengal', Crooke's 'Tribes and Castes of the North Western Provinces and Oudh' But, as these books were compiled for different purposes and upon information acquired in many ways and as there have been great changes amongst the people and their usages during the last fifty years, caution may be required in taking the statements contained in them as always accurate or as representing the customs or usages now in force.

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5 Cal, 744, *Harbaj* v *Gumani* (1880) 2 All, 493, *Isri Sing* v *Ganga, ib*, 876, *Thakur Nitepal Singh* v *Jai Singh* (1897) 23 I A, 147, 19 All, 1, *Muhammad Imam* v *Sardar Hussain* (1899) 25 I A, 161, 26 Cal, 81, *Parbutt Kunwar* v *Chandar* (1909) 36 I A, 125, 31 All, 457 In the case of *Uman Parshad* v *Gandharp Singh* (1888) 14 I A, 127, 15 Cal, 20, the Judicial Committee called attention to a practice which had grown up in Oudh of allowing the proprietor to enter his own views upon the Wajib ul-arz, whereas it ought to be an official record of customs, arrived at by the inquiries of an impartial officer See, too, *Tulshi Ram* v *Behari Lal* (1890) 12 All, 328, 335, *Superunddhwaja Prasad* v *Garuraddhwaja* (1893) 15 All, 147. A Wajib ul-arz, which has long stood on record, and been unquestioned by the parties who would be affected by it, is *prima facie* evidence of custom, though not signed by any landholder in the village *Rustam Ali* v *Abbasi* (1891) 13 All, 407

(*y*) *Vaishno Ditti* v *Rameshri* (1928) 55 I.A, 407, 421, 55 M L J., 746, 755, *Beg* v *Allah Ditta* (1916) 44 I A, 89, 97, 44 Cal, 749, 759, *Ahmed Khan* v *Channibibi* (1925) 52 I.A, 379, 6 Lah, 502 For Wajib-ul-arzes, see *Roshan Ali Khan* v *Chowdri Ashgar Ali* (1930) 57 I A, 29, 5 Luck, 70, *Bal Gobind* v *Badri Prasad* (1923) 50 I A, 196, 45 All, 413 A great deal of interesting information, derived from the records of the Pondicherry Court has been made available by the labours of Leon Sorg, Juge President du Tribunal de Premiere Instance at Pondicherry in his works.

In some parts of Northern India, particularly in districts now in the Punjab or adjacent to the Punjab, the strict rules of the Mitakshara, as recognised by the School of Benares, have not been followed by some castes, tribes and families of Hindus, and customs which are at variance with the law of the Mitakshara, as recognised by that School, have been for long consistently followed and acted upon, and when such customs are established, they, and not the strict rules of the Mitakshara with which they are at variance, are to be applied. Such customs relate to a variety of subjects, as for instance, to widows, adoptions, and the descent of lands and interests in lands; they are to be found principally amongst the agriculturist classes, but they are also to be found amongst classes which are not agricultural (y^1).

Evidence of valid custom

§ 36. The first question is as to the validity of customs differing from the general Hindu law. A belief in the propriety, or the imperative nature of a particular course of conduct, produces a uniformity of behaviour in following it; and a uniformity of behaviour in following a particular course of conduct produces a belief that it is imperative, or proper, to do so. When from either cause, or from both causes, a uniform and persistent usage has moulded the life, and regulated the dealings, of a particular class of the community, it becomes a custom, which is a part of their personal law (z). What the law requires before an alleged custom can receive the recognition of the Court, and so acquire legal force, is satisfactory proof of usage, so long and invariably acted upon in practice, as to show that it has, by common consent, been submitted to as the established governing rule of the particular family, class, district or country; and the course of practice upon which the custom rests must not be left in doubt, but be proved with certainty (a). In *Ramalakshmi* v. *Sivanantha*,

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(y^1) *Ramkishore* v. *Jainarayan* (1921) 48 I.A., 405, 410, 49 Cal., 120.

(z) This sentence is referred to by Sargent C. J. in *Patel Vandravan* v. *Patel Manilal* (1892) 16 Bom., 470, 476. See the subject discussed, *Khojah's case*, Perry, O.C., 110; *Howard* v. *Pestonji*, *ib.*, 535; *Tara Chand* v. *Reeb Ram* (1866) 3 Mad. H C, 50, 56; *Bahu Nanaji* v. *Sundarabai* (1874) 11 Bom. H.C., 249; *Mathura* v. *Esu* (1880) 4 Bom., 545; Savigny. Droit Rom., 1, 33-36, 165-175, Introduction to Punjab Customs. As to the effect of judicial decisions in evidencing a custom, see *Shembhu Nath* v. *Gayan Chand* (1894) 16 All., 379.

(a) *Sivanananja* v. *Muttu Ramalinga* (1866) 3 Mad. H.C., 75, 77; affirmed on appeal, *Sub nominee, Ramalakshmi* v. *Sivanantha*, the *Oorcad case* (1872) 14 M.I.A., 570, 12 B.L.R., 396, 17 W.R., 553. Approved by the Bombay High Court, *Shidhojirav* v. *Naikojirav* (1873) 10 Bom. H.C., 228, 234; see also *Bhujangrav* v. *Malojirav* (1868) 5 Bom. H.C. (A.C.J.), 161; *Chinnammal* v. *Varadarajulu* (1892) 15 Mad., 307; *Sundrabai* v. *Hanmant* (1932) 56 Bom., 298.

the Judicial Committee observed (*b*), "Their Lordships are fully sensible of the importance and justice of giving effect to long established usages existing in particular districts and families in India, but it is of the essence of special usages, modifying the ordinary law of succession, that they should be ancient and invariable, and it is further essential that they should be established to be so by clear and unambiguous evidence. It is only by means of such evidence that the Courts can be assured of their existence, and that they possess the conditions of antiquity (*b*[1]) and certainty on which alone their legal title to recognition depends" Accordingly, the Madras High Court, when directing an inquiry as to an alleged custom in the south of India that Brahmans should adopt their sister's sons, laid it down that. "I. The evidence should be such as to prove the uniformity and continuity of the usage, and the conviction of those following it that they were acting in accordance with law, and this conviction must be inferred from the evidence, II Evidence of acts of the kind, acquiescence in those acts, decisions of Courts, or even of panchayets, upholding such acts, the statements of experienced and competent persons of their belief that such acts were legal and valid, will all be admissible, but it is obvious that, although admissible, evidence of this latter kind will be of little weight if unsupported by actual examples of the usage asserted"(*c*). If a custom is found to have existed at a particular date within living memory, it must be taken to have the ordinary attribute

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(*b*) 14 M I A, 585 A long continued practice which appears to have originated from, and to be maintained by, a series of erroneous decisions cannot be supported as a custom, if the decisions themselves are ultimately reversed *The Pittapur case,* 26 I A, 83, *Ramakanta Das* v *Shamanand* (1909) 36 Cal, 590

(*b*[1]) As to the test of antiquity, see *Ambalika Dasi* v. *Aparna Dasi* (1918) 45 Cal, 835, 858 The Calcutta High Court takes either 1773 A D. or 1793 A D as the date for treating a custom which was then in existence as immemorial, *Nolin Behari* v *Hari Pada* A I R., 1934 Cal, 452. In *Umrithnath Chowdri* v. *Goureenath* (1870) 13 M I A, 542, 549, the expression 'immemorial' instead of 'ancient' was used with reference to a family custom. Hindu law recognises usage beyond 100 years as 'immemorial', the Mitakshara on Yajn, II, 27 (Setlur's edn., 342) says 'Time within memory is 100 years,' for, the Sruti says 'A man's life is 100 years'.

(*c*) *Gopalayyan* v *Raghupatiayyan* (1873) 7 Mad. H C, 250, 254 See too, per Markby J, *Hiranath* v *Baboo Ram* (1872) 9 B L R, 274, 294, 17 W R, 316, *Collector of Madura* v. *Mootoo Ramalinga* 12 M.I A, 436, and *Hurpurshad* v. *Sheo Dayal* (1876) 3 I A, 259, 285, 26 W R., 55; *Vishnu* v *Krishnan* (1884) 7 Mad, 3, *Harnabh* v. *Mandil* (1900) 27 Cal., 379, *Murabivi* v. *Vellayanna* (1885) 8 Mad, 464, 466: It must be more than a mere practice and must be consciously accepted as having the force of law, approved in *Abdul Hoosein* v. *Bibi Sono* (1917) 45 I A, 10, 17, 18, 45 Cal, 450.

of a custom that it is ancient, and may be assumed to have existed prior to that date (*d*).

Antiquity and certainty.

A custom must be ancient, certain, and reasonable (*e*), and being in derogation of the general rules of law, must be construed strictly (*f*). Customs are not to be enlarged beyond the usage by parity of reason, since it is the usage that makes the law and not the reason of the thing. It cannot be said that a custom is founded upon reason, though an unreasonable custom is void, for no reason, even the highest whatsoever, would make a custom or law (*g*). A custom may be proved either by actual instances or by general evidence of the members of the tribe or family who would naturally be cognisant of its existence; specific instances need not always be proved (*h*). But when a custom or usage is repeatedly brought to the notice of the courts, that custom may be held to be introduced into the law without the necessity of proof in each particular case (*i*). Of course, it is easier to prove a

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(*d*) *Kunwar Basant Singh* v. *Kunwar Brijraj Singh* (1935) 62 I.A., 180, 193, 57 All, 494, 508 (where the custom was shown to have existed for about fifty years), compare *P. V. Chattan Raja* v. *Rama Varma* (1915) 28 M L J, 669.

(*e*) Barbarous customs or customs which are repugnant to natural justice, equity and good conscience are bad and they cannot be made good by courts modifying them. *E Eleko* v *Officer administering the Govt of Nigeria* (1931) A.C, 662, 673; Punjab Laws Act, 1872, s. 5; N. W. F Province's Regulations, s. 27, Oudh Laws Act, s 3. A custom is not unreasonable merely because it is contrary to a rule of law or against the interests of an individual, 10 Halsbury, 2nd edn., paras 9-11, see *Shib Narain Mookerjee* v *Bhutnath* (1918) 45 Cal., 475, 479, *Saladhur Jaman* v *Oojaddin* (1936) 63 Cal, 851, *Hashmat Ali* v *Mt Nasibunnissa* (1924) 6 Lah, 117 P.C

(*f*) *Hurpurshad* v *Sheo Dayal* (1876) 3 I A, 259, 285, *Luchman* v *Akbar* (1877) 1 All, 440; *Lala* v. *Hira* (1878) 2 All., 49.

(*g*) *Arthur* v. *Bokenham*, 11 Modern, 148, 161. 88 E R, 957, 962; *Muharram Ali* v *Barkat Ali* (1930) 12 Lah., 286, 290, *Palaniappa Chetty* v *Chockalingam Chetty* (1929) 57 M L J., 817, *Muthala Reddy* v. *Sankarappa* (1934) 67 M.L.J., 706 This rule is in accordance with Hindu law, for, according to Jaimini's rule 'Without reference to causes, usages prevail. K. L. Sarkar, Mimamsa, 444, 481.

(*h*) *Ahmad Khan* v *Channi Bibi* (1925) 52 I.A, 379, 383, 6 Lah., 502, affirming A.I R, 1924, Lah. 265, *Vashno Ditti* v. *Rameshri* (1928) 55 I.A, 407, 421, 55 M L J, 746, 755, *Gopikrishna* v.*Mt Jaggo* (1936) 63 I.A., 295, 298, 58 All., 397 (Sir Shadilal's observation), *Akbarally* v. *Mahomedally* (1933) 57 Bom., 551 (mere affidavits—no good), *Sobansingh* v *Mt. Narain* A.I R., 1936 Lah., 540; *S. K. Wodeyar* v. *Ganapathy* A.I.R 1935 Bom., 371, *Shanmugathammal* v. *Gomathi* (1934) 67 M L.J, 861

(*i*) *Rama Rao* v. *Raja of Pitapur* (1918) 45 I.A., 148, 154, 41 Mad., 778; *Hemandranath* v. *Jnanendra* (1935) 63 Cal., 155, 161; *Effuah Amissah* v. *Effuah Krabha* A.I.R. 1936 P.C., 147, *Krishnamoorthy* v. *Krishnamoorthy* (1927) 54 I A., 208, 50 Mad, 508; *Gireeschandra* v. *Rabeendranath* (1934) 61 Cal., 694; *Banarsi Das* v. *Sumat Prasad* A.I.R. 1936 All.. 641.

custom which supplements Hindu law than one which varies it, as in the case of customs governing religious institutions or forms of marriage other than those prescribed by Hindu law (*j*).

Immoral usages.

§ 37 Customs which are immoral or opposed to public policy or opposed to enactments of the legislature will neither be recognised nor enforced (*k*) The requirement in the books that a custom should be the usage of the virtuous and should not be opposed to the Dharmasastras means, as already pointed out, that it should not be immoral or opposed to public interests (*l*).

Accordingly, caste customs authorising a woman to abandon her husband, and marry again without his consent, are void for immorality (*m*) And it was doubted whether a custom authorising her to marry again during the lifetime of her husband, and with his consent, would have been valid (*n*) In Madras, it has been held that there is nothing immoral in a custom by which divorce and re-marriage are permissible by mutual agreement, on repayment by one party to the other of the expenses of the original marriage (*o*) But a custom permitting a Hindu husband to dissolve the marriage without the consent of the other party on payment of a sum of money to be fixed by the caste is bad (*p*) So also a custom allowing a woman to re-marry during her first husband's lifetime without any defined rules by which the marriage of the first husband is dissolved has been held to be bad (*q*) But a custom amongst a certain class of Vaishyas by which abandon-

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(*j*) *Sheobaran Singh* v *Kulsumunnissa* (1927) 54 I A, 204, 49 All, 367. *Chattan Rajah* v *Rama Varmah* (1915) 28 M L J, 669.

(*k*) *Vanniakone* v *Vannichi* (1928) 51 Mad, 1, 10 (F.B.).

(*l*) Custom should be the custom of the virtuous (Sadachara) Yajn., I, 7, custom should not be opposed to revealed law, Yajn, II, 186 See also s ,23, Indian Contract Act As to the test of immorality, it must be determined by the sense of the community as a whole and not by the sense of the section of a community, per Oldfield J in *Daivanayaga* v. *Muthureddi* (1921) 44 Mad, 329, 333. According to the Mimamsa rule, customs influenced by an improper cause or perverse motive are bad (K L Sarkar, Mimamsa, 240), ante § 33

(*m*) *R* v. *Karsan* (1864) 2 Bom. H C, 117, at p. 124; see *R* v. *Manohar* (1868) 5 Bom. H C (C C.), 17, *Uju* v. *Hathi* (1870) 7 Bom. H.C. (A C J), 133, *Narayan* v. *Laving* (1878) 2 Bom, 140

(*n*) *Khemkor* v. *Umiashankar* (1873) 10 Bom. H C., 381, *In re Gedalu Narayana* A.I R. 1932 Mad., 561.

(*o*) *Sankaralingam Chetti* v. *Subban Chetty* (1894) 17 Mad, 479.

(*p*) *Keshav* v *Bai Gandi* (1915) 39 Bom., 538

(*q*) *Budansa Rowther* v. *Fatmabi* (1914) 26 M.L.J., 260; *Venkatakrishna* v. *Lakshminarayana* (1909) 32 Mad., 185

ment or desertion of the wife by her husband dissolves the marriage tie and enables her to remarry during his lifetime has been upheld (*r*). The usage among Nattukottai chetties by which an adoptive parent pays a sum of money to the natural parent in consideration of his giving his son in adoption is, just like an agreement to that effect, bad (*s*). In a case before the Privy Council, a custom was set up as existing on the West Coast of India, whereby the trustees of a religious institution were allowed to sell their trust. The Judicial Committee found that no such custom was made out, but intimated that in any case they would have held it to be invalid, as being opposed to public policy (*t*).

Opposed to public policy.

The custom amongst dancing girls or naikins of adopting one or more daughters has been held by the Bombay (*u*) and Calcutta (*v*) High Courts to be opposed to morality and public policy. In Madras, such an adoption by a dancing girl for the purpose of prostitution, after the Penal Code, has been held to be illegal (*w*). In a Muhammadan case (*x*) the Privy Council upheld the view that the custom of adoption of daughters by a prostitute class or family aims at the continuance of prostitution as a family business and that it has a distinctly immoral tendency and should not be enforced in Courts of Justice. These observations must equally apply to the custom of adoption of daughters amongst Hindu dancing girls. In Madras, however, a distinction has been sought to be made between an adoption made with the intention of training a girl for the purposes of prostitution and one made with a different intention and the custom, amongst dancing girls, of adoption has so far been recognised as to make the adoption of a daughter valid, where

Dancing girls.

Adoption of daughters.

(*r*) *Gopikrishna* v. *Mt. Jaggo* (1936) 63 I.A., 295, 302, 58 All., 397 (Vaishyas of Gorakpur).

(*s*) *Murugappa* v. *Nagappa* (1906) 29 Mad, 161, see also *Kothandaramareddi* v. *Thesu Reddi* (1914) 27 M.L.J., 416. *Danakoti* v. *Balasundara* (1913) 36 Mad., 19; *Subba Raju* v. *Narayana Raju* (1926) 51 M.L.J., 366.

(*t*) *Rajah Vurmah* v. *Ravi Vurmaoh* (1876) 4 I.A., 76, 1 Mad, 235.

(*u*) *Mathura Naikin* v. *Esu* (1880) 4 Bom., 545; *Hira* v. *Radha* (1913) 37 Bom., 116; *Thara Naikin* v. *Nana* (1890) 14 Bom., 90.

(*v*) *Hencower* v. *Hanscower* 2 Morley's Digest, 133.

(*w*) *Kamalakshi* v. *Ramaswami Chetty* (1896) 19 Mad., 127.

(*x*) *Ghasito* v. *Umrao Jan* (1894) 20 I.A., 193, 21 Cal. 149.

it is not for the purposes of prostitution (*y*). This line of reasoning overlooks the essential difference between an illegal custom and an adoption under a valid custom for an immoral purpose. To determine the validity of a custom, it must be judged as a whole. It is a single and indivisible custom of adopting daughters, having its origin in prostitution, by a class with whom prostitution is admittedly a profession. It cannot be split up into two customs, a custom of adoption for ordinary purposes and a custom of adoption for immoral purposes. As the general, if not invariable, tendency of the custom is undoubtedly to promote prostitution and to corrupt youthful and innocent minds, the custom can only be regarded, on broad grounds, as opposed to morality and public policy, apart from any criminal intention under the Penal Code or any enactment for the suppression of immoral traffic (*z*). An adoption by a woman under Hindu law is only to her husband. An adoption by an unmarried prostitute can hardly be said to be required for religious purposes or for perpetuation of the line (*a*) It is a serious mistake to assume that the practices of prostitution are related to worship in Hindu temples merely because dancing and singing by professional dancers and singers are permitted in temples; the remuneration from endowments or otherwise is only for the service of dancing and singing (*b*).

(*y*) *Venku* v *Mahalinga* (1888) 11 Mad, 393, 402 See also *Muthukannu* v *Paramaswami* (1889) 12 Mad, 214, *Veeranna* v. *Sarasiratnam* (1936) 71 M L J, 53 (where the question is fully discussed), *Balasundaram* v *Kamakshi* (1936) 71 M L J., 785, see *Chalakonda* v *Chalakonda* (1864) 2 M H C, 56, *Kamalam* v. *Sadagopa* (1878) 1 Mad, 356, *Kamalakshi* v *Ramaswami* (1896) 19 Mad, 127, *Sarojini* v *Jalajakshi* (1898) 21 Mad, 229

(*z*) For instance, the Madras Suppression of Immoral Traffic Act (V of 1930)

(*a*) See per Sadasiva Aiyar J in *Guddattureddi* v. *Ganapathi* (1912) 23 M L J, 493 "Prostitution is not looked on by the Hindu religion or its laws with any more favourable eye than by the Christian or Mohammedan religion or the Christian or Mohammedan laws" In *Public Prosecutor* v *Kannammal* (1913) 24 M L J, 211, 216, Mr. Justice Miller said "The view that all that is necessary in the interest of morality is to leave the minor a virgin till 16 years of age so that she may then make her choice between prostitution and a decent life, seems to me to give too little weight to the probable effect of training and surroundings" But see *Visvanatha Mudali* v *Doraiswami Mudali* (1925) 48 Mad, 944

(*b*) The object of the rules (Yajn, II, 292, Narada, VI, 18, Vivad. Chintamani, 101, Arthasastra, II, 27, Shamasastri, 148) was not to make that which was immoral, moral; [Manu, IV, 209, 219, IX, 259 (degradation), "For killing a woman who subsists by harlotry, nothing at all (no penance)." Gaut, XXII, 27]. The Arthasastra shows that prostitutes were slaves of the ancient state, licensed by it, for its profit. This has no bearing on modern Hindu law.

Discontinuance of customs.

§ 38. Continuity is as essential to the validity of a custom as antiquity. In the case of a widely-spread local custom, want of continuity would be evidence that it had never had a legal existence; but it is difficult to imagine that such a custom, once thoroughly established, should come to a sudden end. It is different, however, in the case of family usage, which is founded on the consent of a smaller number of persons. Therefore, where it appeared that the members of a family interested in an estate in the nature of a Raj, had for twenty years dealt with it as joint family property, as if the ordinary laws of succession governed the descent, the Privy Council held that any impartible character which it had originally possessed was determined. They said: "Their Lordships cannot find any principle, or authority, for holding that in point of law a manner of descent of an ordinary estate, depending solely on family usage, may not be discontinued, so as to let in the ordinary law of succession. Such family usages are in their nature different from a territorial custom which is the *lex loci* binding all persons within the local limits in which it prevails. It is of the essence of family usages that they should be certain, invariable, and continuous; and well established discontinuance must be held to destroy them. This would be so when the discontinuance has arisen from accidental causes; and the effect cannot be less when it has been intentionally brought about by the concurrent will of the family. It would lead to much confusion, and abundant litigation, if the law attempted to revive and give effect to usages of this kind after they had been clearly abandoned, and the abandonment had been, as in this case, long acted upon" (*c*). But the breach of a custom in a particular instance need not destroy the custom which may continue to be applicable. Of course, the onus of proving discontinuance will be upon the person setting it up (*d*).

Family customs.

§ 39. The above cases settle a question, as to which there was at first some doubt entertained, *viz.*, whether a particular family could have a usage differing from the law of the surrounding district applicable to similar persons (*e*). In a

(*c*) *Rajkishen* v. *Ramjoy* (1876) 1 Cal., 186, 19 W.R., 8. See, also, *per cur*, *Abraham* v. *Abraham* (1863) 9 M.I.A., 195, 243.

(*d*) *Sahabjit* v. *Indrajit* (1905) 27 All., 203; *Ekradeswar Singh* v. *Janeswari* (1915) 42 Cal., 582, 606 P.C., *Zarif-un-Nissa* v. *Shafiq-uzzaman* 55 I A, 303, 317, 3 Luck., 372; *Chundri* v. *Mt Bibi* A I R. 1931 All., 547; *Amina Khatun* v. *Khalilur Rahman* (1933) 8 Luck, 445, A.I.R. 1933 Oudh., 246.

(*e*) See *Basavantrav* v. *Mantappa* (1860) 1 Bom. H.C., Appx. 42; *per cur.*, *Tara Chand* v. *Reeb Ram* (1866) 3 M.H.C., 50, 58; *Madhavrao* v. *Balkrishna* (1867) 4 Bom. H.C. (A.C.J.), 113.

recent case the Privy Council observed: "Custom binding inheritance in a particular family has long been recognised in India (See *Soorendranath Roy* v. *Heeramonee Burmoneah* (1868) 12 Moo. I. A. 91), although such a custom is unknown to the law of this country, [England], and is foreign to its spirit Customs affecting descent in certain areas or customs affecting rights of inhabitants of a particular district are perhaps the nearest analogies in this country But in England, if a custom were alleged as applicable to a particular district, and the evidence tendered in its support proved that the rights claimed had been enjoyed by people outside the district, the custom would fail. This principle, however, it seems to their Lordships, ought not to be applied in considering such a custom as the one claimed here, since, if the custom were in fact well established in one particular family, whether it were enjoyed or no by another family would not affect the question, since the custom might be independent in each case, and the evidence would not establish that the custom failed by reason of the inability to define the exact limits within which it was to be found when once it was established that within certain and definite limits, it undoubtedly existed"(*f*).

But in the case of a single family, and especially a family of no great importance, there will of course be very great difficulty in proving that the usage possesses the antiquity and continuousness, and arises from the sense of legal necessity as distinguished from conventional arrangement, that are required to make out a binding usage (*g*). Of course, the custom observed by one branch of a family is of high evidentiary value as to the custom in the other branch (*h*). Where the family is a very great one, whose records are capable of being verified for a number of generations, the difficulty disappears. In the case of the Tipperah Raj, usage has been repeatedly established by which the Raja nominates from amongst the members of his family the Jobraj (young sovereign) and the Bara Thakoor (chief lord), of whom the former succeeds to the Raj on a demise of the Raja, and the second takes the place of Jobraj (*i*). Also a custom in the Raj of Tirhoot, by which the Raja in possession abdicates during his lifetime, and

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(*f*) *Abdul Hussain Khan* v. *Bibi Sono Dero* (1917) 45 I A., 10, 14, 45 Cal, 450. 460.

(*g*) *Bhau Nanaji* v *Sundrabai* (1874) 11 Bom. H C., 249, 263; *Ismail* v. *Fidayet* (1881) 3 All, 723.

(*h*) *Roshan Ali Khan* v. *Chowdri Ashgar Ali* (1929) 57 I.A., 29, 36, 5 Luck., 70.

(*i*) *Neelkistodeb* v. *Beerchunder* (1869) 12 M.I.A., 523.

assigns the Raj to his eldest son, or nearest male heir (*j*). Many of the cases of estates descending by primogeniture appear to rest on the nature of the estate itself, as being a sort of sovereignty, which from its constitution is impartible (*k*). But family custom alone will be sufficient, even if the estate is not of the nature of a Raj, provided it is made out (*l*). And where an impartible Raj has been confiscated by Government, and then granted out again, either to a stranger, or to a member of the same family, the presumption is that it has been granted with its incidents as a Raj, of which the most prominent are impartibility and descent by primogeniture (*m*). This presumption, however, will not prevail, when the mode of dealing with the Raj after its confiscation, and the mode of its re-grant are consistent with an intention that it should for the future possess the ordinary incidents of partibility (*n*). Where a family custom is proved to exist, such a custom supersedes the general Hindu law which, however, still regulates all beyond the custom (*o*).

Local custom.

A local custom is one binding on all persons in the local area within which it prevails and differs entirely from a family custom binding only on members of the family, as to rules of descent and so forth. It is one which must be pleaded with particularity as to the local limits of the area of which it is

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(*j*) *Gunesh* v *Moheshur* (1855) 6 M I A, 164; see the *Pachete Raj*, *Gurundnaram* v *Unund* 6 S.D, 282 (354); *affd. sub nomnee, Anund* v. *Dheraj* (1850) 5 M I.A, 82.

(*k*) There may, however, be a partible Raj. See *Ghirdharee* v *Koolahul* (1840) 2 M I A, 344, 6 W R (P.C), 1.

(*l*) *Rawut Urjun* v *Rawut Ghunsiam* (1851) 5 M I A, 169, *Chowdhry Chintamun* v *Nowlukho* (1875) 2 I.A., 263, 24 W.R., 255; *Yarlagadda Mallikarjuna* v *Durga* (1890) 17 I A, 134, 13 Mad, 406, *Thakur Nitopal Singh* v *Jai Singh* (1897) 23 I.A., 147, 19 All., 1, *Garurudhwaja* v *Saparandhwaja* (1901) 27 I.A., 238, 23 All., 37, *Lakshmipati* v *Kandasami* (1894) 16 Mad., 54, *Chandika Baksh* v. *Muna Kuar* (1903) 29 I A, 70, 24 All, 273, *Parvati Kunwar* v. *Chandra Pal* (1909) 36 I A, 125, 31 All, 457.

(*m*) *Beer Pertab* v *Maharajah Rajender (Hunsapore case)* (1867) 12 M.I.A, 1, 9 W.R (P C), 15; *Muttu Vaduganatha* v *Doorasinga* (1881) 8 I.A, 99, 3 Mad, 290; *Ram Nundun Singh* v. *Janki Koer* (1902) 29 I.A., 178, 29 Cal, 828, *Muhammad Afzul Khan* v. *Ghulam Kasim* (1903) 30 I A, 190, 30 Cal, 843.

(*n*) *Venkata Narasimha* v. *Narayya (Nuzvid case)* (1879) 7 I.A., 38, 2 Mad. 128. *Zemindar of Merangi* v. *Satrucharla Ramabhadra* (1891) 18 I.A, 45, 14 Mad., 237, *the Ramnad case* (1901) 24 Mad., 613, 626.

(*o*) *Neel Kisto Deb* v. *Beer Chundra Thakoor* (1869) 12 M.I.A., 523, *Shiba Prasad Singh* v *Prayag Kumari Debi* (1932) 59 I.A., 331, 345, 59 Cal., 1399.

alleged to be the custom and the evidence must be the evidence as to the prevalence of the custom in that area (*p*).

Custom cannot be created by agreement

§ 40. It follows from the very nature of the case that a mere agreement among certain persons to adopt a particular rule cannot create a new custom binding on others, whatever its effect may be upon themselves (*q*). Nor can a family custom ever be binding where the family, or estate, to which it attaches is so modern as to preclude the very idea of immemorial usage (*r*). Nor does a custom, such as that of primogeniture, which has governed the devolution of an estate in the hands of a particular family, follow it into the hands of another family, by whom it may have been purchased. In other words, it does not run with the land (*s*).

Onus of proof of custom.

§ 41. Where a tribe or family is admittedly governed by Hindu law, but asserts the existence of a special custom in derogation of that law, the *onus* of course rests upon those who assert the custom to make it out (*t*). For instance, a custom forbidding adoption, or barring inheritance by adoption, might be established, though, in a family otherwise subject to Hindu law, it would probably require very strong evidence to support it (*u*). But if the tribe or family had been originally non-Hindu, and only adopted Hindu usages in part, the *onus* would be shifted, and the burden of proof would rest upon the side which alleged that any particular doctrine had become part of the personal law. A case of this sort arose in regard to the Baikantpur family, who were not originally Hindus, but who had in part, though not entirely, adopted Hindu customs. On a question of succession, when the estate was claimed by an adopted son, it was held by the Judicial Committee that the *onus* rested upon those who relied on the adoption to show that this was one of the Hindu

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(*p*) *Narayan* v *Niranjan* (1923) 51 I A, 37, 60, 61, 3 Pat, 183, 209

(*q*) *per cur*, *Myna Baee* v *Ootaram* (1861) 8 M I A, 400, 420, *Abraham* v *Abraham* (1863) 9 M I A 195, 242, *Sarupi* v *Mukhram* (1870) 2 N W P, 227, *Bhaoni* v *Mahraj Singh* (1881) 3 All., 738, *Muthuswami* v *Masilamoni* (1910) 33 Mad, 342

(*r*) *Umrithnath* v *Gaureenath* (1870) 13 M I A, 542, 549.

(*s*) *Gopal Doss* v *Nurotum* 7 S D, 195 (230).

(*t*) *Chandika Baksh* v *Muna Kuar* (1902) 29 I A, 70, 24 All, 273, *Ram Narain* v *Har Narinjan Kaur* (1923) 4 Lah, 297, *Bhikabai* v. *Manilal* (1930) 54 Bom, 780, *Sundrabai* v *Hanmant* (1932) 56 Bom, 298, *Ladharam* v *Mt Hiranbai* A I R 1932 Lah, 452 (custom of reversioners excluding daughters)

(*u*) *Patel Vandravan Jekisan* v. *Manilal* (1892) 16 Bom, 470.

customs which had been taken into the family law (*v*). If the family was generally governed by Hindu law the claimant might rely on that, and then the *onus* of proving a family custom would be on him who asserted it (*w*).

Statutes.

§ 42. Enactments of the legislature declaring, abrogating or modifying rules of Hindu law are an additional and modern source. They have been an important factor in the development of Hindu law. While most of them are in the direction of reform of Hindu law, some of them supersede Hindu law in certain class of cases either by different provisions or by the Indian Succession Act.

Caste Disabilities Removal Act.

§ 43. The Caste Disabilities Removal Act (XXI of 1850) which extended the principle of section 9 of Regulation VII of 1832 of the Bengal Code throughout British India, declared that "so much of any law or usage now in force within [British India] 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 [British India]". By this enactment, the legislature virtually set aside the provisions of Hindu law which penalised renunciation of religion or exclusion from caste. Accordingly, neither a convert to Muhammedanism or Christianity nor one deprived of caste forfeits his existing interest in the joint family property and both the convert and the outcaste retain their rights of inheritance to the property of the members of the family, whether the right accrues before or after the conversion or the exclusion from caste (*x*). The Act applies only to the actual person who either renounces his religion or has been deprived of caste but does not enable his descendants to claim the benefit of it. The descendants of a Hindu convert to Muhammedanism cannot claim to inherit to his Hindu collaterals nor conversely can his Hindu collaterals succeed to the convert or his descendants (*y*). Deprivation of caste

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(*v*) *Fanindra Deb* v. *Rajeswar* (1885) 12 I A., 72, 11 Cal, 463

(*w*) *Sahdeo Narain* v. *Kusum Kumari* (1922) 50 I.A, 58, 2 Pat, 230; see *Muhammad Ibrahim* v. *Sheikh Ibrahim* (1922) 49 I.A, 119, 45 Mad., 305.

(*x*) *Khunni Lal* v. *Gobind Krishna* (1911) 38 I A., 87, 33 All, 356, *Subbaroya* v. *Ramaswami* (1900) 23 Mad., 171; *Ram Pergash* v. *Mt Dahan Bibi* (1924) 3 Pat., 152.

(*y*) *Mitar Sen* v. *Maqbul Hasan* 57 I.A., 313, A I.R. 1930 P.C., 251, approving *Vaithilinga* v *Aiyadorai* (1917) 40 Mad, 1118 and overruling *Bhagwant* v. *Kallu* (1889) 11 All., 100; *Chidambara* v. *Ma Nyein* (1928) 6 Rang., 243.

on other grounds than change of religion or exclusion from Hindu religion is also relieved against by the Act (*z*). The Act does not enlarge the rights of the convert in his family property or get rid of any condition or restriction to which they were originally subject (*a*).

Hindu Widows' Remarriage Act.

§ 44 The Hindu Widows' Remarriage Act (XV of 1856) is an enabling Act which was passed to give effect to the views of a reforming section of Hindus, according to whom re-marriage of widows was in accordance with the true interpretation of the precepts of Hindu religion The Act legalises the re-marriage of Hindu widows and declares the issue of such re-marriage to be legitimate (s 1) Section 2 runs: "All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to re-marry, only a limited interest in such property, with no power of alienating the same, shall upon her re-marriage cease and determine as if she had then died; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same". Section 3 provides for the guardianship of the children of the deceased husband on the re-marriage of the widow. Section 4 provides that nothing in the Act shall render any childless widow capable of inheriting if she had no such rights under ordinary Hindu law. Section 5 saves the rights of the widow on re-marriage and runs "Except as in the three preceding sections is provided, a widow shall not, by reason of her re-marriage forfeit any property or any right to which she would otherwise be entitled, and every widow who has re-married shall have the same rights of inheritance as she would have had, had such marriage been her first marriage". The provisions of this Act have given rise to conflicting views on several matters and they will be dealt with in a subsequent chapter

Special Marriage Act.

§ 45. The Special Marriage Act (III of 1872) provides for a civil marriage before a Registrar (1) between persons neither of whom professes the Christian, Jewish, Hindu, Muhammedan, Parsi, Buddhist, Sikh or Jaina religion and (2)

(*z*) *Subbaraya* v *Ramaswami* (1900) 23 Mad, 171, 174; *Vedammal* v. *Vedanayaga* (1908) 31 Mad, 100, *Honamma* v. *Timanna Bhat* (1877) 1 Bom, 559, *Bhujjanlal* v. *Gya Pershad* (1870) 2 N.W.P., 446 But see *Nalinaksha* v. *Rajanikant* (1931) 58 Cal., 1392, 1398.

(*a*) *Matungini* v. *Ram Rutton* (1892)19 Cal, 289, 291 F.B.; *Pathumma* v. *Raman Nambiar* (1921) 44 Mad, 891.

between persons who profess the Hindu, Buddhist, Sikh or Jaina religion. The marriage may be solemnised in any form, provided that each party says in the presence of the other and hearing of the Registrar and witnesses, "I (A) take thee (B) to be my lawful wife (or husband)" (s. 11). Before the marriage is solemnised, the bridegroom and the bride have to make declarations in the prescribed form (s. 10). All restrictions on marriage, imposed by law or custom, are removed except as regards certain prohibited degrees of consanguinity or affinity (*b*). A marriage solemnised under the Act is subject to the provisions of the Indian Divorce Act (s. 17). The Act, as it originally stood, only enabled Hindus to make a declaration that they did not profess the Hindu religion and to marry in accordance with it. After its amendment in 1923, the Act also enables persons who profess to be Hindus in their declaration to marry under it. The important provisions are:—The marriage under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family (s. 22). A person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act shall have the same rights and be subject to the same disabilities in regard to any right of succession to any property as a person to whom the Caste Disabilities Removal Act, 1850, applies: Provided that nothing in the section shall confer on any person any right to any religious office or service, or to the management of any religious or charitable trust (s. 23). Succession to the property of any person professing the Hindu, Buddhist, Sikh or Jaina religion, who marries under this Act, and to the property of the issue of such marriage, shall be regulated by the provisions of the Indian Succession Act, 1865 (s. 24). No person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act shall have any right of adoption (s. 25). When a person professing the Hindu, Buddhist, Sikh or Jaina religion marries under this Act, his father shall, if he has no other son living, have the right to adopt another person as a son under the law to which he is subject (s. 26). Before the amending Act of 1923, Hindus like Brahmos who married under the Act upon a declaration that they did not profess Hinduism were undoubtedly governed by Hindu law. After the amending Act, too, apparently a Hindu marrying under it on a declaration that he does not

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(*b*) The Special Marriage Act (III of 1872) s. 2 (4) and provisos 1 and 2.

profess the Hindu religion will still be governed by Hindu law as the expression 'professes the Hindu religion' in sections 22 to 26 can only apply to those who claim in the declaration that they profess the Hindu religion (*c*).

The Arya Marriage Validation Act (XIX of 1937) validates all marriages before or after the commencement of the Act, between persons who at the time of marriage are Arya Samajists, whether or not they belonged to different castes or to religions other than Hinduism before their marriage.

Hindu Disposition of Property Act.

§ 46. The Hindu Disposition of Property Act (XV of 1916), the Hindu Transfers and Bequests Act (Madras Act I of 1914) and the Hindu Transfers and Bequests Act (City of Madras) Act (VIII of 1921), were passed with a view to mitigate the grave inconveniences resulting from the rule laid down by the Privy Council in the *Tagore* case as a rule of Hindu law that a gift *inter vivos* or a testamentary disposition can only be made in favour of a person who must either in fact or in contemplation of law be in existence on the date of the gift or at the death of the testator as the case may be. Now, the provisions of Chapter II of the Transfer of Property Act relating to transfers *inter vivos* apply to Hindus and Buddhists by reason of the Transfer of Property Amendment Supplementary Act (XXI of 1929) which came into force on 1st April 1930. The provisions of sections 113 to 116 of the Indian Succession Act have been made applicable to Hindus by the Acts of 1914 and 1916 Hindus governed by the Marummakathayam and the Aliya Santana law are also entitled to the benefit of Madras Act I of 1914 and The Hindu Transfers and Bequests (City of Madras) Act, 1921(*d*). The effect of these provisions will be referred to in a subsequent chapter (Ch XXI).

During the last ten years especially, most important changes in Hindu law have been introduced by legislation

Hindu Gains of Learning Act.

§ 47. The Hindu Gains of Learning Act (XXX of 1930) was passed to remove doubt and to provide a uniform rule as to the rights of a member of a Hindu undivided family in property acquired by him by means of his learning S. 3

(*c*) *Vidyagavri* v. *Narandas* A I R, 1928, Bom., 74, *In the goods of Jnanendranath Ray* (1929) 49 Cal, 1069 *Thukrubai* v. *Attavar* (1935) 58 Mad, 1004.

(*d*) See explanation to section 2 of Act XV of 1916 and Act VIII of 1921.

of that Act says "Notwithstanding any custom, rule or interpretation of the Hindu Law, no gains of learning shall be held not to be the exclusive and separate property of the acquirer merely by reason of—

(*a*) his learning having been, in whole or in part imparted to him by any member, living or deceased, of his family, or with the aid of the joint funds of his family, or with the aid of the funds of any member thereof; or

(*b*) himself or his family having, while he was acquiring his learning, been maintained or supported, wholly or in part by the joint funds of his family, or by the funds of any member thereof".

In this Act " learning " means education, whether elementary, technical, scientific, special or general, and training of every kind which is usually intended to enable a person to pursue any trade, industry, profession or avocation in life;

"gains of learning" means all acquisitions of property made substantially by means of learning, whether such acquisitions be made before or after the commencement of this Act and whether such acquisitions be the ordinary or the extraordinary result of such learning".

The Act is declaratory and largely retrospective and governs all acquisitions whether made before or after the commencement of the Act. It does not however affect any transfer of property made or a partition or an agreement for partition made before the commencement of the Act, or any rights or liabilities under such transfer, partition or agreement or things done before its commencement.

Acts relating to Inheritance.

§ 48. The Hindu Inheritance (Removal of Disabilities) Act, (XII of 1928) amends the rule of Hindu Law relating to exclusion from inheritance of certain disqualified heirs. Section 2 provides: "Notwithstanding any rule of Hindu Law or custom to the contrary, no person governed by the Hindu Law, other than a person who is and has been from birth a lunatic or idiot, shall be excluded from inheritance or from any right or share in joint family property by reason only of any disease, deformity, or physical or mental defect". It leaves the prior law untouched as regards any right in respect of a religious office or service or of the management of any religious or charitable trust. It does not apply to any person governed by the Dayabhaga school of law and is not retrospective in its operation.

The Hindu Law of Inheritance (Amendment) Act, II of 1929, alters the order of intestate succession under the Mitakshara law, with a view to prefer certain near bandhus or cognates to distant agnates, in the succession to the estate of a Hindu male dying without male issue. It provides that a son's daughter, daughter's daughter, sister and sister's son, shall in that order come in as heirs *next* after the paternal grandfather and before the paternal uncle.

A son adopted by the sister's husband after her death however is not her son within the meaning of the Act. The Act does not provide for a son's daughter's son, daughter's son's son, daughter's daughter's son, son's son's daughter and son's daughter's daughter—a serious omission. They are in the direct line and nearer bandhus than the sister and her son, who are named in the Act (*e*). The Act applies only to persons governed by the Mitakshara school of law The provisions of this Act apply not only to the estate of a Hindu male who dies after the Act but to the estate of one who died before the Act where the succession opens after the Act on the death of his widow, daughter, mother, or grandmother (*f*).

Hindu Women's Rights to Property Act.

§ 49. Quite recently, the Hindu Women's Rights to Property Act (XVIII of 1937) was passed to amend the Hindu law of all the schools so as materially to confer greater rights on women than they had. The Act effects revolutionary changes in Hindu law, more particularly in the Mitakshara law. It affects the law of the coparcenary, partition and alienation. It will also affect the topics of inheritance and adoption It confers upon the widow of a man, whether governed by the Mitakshara or the Dayabhaga law, rights

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(*e*) See *Kalimuthu* v *Ammamuthu* (1934) 58 Mad, 238, 249, 251. The nature of the estate taken by the new female heirs will be, according to the school of law, either limited (Mitakshara) or absolute (Mayukha)

(*f*) *Lakshmi* v *Anantarama* [1937] Mad, 948, A I.R 1937 Mad, 699 F B [overruling *Krishnan Chettiar* v *Manikkammal* (1934) 57 Mad, 718], *Mt Rajpali* v. *Surju Raj* (1936) 58 All, 1041 F B, A I R. 1936 All, 507 F B, *Rajdeo Singh* v *Mt Janak Raj* A I R 1936 All, 154, *Shakuntala Bai* v. *Kaushalya* (1936) 17 Lah, 356, A I R 1936 Lah, 124, *Chulhan* v *Mt Akli* A I R 1934 Pat, 324, *Pokhan Dusadh* v *Mt Manoa* (1937) 16 Pat, 215 F B, *Shankar* v *Raghoba* A I R. 1938 Nag, 97, in *Mt Charjo* v *Dinanath* A I R 1937 Lah, 196 (2), the Act was applied to the stridhanam property of a woman who died without issue and whose husband had predeceased her by ascertaining the heirs of her husband as under the Act and treating the property as the husband's property. This decision overlooks the express provision in sub-section 2 of section 1 which limits the altered order only to the property of males.

of inheritance to his property even when he leaves male issue. Similar rights are conferred upon the widows of his predeceased son and of *his* predeceased son. In a Mitakshara undivided family, the widow of a deceased coparcener takes his interest. In all cases, the widows are entitled to claim partition, but they take only the limited interest of a Hindu woman. Where a coparcener leaves a widow, the rule of survivorship no longer takes effect.

The Act came into force on the 14th April, 1937 and has no retrospective operation. As the original Act was badly drawn, it has just been amended by an amending Act which is to have effect as from the 14th April, 1937. The interpretation and effect of the Act will be fully discussed in a subsequent chapter (f^1).

§ 50. There does not appear to be any reasonable doubt as to the validity of the Act of 1937. No doubt Part III of the Government of India Act, 1935, came into force on the 1st April, 1937, with the result that the distribution of legislative powers as between the Indian Legislature and the Provincial Legislatures took effect under Secs. 100 and 316 of the Government of India Act as from that date. But the Bill had already been passed by the Indian Legislature before the commencement of Part III. The Governor-General's assent on the 14th April, 1937, was valid as a necessary incident of the power of the legislature to pass the bill before the 31st March, 1937. The old legislature itself was continued by Sec. 317 and the ninth schedule of the Government of India Act. Neither Section 292 nor clause 9 of the Commencement and Transitory Provisions Order, 1936, applies to this Act or affects the validity of the Governor-General's assent given after the 1st April, 1937. Clause 9 of the Order is overridden by a Statute of Parliament, The India and Burma (Existing Laws) Act, 1937, § 1 (1) (i). But the validity of the recent amending Act stands on a different footing. "Intestacy and succession" as regards agricultural land, which is what the vast bulk of land in India is, are excluded from No. 7 of the concurrent list, and are only in No. 21 of the provincial list. The recent amending Act therefore may to a large extent be *ultra vires* unless supplemented by provincial legislation.

§ 51. The principles of justice, equity and good conscience, which are made applicable, in the absence of any

Justice, equity and good conscience.

(f^1) Chapter XIV.

express provision of Hindu Law, by the several Civil Courts Acts are, as they have always been, certainly an additional source of Hindu law. The term *Nyaya*, meaning equity and reason, was recognised by the Smritis as applicable both to cases not covered by the written law as well as where two Smritis differed (*g*). Gautama says: "In cases for which no rule is given, that course must be followed of which at least ten (persons) who are well instructed, skilled in reasoning and free from covetousness approve"(*h*). Narada and Brihaspati refer to this residual source as *Dharma* (justice) or *Yukti* (equity and reason) (*i*) Nilakantha in Vyavahara Mayukha refers to a text of Brihaspati which insists upon equity and reason as the determining factor. "No decision should be made merely exclusively according to the letter of the *Sastra* for, in a decision devoid of *Yukti* (reason or equity), failure of justice occurs" (*j*).

Rules of justice, equity and good conscience are properly applicable in the administration of Hindu law to cases not governed by the Smritis and the Commentaries as interpreted by the Courts (*k*). Analogy is more a method of interpretation than a rule of justice, equity and good conscience. There is no doubt that both the principles of justice, equity and good conscience and the rule of analogy, separately or together, have been and are always applied in modern Hindu law.

Justice, equity and good conscience have been generally understood to mean the rules of English law modified to suit Indian conditions (*l*), but they may equally well be rules or analogies deduced from general principles of Hindu Law,

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(*g*) Yajn., II, 21.

(*h*) Gaut., XXVIII, 48, Manu, XII, 108-112.

(*i*) Nar., Introdn, I, 10; Brih, II, 18, XXVII, 2.

(*j*) Brih, II, 12, Arthasastra, III, 1, 51, 55, 57 (Dr. Jolly's edn.). (Shamasastri, 185) refers to equity and justice as *Nyaya* and *Dharmanyaya* as a ground of legal decision; V. May., I, 1, 12.

(*k*) *Kenchava* v. *Girimallappa* (1924) 51 I A., 368, 48 Bom, 569, per Kumaraswami Sastri J in *Subramania Iyer* v *Ratnavelu Chetty* (1918) 41 Mad, 44, 74, 75 F B, *Jagannath Gir* v. *Sher Bahadur* (1935) 57 All, 85.

(*l*) "In point of fact, the matter must be decided by equity and good conscience, generally interpreted to mean the rules of English law, and found applicable to Indian society and circumstances" in *Waghela Rajsanji* v. *Shekh Masluddin* (1887) 14 I.A., 89, 96, 11 Bom., 551, 561 (case of guardianship), *Mehrban Khan* v *Makhna* (1930) 57 I.A., 168, 11 Lah, 251, *Muhammad Raza* v. *Abbas Bandi* (1932) 59 I A., 236, 246, 7 Luck., 257, *Narayana Sah* v. *Kannamma Bai* (1932) 55 Mad, 727, 746.

altered to suit the conditions of modern society (*m*). "Hindu law is a jurisprudence by itself and contains, within limits, all the principles necessary for application to any given case . . . . . The Hindu lawgivers have not indeed laid down a rule in express terms on every conceivable point. But having provided texts for such cases as had arisen before or in their time, they left others to be determined either with reference to certain general principles laid down by them in clear terms or by the analogy of similar cases, governed by express texts" (*n*). The Privy Council deduced principles from the law of gifts and applied them to the law of wills and pointed out in the *Tagore* case (*o*) that it is the duty of a Court, "dealing with a case new in the instance, to be governed by the established principles and the analogies which have heretofore prevailed in like cases". Accordingly where a Hindu who was the next reversioner to the estate of an intestate was convicted of the murder of the intestate's mother, it was held that he was disqualified from succeeding to the estate, on principles of justice, equity and good conscience (*p*). Courts are also entitled to interpret Hindu law so as not to affect paramount questions of public policy or to depart from well settled principles of jurisprudence (*q*).

Application of Hindu law.

§ 52. The question who are governed by Hindu law is not easily answered by saying that all Hindus are governed by it. For, there are classes of Hindus who are governed by their customary laws and not by the Hindu law, for instance, those that follow the Marumakkathayam law in Malabar and the Aliyasantana law in Kanara and those Hindu communities in the Punjab who are governed by their customary law. On the other hand, some Muhammedan communities, descended from an original Hindu ancestry, like the Khojahs, the Cutchi Memons, the Borahs, and the Halai Memons, are, subject to the new Shariat Application Act, 1937, governed by Hindu law in matters of succession and inheritance. Subject to the above exceptions, Hindu

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(*m*) *Bhyah Ramsingh* v. *Bhyah Ugur* (1870) 13 M.I.A., 373, 390; *Ramchandra's case* (1914) 41 I.A., 290, 299, 42 Cal., 384; *Subbaraya Pillai* v. *Ramaswami Pillai* (1899) 23 Mad., 171; *Budansa Rowther* v. *Fatma Bi* (1914) 26 M.L.J., 260, 264.

(*n*) Per Chandavarkar J. in *Kalgavda Tavanappa* v. *Somappa* (1909) 33 Bom., 669, 680.

(*o*) *Jatindra Mohan Tagore* v. *Ganendra Mohun Tagore* (1872) 1 I.A. Sup. 47, 68; *Mirehouse* v. *Rennell* 1 Cl. & F., 546, 6 E.R., 1015.

(*p*) *Kenchava* v. *Girimallappa* (1924) 51 I.A., 368, 48 Bom., 569.

(*q*) Compare what Lord Phillimore said as to statutes: *Kenchava* v. *Girimallappa* (1924) 51 I.A., 368, 373, 48 Bom., 569, 575.

law applies to Hindus by birth as well as to Hindus by religion. It is now well settled that a Hindu does not cease to be governed by Hindu law by lapses from orthodox Hindu practice or by deviation or dissent from its central doctrines (*r*). Several religious sects or bodies had at various periods and under various circumstances split off from the Hindu system but their members nevertheless continue to live under Hindu Law. Of these, the Jains and the Sikhs are conspicuous examples. In *Rani Bhagwan Koer* v. *J. C. Bose* (*s*), the Sikhs (*t*) and Jains (*u*) were held to be governed by Hindu law except to the extent to which it is varied by custom. The Jains, generally adhering to the ordinary Hindu law, that is the law of the three superior castes, recognise no divine authority in the Vedas and do not practise the *sraddhas* or ceremonies for the dead (*v*). Nor do

Jains and Sikhs.

(*r*) *Rani Bhagwan Koer* v *J C Bose* (1903) 30 I A, 249, 31 Cal, 11, *Ishwari Prasad* v *Rai H P Lal* (1927) 6 Pat, 506 The decision in *Rai Bahadur* v *Bishen Dayal* (1882) 4 All, 343, that the term 'Hindu' means an orthodox Hindu in the strict sense or orthodox believer in the Hindu religion which was dissented by the Punjab Chief Court whose decision was affirmed by the Privy Council is on that point no longer law

(*s*) (1903) 30 I A, 249, 31 Cal, 11, (where the judgment of the Chief Court is also reported)

(*t*) *Mahant Basantdas* v. *Hem Singh* (1926) 7 Lah, 275, *Sohanlal* v. *Kartar Singh* (1935) 16 Lah, 320, 325, see also *Jagga Mohun* v. *Saumcoomar* 2 Mor Digest, 13, *Bhagwan Singh* v *Bakshi Ram* A I R. 1933 Lah, 494

(*u*) It may be wrong to describe the Jains as dissenters from Brahminism, but they were dissenters from the Vedic religion While Brahminism represented the main ritualistic tradition of the Vedas softened by the Upanishads, Jainism and Buddhism were off-shoots of the Aryan religion in India As to the origin of Jainism, see per Kumaraswami Sastri, J, in *Gettappa* v *Eramma* (1929) 50 Mad, 228; also 'The Jain Law' by C R Jain *Sheo Singh Rai* v *Dakho* (1878) 5 I A, 87, 1 All, 688, *Chottey Lal* v *Chunno Lal* (1879) 6 I A, 15, 4 Cal, 744, *Sheokuar Bai* v *Jobraj* (1920) 25 C W N, 273, A I R. 1921 P C, 77, *Rani Bhagwan Koer* v. *J C Bose* (1903) 30 I A, 249, *Lala Rupchand* v *Jambu Prasad* (1910) 37 I A, 93, 32 All, 247, (where the Agarwalla Jains were held to belong to one of the twice born classes and the ordinary Mitakshara law was applied to them), *Dhanraj Joharmal* v *Sonibai* (1925) 52 I A, 231, 52 Cal, 482 (adoption is purely a secular matter to Agarwalla Jains), see also *Bhagwan das Tejmal* v *Rajmal* (1873) 10 Bom H C R, 241, *Sundarji Dangi* v. *Dahibai* (1905) 29 Bom, 316, *Ambabai* v *Govind* (1899) 23 Bom, 257 (The Jains have caste divisions of their own They are mostly Vaisyas and their four main divisions are Pramar, Oswal, Agarwal and Khandewal), *Bhikabai* v *Manilal* (1930) 54 Bom, 780, *Asharfi Kunwar* v *Rupchand* (1908) 30 All, 197, *Periammani* v *Krishnaswami* (1893) 16 Mad, 182, *Mt Lado* v *Banarsidas* (1933) 14 Lah, 95 (adoption), *Sundar Lal* v *Baldeo Singh* (1933) 14 Lah, 78 (adoption), *Mari Deiamma* v. *Jinamma* 10 Mysore, 384.

(*v*) This passage is cited with approval in *Sheokuar Bai* v. *Jobraj* (1920) 25 C W.N, 273 P C, C H.I., I, 150

they recognise the spiritual superiority of the Brahmins. The Jains in the Madras Province who were previously governed by the Aliya Santana law have now been brought under the Mitakshara law by the Jaina Succession Act, (III of 1929). There is no personal law except Hindu law applicable to Buddhists in India. They cannot be governed by Burmese or Chinese Buddhist law. They must therefore be governed by Hindu law except where there is a change to a Buddhist domicil and an adoption of that law (*w*). Similarly the Lingayats, a body of dissenters from Hinduism who deny the supremacy of the Brahmins and caste-distinctions have been held to be a sect of Hindus governed by ordinary Hindu Law except in so far as it is varied by any custom amongst them (*x*). A Hindu does not by becoming a Brahmo or an Arya Samajist or a Dayanandi, cease to be governed by Hindu law and both the Brahmo Samaj and the Arya Samaj are only sects of Hindus for the purpose of the application of Hindu Law (*y*). In *Ma Yait* v. *Maung Chit Maung* (*z*) the question was whether the Kalais descended from Hindus who married Burmese women were a Hindu community governed by Hindu Law; it was held that they were not, but that they were governed by the Indian Succession Act on the ground that there was no continuity of Hindu character in their case as they were away from Hindu centres in an alien country in a Buddhist environment and their mode of life was different from that of the Hindu communities in India. Lord Haldane pointed out that if a man is born a Hindu, deviation from orthodoxy not amounting to a clear renunciation of his religion does not deprive him of his status as a Hindu and that, though contact with other religions may well evolve sects which discard many characteristics of orthodox Hinduism and adopt ideas and rites popularly supposed to belong to other

Buddhists.

Lingayats.

Brahmos and Arya Samajists.

Kalais.

(*w*) See Sarkar Sastri (Hindu Law, 7th edn., 61), see *Ram Pergash* v. *Mt Dahan* (1924) 3 Pat, 152 at 175; see *Vannikone* v. *Vannichi* (1928) 51 Mad, 1 F B. "Mere conversion would not involve the adoption of its laws as to the inheritance and succession."

(*x*) *Somasekhara Royal* v *Sugattur Mahadeva Royal* A I R. 1936 P.C., 18, 70 M L.J., 159, affirming 53 Mad, 297; *Basava* v *Lingan Cowda* (1895) 19 Bom., 428, 457, *Fakirgowda* v. *Gangi* (1898) 22 Bom., 277, see Thurston's 'Castes and Tribes,' Vol. IV, 236.

(*y*) *Rani Bhagwan Koer* v. *J. C. Bose* (1903) 30 I.A., 219, 31 Cal., 11. *In the goods of Jnanendranath Ray* (1922) 49 Cal., 1069 (where there was a declaration under the Special Marriage Act that he did not profess Hinduism), *Mt. Suraj Jote Kuer* v. *Mt Attar Kumari* (1922) 1 Pat., 706; see also *Ganga Saran Singh* v. *Mt. Sirtaj Kuer* A.I.R. 1935 All., 924; see as to Jati Vaishnavas of Bengal, *Nalinaksha* v. *Rajani* (1931) 58 Cal., 1392.

(*z*) (1921) 48 I.A., 553, 49 Cal., 310.

systems, continuity with a religion which is so elastic in its scope as is Hinduism may not be destroyed. The Judicial Committee referred in *Bhagwan Kuar's* case to the separation from the Hindu communion, and in *Ma Yait's* case to a clear renunciation of the Hindu religion. As the authorities show, neither can be established except by a Hindu becoming a Muhammadan or a Christian or by the combined operation of migration, intermarriage and new modes of life (*a*). A solemn declaration under the Special Marriage Act by a person that he does not profess the Hindu religion has been rightly held to be insufficient to deprive him of his status as a Hindu (*b*).

A man cannot alter the law of succession applicable to himself by a mere declaration that he is not a Hindu. He can only alter his existing status by becoming a member of such a religion as would destroy that status and give him a new one. The question is whether a Hindu by proclaiming himself not to belong to the Hindu religion or to belong to no religion can effectively renounce his religion. Hinduism not only comprises religious beliefs and modes of life but also social, moral and philosophical implications as well. Therefore a mere investigation into a man's modes of life and religious beliefs without taking his racial and historical background into account will not be conclusive As Lord Haldane pointed out, a method which takes account of historical as well as other considerations must be applied and the opinion of the community in which he lives may well be a factor. The reasonable conclusion appears to be that the term 'Hindu' in the Civil Courts Acts of the various provinces must be applied to persons who are Hindus either by birth or by religion provided that those who are born Hindus have not become converts to Christianity or Muhammadanism. In other words, if a Hindu, on his conversion to Christianity or Muhammadanism, ceases to be governed by his prior personal law, it is because of a conflict of laws. In the absence of any such conflict, the personal law must continue to apply to him even though he is not a Hindu in the strict theological sense

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(*a*) Though there may be a conversion to the Zoroastrian religion, a Hindu cannot become a Parsi which is a racial term. *Sir Dinsha M. Petit* v. *Sir Jamsetji Jijibhoy* (1909) 33 Bom., 509; *Saklat* v. *Bella* (1925) 53 I.A., 42.

(*b*) *In the goods of Jnanendranath Ray* (1922) 49 Cal., 1069; *Vidyagavri* v. *Narandas* A.I.R. 1928 Bom., 74.

(b^1). Conversely, conversion to Hindu religion of persons of non-Hindu origin attracts with it the application of Hindu law. Where an European lady (c) or an Indian Christian (d), after formal conversion to Hinduism married a Hindu by race and religion, the Madras High Court has held that she was a Hindu within the meaning of the Succession Act or Hindu law, and that membership of a caste was not a necessary pre-requisite for being a Hindu.

Nambudris.

§ 53. The Nambudris are governed by Hindu law except so far as it is shown to have been modified by usage or custom having the force of law, the probable origin of the usage being some doctrine as it stood at the date of their immigration into Malabar or some Marumakkathayam usage (e). The date of their settlement on the West Coast is not known but it must have occurred certainly before the Mitakshara was written and even prior to the great Sankaracharya (788-820 A.D.) (f). The Hindu law governing them is generally speaking the law laid down in the Mitakshara. The gotras of the Nambudri may be said to be the same as those of the Brahmins of the East Coast, indicating thereby descent from the same common original ancestors. Among the Nambudris, the mode of tracing succession and the devolution of property are in accordance with Hindu law and contrary to the Marumakkathayam usages of Malabar. The same rule of collateral succession obtains both among Nambudri Brahmins and other Brahmins of South India. They recognise the authority of the Vedas and the Smritis like all other Brahmins (f^1). Among Nambudris, the family property was not liable to be partitioned at the instance of any one of the co-parceners till the Madras Nambudri Act (XXI of 1933) which confers the right to partition. But the self-acquisition of a Nambudri Brahmin passed to his heirs under the Mitakshara Law before the enactment of the Nambudri Act which creates a new line of

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(b^1) The dictum in (1929) 52 Mad., 160, 165, infra, and in *Dagree* v. *Pacotti* (1895) 19 Bom., 783, that the term 'Hindu' is used in a theological sense does not amount to much, as it is admitted that short of conversion to Christianity or Mahomedanism he remains a Hindu.

(c) *R. D. Morarji* v. *Administrator-General of Madras* (1929) 52 Mad., 160. See *Ramayya* v. *J. Elizabeth* A.I.R. 1937 Mad., 172.

(d) *Muthusami* v. *Masilamani* (1909) 33 Mad., 342.

(e) *Vasudevan* v. *Secretary of State* (1888) 11 Mad., 157, 160, 181; *Vishnu* v. *Akkamma* (1910) 34 Mad., 496; *Narayanan Nambudri* v. *Ravunni Nair* (1924) 47 M.L.J., 686.

(f) *Vasudevan* v. *The Secretary of State* (1888) 11 Mad., 157, 180.

(f^1) (1888) 11 Mad, 157, 161.

heirs for the self-acquired or separate property of a Nambudri male. The Nambudri widow who is the sole surviving member of the illom (family) is generally speaking subject to the same restrictions as an ordinary Hindu widow in respect of alienations. A Nambudri widow can adopt or appoint an heir in order to perpetuate her illom, which is equivalent to a Kritrima adoption (*g*). Among them the adopted son, as a Kritrima son, is entitled to the properties of both his adopted and natural father (*h*). One peculiarity of their marriage system was that only the eldest son could marry. Now under the Madras Nambudri Act (XXI of 1933), the other major male members are at liberty to marry. By the Nambudri Act, a Nambudri's right to marry more than one wife has been restricted. Among Nambudris, neither divorce nor remarriage of widows is allowed The Malabar and Aliyasantana law are outside the scope of this work though, with the exception of some Mappillas (*i*), the people primarily governed by that law are Hindus in the fullest sense Marumakkattayam law however has been materially modified by the Madras Marumakkattayam Act, 1932 (Act XXII of 1933). Their customary marriages are now made legally valid and binding and strictly monogamous, though dissoluble. Rights of partition within limits are also conferred except in respect of certain ancient kovilakoms and tarwads.

General applicability to all Hindus

§ 54 It was once suggested that it was necessary first to ascertain whether the Hindu law of the Smritis and Commentaries as a whole was accepted by particular communities of Hindus on the ground that they may have originally been non-Aryans or aborigines. But it may now be taken as settled that the general Hindu law, prevailing over large tracts of country and populous communities, applies to every Hindu amongst them, unless he could show some valid local, tribal or family custom to the contrary In order to bring a case under any rule of law laid down by recognised authority for Hindus generally, it is not necessary that evidence should be given of actual events showing that in point of fact the people subject to that general law regulate their lives by it Special customs have to be pleaded by way of exception Any other

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(*g*) *Narayanan Nambudri* v. *Krishnan Nambudri* (1934) 57 Mad., 725, 67 M L J, 511.

(*h*) *Vasudevan* v. *Secretary of State* (1888) 11 Mad., 157, 178.

(*i*) The Mappillas of the West Coast are governed by the Shariat Application Act and the Mappilla Succession Act I of 1918.

view would be to invert the processes by which law is ascertained (*j*).

The Adi Dravidas and Chamars are Hindus governed by Hindu law (*k*). The question as to how far Hindu law as expounded in the Smritis and the Commentaries is to be applied to the Dravidian and other communities of non-Aryan descent is one which gave rise to a good deal of controversy. But it is now generally established that Hindu law should be applied to them, except where there is clear proof of a custom to the contrary (*l*). The Dravidians of South India though probably of non-Aryan origin have become Hinduised centuries ago and are certainly Hindus in religion and social usages and there can be no denying the applicability of Hindu law to them. Some of their ancient customs may here and there survive (*m*). As regards aboriginal tribes, it is enough if they have become sufficiently Hinduised, though they may retain many of their old customs. The aboriginal tribe called the Bhuyyahs was held to be sufficiently Hinduised and to be governed by Hindu law (*n*). In *Fanindra Deb's* case (*o*) it was held that a tribe to which the Baikantpur Raj family belonged had not become sufficiently Hinduised and that it was still governed by family customs. The Jats, whatever their origin, are Hindus and are governed by Hindu law in the absence of a custom to the contrary (*p*). The aborigines of Assam have become

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(*j*) *Bhagwansingh* v. *Bhagwan Singh* (1899) 26 I.A., 153, 165, 21 All., 412, 423; *Muthu Vaduganatha* v *Doraisingha* (1881) 3 Mad., 309, 335, 339. *Minakshi* v. *Ramanada* (1888) 11 Mad., 49 (52) F.B., see *Kalappa* v. *Shivappa* 39 Bom. L.R. 1282 (claim to belong to regenerate class, negatived).

(*k*) *Manicham* v. *Poongavanammal* (1934) 66 M.L.J., 543, 547 (adi-dravida); *Sohansingh* v. *Kallasingh* (1929) 10 Lah., 372 (Chamars).

(*l*) *Vannihone* v. *Vannichiammal* (1928) 51 Mad., 1, 9 F.B., per Devadoss, J. in *Viswanatha* v. *Doraiswami* (1928) 48 Mad., 944, 949.

(*m*) *Palaniappa Chettiar* v. *Alaganchetti* (1921) 48 I.A., 539, 44 Mad., 740.

(*n*) *Sahdeo Narain* v. *Kusum Kumari* (1923) 50 I.A., 58, 2 Pat., 230.

(*o*) *Fanindra Deb* v. *Rajeswar* (1885) 12 I.A., 72, 81, 11 Cal., 463, 481.

(*p*) The Jats (Sanskrit Yadava) are the descendants of an aboriginal race. Mannings, Ancient India, I, 66. *Mt. Bhagwani* v. *Kushi Ram* (1914) 24 I.C., 982; *Ram Pergash Singh* v. *Mt. Dahanbibi* (1923) 3 Pat., 152, 176, *Mewa Ram* v. *Lal Sahai* A.I.R. 1927 All., 410 (Jats are Sudras). *Kunwar Basant Singh* v. *Kunwar Brij Singh* (1935) 62 I.A., 180, 57 All., 494 (in the matter of adoption, Jats are governed by customary law).

Hinduised and are governed by the Bengal School of Hindu Law (*q*) The Rajbansis, originally of non-Aryan origin have adopted Hinduism and are governed by Hindu law (*r*). The Kurmi Mahtos of Chota Nagpur are governed by Hindu Law though the onus of proving the particular school of Hindu Law is upon the person asserting it (*s*). The Thattans (*t*) following the Makkathayam law of Malabar as well as the Ezhuvas (*u*) and the Makkathayam Thiyas (*v*), all of Malabar, are governed by Hindu law.

Illegitimate children.

§ 55. Illegitimate children of Hindu parents are of course Hindus and are governed by Hindu Law (*w*). Where the illegitimate children are born to parents belonging to two separate religious communities as Hindus and Muhammedans or Hindus and Christians, ordinarily the status of the mother will determine the status of her offspring and the law applicable to them. Accordingly the illegitimate son of a Hindu by a Christian woman was held not entitled to maintenance out of the estate of the Hindu father (*x*). It has been held that where a European had illegitimate sons by two Hindu women and they conformed in all respects to Hindu habits and usages,

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(*q*) *Deepo Debia* v *Govindo Deb* (1871) 16 W R, 42, 11 B L R, 131 (Koch), *Dino Nath Mahunto* v *Chandi Koch* (1912) 16 C L J, 14 (Koch), *Nearam Kachari* v *Ardharam Kachari* A I R 1921 Cal, 558, 35 C L J, 34 (Kachari), *Kerry Kolitani* v *Moniram* (1873) 19 W R, 362 (Kolita).

(*r*) *Santala Bewa* v *Badaswari Dasi* (1923) 50 Cal, 727, *Narendra* v *Nagendra* A I R 1929 Cal, 577, 50 C L J, 267.

(*s*) *Krittibash Mahton* v *Bhudwan Mahtani* A I R 1925 Pat, 733, *Ganesh Mahto* v *Shib Charan Mahato* (1931) 11 Pat, 139 As to Mundaris of Ranchi, see *Doman Sahu* v. *Buka* A I R 1931 Pat, 198, as to whether Gonds and Raj Gonds are Hindus, or not, and if so, to what extent, see *Vithoba* v *Bal Singh* A I R 1923 Nag, 317, *Mt. Sarjabai* v *Gangarao* A I R 1930 Nag, 25, *Ramnath* v *Sahabri* A I R. 1924 Nag, 330, *Jankubai* v *Parvati* A I R 1925 Nag, 353, The Korkus of Central Provinces are governed generally by Hindu law, subject to proof of any special custom *Ishakalli* v *Thakur Prasad* 20 N L J, 159

(*t*) *Kunhi Kutti* v *Raman* (1922) 46 Mad, 597.

(*u*) *Balakrishnan* v *Chittoor Bank* A I R 1936 Mad, 937, 71 M L J, 766

(*v*) *Kuttayatha Kutti* v *Atchuthan* A I R 1921 Mad, 74, 13 M L W, 101, *P Chakkutti* v *K Chanthu Kutti* A I R 1927 Mad, 877, 58 M L J, 368, overruling 39 M L J, 427. See also *K. P. K. Raman* v. *R V. Muthu* (1920) 13 M L W, 218

(*w*) *Sivasangu* v. *Minal* (1889) 12 Mad, 277, *Visvanatha* v *Doraiswami* (1925) 48 Mad, 944, 950, *Narayan Pundlik* v. *Laxman* (1927) 51 Bom, 784, *Dattatraya* v *Matha Bala* (1934) 58 Bom, 118

(*x*) *Lingappa* v *Esudasan* (1904) 27 Mad., 13, *Charanjit* v. *Amir Ali* (1921) 2 Lah, 243 (illegitimate children born to a Hindu by a Muhammadan woman). See *Bhaiya Sher Bahadur* v. *Bhaiya Ganga* (1913) 41 I A., 1, 36 All, 101, (where the matter was left open).

they must be treated as Hindus and governed by Hindu Law in all respects (*y*). On the other hand, the vast majority of illegitimate children of Europeans by Indians or half-caste women, known as East Indians, and referred to in the judgment in *Abraham* v. *Abraham* (*y*[1]), who, have been acknowledged and cared for by their fathers and have adopted European modes of life, are governed not by Hindu Law but by the Indian Succession Act. On a similar principle, it has been held that sons of Hindu dancing girls of the Naik caste who were converted to Muhammadanism but who lived with their Hindu grandparents and were brought up as Hindus were Hindus governed by Hindu law, as also the daughters of the family (*z*). So also outcastes and degraded persons and their descendants, when they are not converts to other religions, are governed by Hindu law (*z*[1]).

Domicil.

§ 56. *Prima facie,* any Hindu residing in a particular province of India is held to be subject to the particular doctrines of Hindu Law recognized in that province. In Bengal and Assam, he is governed by the Dayabhaga School of Hindu law; in the Mithila country in Bihar, by the Mithila law: in the rest of Bihar, in the district of Benares and in the Central, North Western and Northern India, by the law of the Benares school; in Guzerat, in the island of Bombay and in North Konkan, by the Mayukha law, in the rest of the Bombay province, by the Mitakshara and the Mayukha and in Southern India, by the law of the Dravida School. The Mitakshara law of the Benares school prevails in Orissa (*a*) but the Ooriyas of those parts of Ganjam in Madras which have now been transferred to Orissa will continue to be governed by the law of the Dravida School, as before (*b*). The Mitakshara

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(*y*) *Myna Baee* v *Ootaram* (1861) 8 M.I A, 400 (after remand, 2 M.H.C.R., 196)

(*y*[1]) 9 M.I A., 195

(*z*) *Ram Pergash Singh* v *Mt Dahanbibi* (1924) 3 Pat, 152.

(*z*[1]) *Subbaraya* v *Ramasami* (1900) 23 Mad, 171; *Sarna Moyee* v. *Secretary of State* (1897) 25 Cal, 254; *Sundari Dossee* v *Nemye Charan* (1907) 6 Cal. L J, 372, *Narain Das* v. *Tirlok Tiwari* (1907) 29 All., 4; *Ishwari Prasad* v. *Rai Hari* (1927) 6 Pat, 506, 540; *Neelawa* v. *Gurshiddappa* A.I R. 1937 Bom, 169.

(*a*) As to Orissa, see Morley's Digest Introdn. *Jogendro* v. *Nityanund* (1890) 17 I.A., 128, 18 Cal, 151; *Parbati Kumar* v. *Jagdishchunder* (1902) 29 I A., 82, 29 Cal, 432; *Kalee Pudo Bannerjee* v. *Choitun Pandah* (1874) 22 W R.C.R., 214, *Raghubanund Doss* v *Sadhu Churn Doss* (1878) 4 Cal., 425.

(*b*) As to the Ooriyas of Ganjam, see *Raghunadha* v. *Brozo Kishore* (1876) 3 I.A., 54, 1 Mad, 69.

law as administered in Bombay is the law in Sind and the Mayukha is not the controlling authority (b^1). But this law is not merely a local law. It becomes the personal law, and a part of the *status* of every family which is governed by it. Consequently, where any such family migrates to another province, governed by another law, it carries its own law with it (c) including any custom having the force of law (d). That law is the law existing at the time of migration, as ascertained even from subsequent decisions in the domicil of origin and is not affected by customs incorporated therein, subsequent to the migration Of course, it is open to the family to adopt the law of its new domicil which will have to be affirmatively proved (e). Where the emigration is to a different country, the presumption that the family has adopted the law of the people among whom it has settled will be more readily made, if it is shown that the members of the family have so acted as to raise the inference that they definitely cut themselves off from their old environment (f). But a family migrating from a part of India, where the Mitakshara or the Mithila system prevailed, to Bengal, would not come under the Bengal law from the mere fact of its having taken Bengal as its domicil And this rule would apply as much to matters of succession to land as to the purely personal relations of the members of the family In this respect the rule seems an exception to the usual principle, that the *lex loci*

(b^1) *Bodomal* v *Mt Kishnibai* A I R. 1926 Sind, 231, as to Berar, see *Narayan* v. *Tulsiram* A I R. 1925 Nag, 329 F.B , *Harigir* v. *Anand* A.I.R. 1925 P.C, 127, as to the lex loci of Central Provinces, see *Keshao Rao* v. *Sadasheorao* A I R 1938 Nag, 163

(c) This passage is cited with approval by Lord Dunedin in *Balwant Rao* v *Baji Rao* (1920) 47 I.A , 213, 48 Cal, 30, *Parbati Kumari* v *Jagadishchunder* (1902) 29 I A , 82, 29 Cal , 433, *Balkisen Devchand* v. *Kunjalal Hiralal* A I R 1930 P C , 133, 58 M L J , 358; *Amba Bai* v. *Govind* (1899) 23 Bom , 257, *Mailathi Anni* v. *Subbaraya* (1901) 24 Mad , 650 I A Hindu governed by the Hindu law of Pondicherry (French India) continues even after her migration to British India to be governed by the Hindu law as administered in French India], *Govindachandra* v. *Radha Kirto Das* (1909) 31 All., 477; *Kulada Prasada* v. *Hari Pada* (1903) 40 Cal , 407, *Jawahirlal* v. *Jaranlal* (1924) 46 All , 192, *Sundaramier* v *Maharaja of Kolhapur* (1925) 48 Mad , 1, *Rameshchandra Sinha* v. *Md. Elahi Baksh* (1923) 50 Cal , 898 (Date of the migration is not material unless to ascertain the law at that time) , *Sukhbir Singh* v. *Mangwar Singh* (1927) 49 All , 302; *Tula Ram Sah* v. *Shyam Lal Sah* (1927) 49 All., 848, *Babu Motisingh* v *Durgabai* (1927) 53 Bom , 242.

(d) *Rana Sheonath* v. *Badan Singh* (1922) 48 I.A., 446, A.I.R. 1922 P.C., 146.

(e) *Sarada P Roy* v *Umakanta* (1923) 50 Cal., 370; *Jiwan Beas* v. *Mt. Indra Kuar* A I R. 1934 Pat., 260.

(f) *Abdur Rahim Haji Ismail Mithu* v. *Halimabai* (1915) 43 I.A., 35, 20 C.W.N., 562, 30 M.L.J., 227.

governs matters relating to land, and that the law of the domicil governs personal relations. The same rule as above would apply to any family which, by local usage, had acquired any special custom of succession, or the like, peculiar to itself, though differing from that either of its original, or acquired, domicil (*g*). The reason is that in India there is no *lex loci*, every person being governed by the law of his personal status (*h*). But if a Hindu contracts a marriage in a foreign country in a form which complies with the *lex loci* of that country, no disability imposed by the Hindu law will be recognized by the foreign court as invalidating the marriage (*i*). While Hindu Law and usage prohibit marriages between the principal castes amongst Hindus, there is no express rule prohibiting the marriage of a Hindu with a non-Hindu. In the absence of any such rule, therefore, the marriage of a Hindu and a non-Hindu contracted in England may well be valid in India on principles of justice, equity and good conscience.

Change of personal law

§ 57 If nothing is known about a person except that he lived in a certain place, it will be assumed that his personal law is the law which prevails in that place In that sense only is domicil important. But if more is known, then, in accordance with that knowledge his personal law must be determined, unless it can be shown that he has renounced his original law in favour of the law of the place to which he migrated (*j*). In other words when such an original variance of law is once established, the presumption arises that it continues; and the *onus* of making out their contention lies

(*g*) *Rutcheputty* v *Rajunder* (1839) 2 M I A, 132, *Bijnath* v *Kopilmon* 21 W R, 95, and *per curiam*, *Soorendronath* v *Mt Heeramonee* (1868) 12 M I A, 91, *Manik Chand* v *Jagat Settani* (1890) 17 Cal, 518

(*h*) *Budansa Rowther* v *Fatma Bi* (1914) 26 M L J, 260

(*i*) *Chetti* v *Chetti* (1909) P 67, *Rex* v *The Superintendent and Registrar of Marriages, Hammersmith, Ex-parte Mir Anwaruddin* (1916) 1 K B, 634 In *Chetti* v *Chetti* one of the points decided was that the disability was not part of the law of the domicil on the ground that it was not the general disability of all the inhabitants of India but purely a religious disability which could be got rid of at the will of the party concerned (1909 P. 67 at 68) On the assumption that the disability is imposed by the law of the Hindus, their personal law is, so far as they are concerned, the law of the domicil. It is not a religious law and can be changed just like the ordinary law of domicil only by changing the domicil. For a curious conclusion resulting from this, see *Sainapatti* v. *Sainapatti* A I.R. 1932 Lahore, 116 (where it was held that the validity of a marriage in England between a Hindu male and a Christian woman in English form does not make his marrying again a Hindu woman in India bigamy).

(*j*) *Balwant Rao* v *Baji Rao* (1921) 47 I A, 213. 48 Cal, 30.

upon those who assert that it has ceased by conformity to the law of the new domicil (*k*). But this presumption may be rebutted, by showing that the family has conformed in its religious or social usages to the locality in which it has settled, or that, while retaining its religious rites, it has acquiesced in a course of devolution of property, according to the common course of descent of property in that district, among persons of the same class (*l*) It is not open to a member of the family that has adopted the law of the place to which it has migrated to revert to the original domicil, such reverter can only be proved by proving a custom (*m*)

Act of Government

Of course the mere fact that, by the act of Government, a district, which is governed by one system of law is annexed to one which is governed by a different system, cannot raise any presumption that the inhabitants of either district have adopted the usages of the other (*n*)

Conversion to Muhammedanism.

§ 58 Where a Hindu becomes a convert to Muhammedanism, he accepts a new mode of life, which is governed by a law recognized, and enforced, in India It has been stated that the property, which he was possessed of at the time of his conversion, will devolve upon those who were entitled to it at that time, by the Hindu law, but that the property, which he may subsequently acquire, will devolve according to Muhammedan law (*o*) The former proposition, however, must be limited to cases where by the Hindu law his heirs had acquired an interest which he could not defeat. The latter part of the proposition, has been affirmed by the Privy Council, in a case where it was contended that a family, which had been converted several generations back to Muhammedanism, was still governed by Hindu law Distinguishing the case of *Abraham* v. *Abraham* (*p*) as a case where there was no law of inheritance defined by statute, their Lordships said. "The written law of India has prescribed broadly that in questions

(*k*) *Soorendronath* v *Mt Heeramonee* (1868) 12 M I A, 81, *Obunnessurree* v *Kishen* 4 Wym, 226, *Sonatun* v. *Ruttun* W.R., Sp, 95, *Pirthee Singh* v. *Mt Sheo* 8 W R, 261.

(*l*) *Rajchunder* v *Goculchund* 1 S D, 43 (56); *Chundro* v. *Nobin Soondur* 2 W R, 197, *Rambromo* v *Kaminee* 6 W R, 295, *Junaruddeen* v *Nobin Chunder* Marsh, 232, *per curiam*, *Soorendronath* v *Mt. Heeramonee* (1868) 12 M I.A, 81, 96

(*m*) *Somasekhara Royal* v. *Sugathur Mahadeva Royal* (1935) 70 M L J, 159 P C affirming 53 Mad., 297.

(*n*) *Prithee Singh* v *Court of Wards* (1875) 23 W R, 272.

(*o*) 2 W MacN., 131, 132, *Jowala* v *Dharum* (1866) 10 M I.A, 511, 537.

(*p*) (1845) 9 M.I.A., 195.

of succession and inheritance, the Hindu Law is to be applied to Hindus, and the Muhammedan law to Muhammedans; and in the judgment delivered by Lord Kingsdown in *Abraham* v. *Abraham*, p. 239, it is said that 'this rule must be understood to refer to Hindus and Muhammedans not by birth merely but by religion also'." Though Muhammedans are ordinarily governed by Muhammedan law, they are also governed by custom having the force of law. It is now well established that in cases of conversion to Muhammedanism from Hinduism, there may be a custom at variance with rules of Muhammedan law, governing the succession in a particular community of Muhammedans. While in their essential characteristics, custom and an election to abide by the law of the old status differ fundamentally as sources of law, still there is no mode of proving this alleged election except by way of inference from actions and conduct that would establish a custom (p^1).

§ 59. The Khojahs in the Bombay province have been, till now, governed, in matters of succession and inheritance, by Hindu law. These are a class of persons who were originally Hindus, but who became converts to Muhammedanism about four hundred years ago, retaining, however, many Hindu usages, amongst others an order of succession opposed to that prescribed by the Koran. Similarly, the *Memon Cutchees* (q) are also a sect of Muhammedans who were converted from Hinduism some four centuries ago but retained their Hindu law of succession and are throughout India governed by that law, save where a local custom to the contrary is proved (r). In 1847, the question was raised in the Supreme Court of Bombay whether this order of succession could be supported, and Sir Erskine Perry, in an elaborate judgment, decided that it could. His decision has been followed in numerous cases in Bombay, both in the Supreme and High Court, and may be considered as thoroughly

Retention of Hindu usages.

(p^1) *Md. Ibrahim* v. *Sheik Ibrahim* (1922) 49 I.A., 119, 123, 124, 45 Mad., 308 (relating to Labbais of Coimbatore where it was held that the custom was not made out). Custom is no longer admissible under the Shariat Application Act, 1937 except as to agricultural land

(q) The term 'memon' means a convert.

(r) *Abdur Rahim* v. *Haimabhai* (1915) 43 I A. 35, 20 C.W.N., 362, 30 M.L.J., 227.

established (*s*) It has, however, been held that these decisions did not establish that the Khojahs and the Cutchee Memons had adopted the entire Hindu family law, and that it could not be assumed, without sufficient evidence, that they were bound by the law of partition, so far as it allows a son to claim a share of the family property in his father's lifetime (*t*). Similar rulings have been given as regards the Sunni Borahs of Guzerat, and the Molesalem Girasias of Broach, both of which tribes were originally Rajput Hindus converted to Muhammedanism (*u*) In the former of these cases, *Ranade*, J., said, "the principles laid down in these decisions may be thus stated (1) that though the Muhammedan law generally governs converts to that faith from the Hindu religion, yet (2) a well-established custom of such converts following the Hindu law of inheritance would override the general presumption (*v*). (3) that this custom

(*s*) *Khojah's case*, Perry, O C, 110, *Gangbai* v *Thavur* (1863) 1 Bom H C, 71, 73, *Mulbai, in the goods of* (1866) 2 Bom H C, 276, *Rahimbai, in the goods of*, (1875) 12 Bom. H C, 294, *Rahimatbai* v *Hirbai* (1879) 3 Bom, 34, *Suddurtonnessa* v *Majada* (1878) 3 Cal, 694, *Haji Ismail's Will* (1882) 6 Bom, 452, *Ashabai* v *Haji Tyeb* (1885) 9 Bom, 115, *Abdul Cadur* v *Turner, ibid*, 158, *Mahomed Sidick* v *Haji Ahmed* (1886) 10 Bom, 1, *Re Haroon Mahomed* (1890) 14 Bom, 189.

(*t*) *Ahmedboy* v. *Cussumbhoy* (1889) 13 Bom, 534, overruling 12 Bom 280 The question as to how far the Khojahs and Memon Cutchees have adopted the rules of Hindu law, has been much debated in the Bombay High Court See especially two learned and exhaustive judgments of Beaman, J, *Jan Mahomed* v. *Datu Jaffer* (1914) 38 Bom, 419, and *Advocate General of Bombay* v *Jumbabai* (1917) 41 Bom, 181 That learned judge, while accepting the proposition that the Khojahs and Memon Cutchees are governed by the Hindu law of succession and inheritance, thinks it unproved that they have adopted the institution of the joint family McLeod, J, in *Manjaldas* v *Abdul Razak* (1914) 16 Bom L R, 224, takes the same view If it is correct it follows that *Mahomed Sidick* v *Haji Ahmed* (1886) 10 Bom, 1, was wrongly decided *Haji Oosman* v *Haroon* (1923) 47 Bom, 369 (where it was held that the son of a Cutchi Memon has no right to claim a partition of ancestral property) See *contra Hajee Aboo Bucker* v *Ebrahim* A I R 1921 Mad, 571, 31 M.L.J, 183, *Fidahusein* v *Bai Monghibai* A I R 1936 Bom, 257 (a Khojah can dispose of his entire property by testamentary disposition); *Elia Sait* v. *Dharamayya* 10 Mys L J, 33 (Cutchi Memons of Mysore).

(*u*) *Bai Baiji* v *Bai Santok* (1896) 20 Bom., 53, at p. 57, *Fatesangji* v *Rewar Harisangji* (1896) 20 Bom, 181. In the latter the claim, which was affirmed, was by a son for maintenance. *Bai Sakar* v. *Ismail Gafoor* 38 Bom L R, 1034 (Sunni Borahs). Some Moplahs of the west coast, who though Mussalmans in religion, have largely adopted the Marumakkathayam law It is a question of fact in each case whether the particular family has done so or not, *Assam* v *Pathumma* (1899) 22 Mad, 494, *Pakrichi* v *Kumbacha* (1913) 36 Mad, 385, contrast *Kunhimbi Umma* v. *Kandy Moithine* (1904) 27 Mad, 77.

(*v*) *Moosa Haji Joonas Noorani* v *Abdul Rahim* (1906) 30 Bom, 197, *Haji Baboo Sidick* v. *Ally Muhomed* (1906) 30 Bom., 270.

should, however, be confined strictly to cases of succession and inheritance; (4) and that, if any particular usage at variance with the general Hindu law applicable to these communities in matters of succession be alleged to exist, the burden of proof lies on the party alleging such special custom." By the Cutchi Memons Act, (X of 1938), which repeals Act XLVI of 1920, all Cutchi Memons are, in matters of succession and inheritance, to be governed by the Mahomedan law. Provincial legislation may be required as to agricultural land. Cutchi Memons who had emigrated to Mombassa in South Africa over half a century ago and settled amongst the Muhammedans there were presumed to have discontinued the custom of following Hindu law in favour of Muhammedan law (*w*). Halai Memons of Porebunder and Morvi in Kathiawar follow Hindu law in matters of succession and inheritance, differing in that respect from Halai Memons of Bombay (*x*). Now after the Muslim Personal law (Shariat) Application Act (XXVI of 1937), however, those Muslim communities, who in accordance with their usages have been governed by Hindu law in many matters, will be governed exclusively by the Muslim Personal law (Shariat) in respect of all matters mentioned in the Act and they may also elect under the Act to be governed by Muhammedan law in the matter of adoption, wills and legacies (*x*[1]).

Although the cases above-mentioned may probably be taken as settling that an adherence to the religion of the Koran does not necessarily entail an adherence to its civil law, there may be cases in which religion and law are inseparable In such a case the ruling of the Privy Council would be strictly in point, and would debar any one who had accepted the religion from relying on a custom opposed to the law. For instance, monogamy is an essential part of the law of Christianity. A Muhammedan, or a Hindu convert to Christianity, could not possibly marry a second wife after his conversion, during the life of his first, and, if he did so, the issue by such

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(*w*) *Abdur Rahim* v. *Halimabhai* (1915) 43 I.A., 35, 20 C.W.N., 362, 30 M.L J., 227.

(*x*) *Khatubai* v. *Mahomed Haji Abu* (1922) 50 I.A., 108, 47 Bom., 146, *Adambhai* v. *Allarakhia* A.I.R. 1935 Bom., 417; *Aisha Bee Bee* v. *Noor Mohammad* (1932) 10 Rang., 461 (Halai Memons of Gondal and Kathiawar).

(*x*[1]) But the Act does not apply in respect of succession to agricultural land in the provinces which will include almost all land in the provinces, except urban land.

second marriage would certainly not be legitimate, any Hindu or Muhammedan usage to the contrary notwithstanding (*y*). His conversion would not invalidate marriages celebrated, or affect the legitimacy of issue born, before that event. What its effect might be upon issue proceeding from a plurality of wives retained after he became a Christian would be a very interesting question, which has never arisen (*z*). The Muhammedan law does not recognise adoption, so the presumption will be that a Hindu convert to that religion has abandoned the law of adoption as established by Hindu law and usage Those who allege that it has been retained, must prove the retention (*a*)

§ 60 As it is open to a Hindu by birth to become a convert to Christianity or Muhammedanism, it is equally open to a Christian or a Muhammedan to become a convert to Hinduism; a fortiori, a Hindu who goes to Christianity or Muhammedanism is equally free to go back to Hinduism (*b*) Under the Hindu law, apostacy or conversion does not dissolve the marriage tie (*c*) Accordingly, where a Hindu married woman became a convert to Muhammedanism and during the lifetime of her Hindu husband married a Muhammedan and had several children, it was held that the second marriage was illegal and that the children who were born of this union were illegitimate (*d*)

Conversion to Christianity

§ 61. The question whether Hindus who are converted to Christianity may retain the Hindu law or parts of it has often arisen. In *Abraham* v *Abraham* (*e*) it was made clear that upon the conversion of a Hindu to Christianity, the

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(*y*) See *Hyde* v *Hyde* L R, 1 P & D, 130, *Skinner* v *Orde* 14 M I A., 309, 324, 17 W R, 77

(*z*) As to the validity of second marriages after conversion, see *Emperor* v *Lazar* (1907) 30 Mad, 550, *Emperor* v *Antony* (1910) 33 Mad, 371

(*a*) *Bai Machhbai* v *Bai Hirbai* (1911) 35 Bom, 264

(*b*) Per Holloway, J., in 3 M H C R, VII, *Morarji* v *Admr Genl of Madras* (1929) 52 Mad, 160, 166, *Kusum Kumari* v *Satya Ranjan* (1903) 30 Cal, 999 (where it was held that along with his reconversion, his minor son was also reconverted), *Guruswami Nadar* v *Irulappa Nadar* (1934) 67 M L J, 389.

(*c*) *Gobardhan Dass* v *Jasadamoni Dassi* (1891) 18 Cal, 252, 255

(*d*) *Budansa Routher* v *Fatma Bi* (1914) 26 M L J, 260, see also *In re Gedalu Narayana* (1932) N W.N., 1082, 1084, A.I R 1932 Mad, 561, *In re Ram Kumari* (1891) 18 Cal, 264, *Mt. Nandi* v *The Crown* (1919) 1 Lah, 440 (where it was held that the woman was guilty of bigamy under s 494 of the Indian Penal Code).

(*e*) 9 M I A, 195, see also *Ponnuswami* v *Doraiswami* (1879) 2 Mad, 208, *Sarkies* v *Prosonomovee* (1881) 6 Cal, 794

Hindu law ceases to have any continuing obligatory force on the convert. He may renounce the old law by which he was bound as he has renounced his old religion or if he thinks fit, he may abide by the old law, nothwithstanding he has renounced the old religion (*f*). If a Hindu after conversion to Christianity dies intestate, succession to his estate is now governed by the Indian Succession Act of 1925, replacing the Indian Succession Act of 1865. Since the latter Act, it was not open to a Hindu, as it is not open to him now, on conversion to Christianity, to elect to be bound in the matter of succession by Hindu law (*g*).

In *Tellis v. Saldanha* (*h*) it was held that co-parcenership and the right of survivorship are incidents peculiar to Hindu law and have no application to Indian Christians after the Indian Succession Act, 1865, though it cannot take away rights that had vested prior to conversion. The Bombay High Court dissented from this view on the ground that the rules of law applicable to intestate and testamentary succession did not affect the other rights and incidents of a joint family (*i*). The Madras High Court in a later case dealing with a Marumakkathayam family in Malabar, after considering the Bombay decision adhered to their view in *Tellis* v. *Saldanha* (*j*) The Calcutta High Court, referring to this difference of opinion considered that if all members of a Hindu family have become Christians, it may be that the rights of co-parcenership may not be affected by the conversion (*k*). The convert, in no case, can abide by the entirety of the old law, for marriage and family relations will be governed by the new law. The question therefore is whether he could elect to abide by Hindu law in respect of property, partition

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(*f*) 9 M I.A, 195, 237, 238

(*g*) *Kamawati* v *Digbijai Singh* (1921) 48 I.A, 381, 43 All, 528, holding *Abraham* v *Abraham* 9 M I.A, 195, and *Gajapathi* v *Gajapathi* 14 W.R.P C, 33, as no longer applicable after the Act of 1865

(*h*) (1886) 10 Mad., 69.

(*i*) Per Jenkins C J. in *Francis Ghosal* v. *Gabri Ghosal* (1907) 31 Bom., 25.

(*j*) *Kunhichekkan* v. *Lydia* (1912) 11 M.L.T., 232, *G. Subbayya* v. *G Rangayya* A I.R 1927 Mad, 883

(*k*) *Kulada Prasad* v. *Haripada* (1913) 40 Cal., 407; see also *Muhammad Aliyar* v. *Gnana Ammal* (1934) 66 M.L.J., 671 (where the matter is discussed but not decided) See the dictum of the P.C. in *Jogireddi* v. *Chinnabi Reddi* (1928) 56 I.A, 6, 52 Mad, 83, 90, that a convert to Christianity may elect to retain his interest in the family property on the old footing

and cognate matters. It is not easy to see how there can be an election to abide by the old law except when the whole family consisting of adults become converts to Christianity as they may then be presumed to agree to continue as a joint family. But such a presumption cannot possibly be applied to the second generation as the continuance of survivorship will be incompatible with the provisions of the Indian Succession Act relating to intestate and testamentary succession

CHAPTER IV

FAMILY RELATIONS.

Marriage and Sonship.

Aryan Marriage

§ 62. The origin of marriage amongst Aryans in India as amongst other ancient peoples is a matter for the science of anthropology. From the very commencement of the Rigvedic age, marriage was a well-established institution, and the Aryan ideal of marriage was very high (*a*). Monogamy was the rule and the approved rule, though polygamy existed to some extent. There is no real evidence of the existence of polyandry and the matriarchate in Vedic times (*b*). According to Dr. Keith, polyandry is not shown by a single passage to have existed amongst the Vedic Aryans (*c*). On the other hand, the Vedic rule expressly declares that a man may have several wives but a woman cannot have many husbands (*d*).

(*a*) C H I, Vol I, 88, Mandlik, 396 The Mahabharata (Adi Parva, Ch 122) relates how in a primitive age, men and women behaved like birds and beasts and how Svetaketu, the son of Uddalaka, established marriage as an institution This is purely a story with an element of the dramatic about it. It is disproved by the entire body of Vedic evidence which establishes the sacredness of the marriage tie and the tracing of relationship only through the father as well as the offering of funeral oblations to him and to his male ancestors. Svetaketu was not a Rigvedic Rishi, but must have belonged only to the Brahmana period as Apastamba refers to him only as an *avara* or a person of later times

(*b*) The solitary case of Draupadi in the Epic was an exception and was so treated at the time. The father of Draupadi was shocked at the proposal of the Pandava princes to marry his daughter 'It is ordained that a husband can have many wives but we have never heard that a wife can have many husbands You who know the law must not commit an act that is sinful and opposed to both the Vedas and the usage" The reply refers to some transgressions of ancient sages. (Mahabh Adi Parva, Ch 197) Moreover, the Pandus appear to have been a Northern hill-tribe with peculiar customs, C H I, I. 258. Dr Jolly refers to Apas. (II, 10, 27, 2-4) and Brih (XXVII, 20) as containing traces of polyandry or group marriage (Jolly, L & C, 102, T L.L., 155). His reference to Apastamba is due to a misconception. Sutra 3 upon which he relies refers to the *Niyoga* or remarriage with the husband's brother which was the earlier form as explained in the Vedic Index (Vedic Index I, 477). This is perfectly clear from the sutra which precedes, and the sutras that follow sutra 3, and from Apastamba II, 6, 13, 4-10. Brihaspati in XXVII, 20, refers to practices in other countries and not amongst Aryans as Dr. Jolly himself admits, (T L.L, 155).

(*c*) C.H I., I, 88; Vedic Index, I, 478-479.

(*d*) Aiteraya Brahmana, III, 2, 12; "A woman cannot have two husbands". Taittiriya Samhita, VI, 6, 4, 3, quoted in J. C. Ghose, Hindu Law, I, 828, 829, "While the occurrence of the word *Dampathi* throughout the Vedas clearly supports monogamy, other texts support the sacredness of the marriage tie". Mandlik, 399; Jolly, L & C, 140.

Again, the most striking feature in the Aryan Hindu system is the strictness with which kinship is traced through males. This rule is connected with, if it is not based upon, the religious system, the first principle of which was the practice of worshipping deceased male ancestors to the remotest degree (*e*). This, of course, involved the assumption that those ancestors could be identified with the most perfect certainty The female ancestors were only worshipped in conjunction with their deceased husbands We can be quite certain that this system was one of enormous antiquity, since we find exactly the same practice of religious offerings to the dead prevailing among the Greeks and the Romans (*f*). We may assert with confidence that a usage common to the three races had previously existed in that ancient stock from which Hindus, Greeks and Romans alike proceeded

Family ideal

§ 63. In the Vedic period, the sacredness of the marriage tie was repeatedly declared, the family ideal was decidedly high and it was often realised (*g*) The wife on her marriage was at once given an honoured position in the house. She was mistress in her husband's home and where she was the wife of the eldest son of the family, she exercised authority over her husband's brothers and his unmarried sisters She was associated in all the religious offerings and rituals with her husband As the old writers put it, "a woman is half her husband and completes him" (*h*) Manu, in impressive verses, exhorted men to honour and respect women. "Women must be honoured and adorned by their fathers, brothers, husbands, and brothers-in-law who desire their own welfare. Where women are honoured, there the gods are pleased; but where they are not honoured, no sacred rité yields rewards". "The husband receives his wife from the gods, he must always support her while she is faithful". "Let mutual fidelity continue until death This may be considered as the summary of the highest law for husband and wife" (*i*). Disputes

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(*e*) Manu, III, 81-91, 122-125, 189, 193 231, 282-284, Spencer, Sociology, I 304, Appx 1; MaxMuller, A S Lit., 386, Ind. Wisd, 255

(*f*) See De Coulanges, La Cite Antique, passim See Teulon, La Mére, 62, 63 "Partout, ou les Aryas se sont établis, ils ont introduit avec eux la famille gouvernee par le père"

(*g*) Vedic Index, I, 484, 485, C H I, I, 89 "The high value placed on the marriage is shown by the long and striking hymn". Rig Veda, X, 85 "Be, thou, mother of heroic children, devoted to the Gods Be, thou, Queen in thy father-in-law's household. May all the Gods unite the hearts of us two one"

(*h*) Vedic Index, I, 484-6, Manu, IX, 96

(*i*) Manu, III, 55-76, IX, 95, 101, 102, Yajn., I, 82.

between husband and wife were not allowed to be litigated either in the customary tribunals or in the king's courts. Neither bailment nor contracting of debt, neither bearing testimony for one another nor partition of property was allowed between them (*j*).

§ 64. Whether in the period of the Rigveda, the Aryan society was casteless or not has been the subject of controversy; but before the end of the period covered by the hymns of the Rigveda, a belief in the divine origin of the four orders of men, Brahmana, Rajanya or Kshatriya, Vis or Vaisya and Sudra was fully established (*k*). In the period of the Yajurveda, these orders had developed into social orders or castes and mixed castes were also known. According to the authors of the Vedic Index, the Vedic characteristics of caste are heredity, pursuit of a common occupation, and restriction on inter-marriage (*l*). Caste.

Inter-marriage between persons of different *varnas* or castes was certainly not uncommon in the earlier period but, as caste hardened, the restrictions increased. But from the beginning, inter-marriages in the order of castes *(anuloma)* were apparently more frequent than those in the reverse order *(pratiloma)*, till, by the time of the Dharma-sutras and the Code of Manu, *pratiloma* marriages had come to be definitely forbidden (*m*) Finally, inter-marriages between *Dvijas* and Sudras were forbidden by Manu and Yajnavalkya (*n*). Inter-marriage.

Re-marriage of widows was apparently permitted in the Vedic age. This seems originally to have taken the form of the marriage of the widow to the brother or other near kinsman in order to produce children (*o*) Subsequently, a widow was occasionally allowed to re-marry in the ordinary way any other than her brother-in-law (*p*). According to Kautilya's Arthasastra (c. 300 B.C.), while marriages contracted in accordance with approved forms could not be dissolved, divorce could in some cases be obtained by the Re-marriage.

(*j*) Yajn., II, 52, Nar., XII, 89, Jolly, T.L.L., 78.

(*k*) C.H.I., I, 54, 55, 92-94.

(*l*) Vedic Index, II, 247-260.

(*m*) Gaut., IV, 25, Baudh, I, 16, 2 to 6; Vas., I, 24-25, Vishnu, XXVI, 2-6, Arthas, III, 6, 7 (Shamasastri, 201, 203), Yajn., I, 55, 56, C.H.I., I, 125, 126; Jayaswal, M & Y, 241, 242.

(*n*) Manu, III, 15 to 17; Yajn., I, 57.

(*o*) Vedic Index, I, 476, 477; see Asavalayana Grihya Sutra, IV, 2, 13, S.B E., Vol XXIX (page 239) and Rig Veda, X, 40. 2, cited there.

(*p*) Nar, XII, 97-101, Gaut., XVIII, 15.

husband or wife, if they had married in the unapproved form, as for instance, in the Asura form (*r*). It recognises the re-marriage of women in certain cases or under certain conditions (*s*). Manu finally disapproves of divorce and re-marriage. "The husband is declared to be one with the wife. Neither by sale nor by repudiation is a wife released from her husband". "Once only a maiden is given in marriage" (*t*)

Marriage tie strict

§ 65. Even from the Vedic age, the standard of female morality appears to have been fairly high (*u*). The chastity of women of all the four castes was to be carefully protected and respected. though the degrees of punishment depended to some extent, upon the caste of the offender (*v*)

Adultery was a serious offence as well as a sin (*Upapataka*) on the part of both the wife and the adulterer. both were punished with severity and had also to expiate their sins by appropriate penances (*w*). The unchaste wife was

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(*r*) Arthas, III, 3, Shamasastri, 191

(*s*) Arthas, III, 4, Shamasastri, 195, 196

(*t*) Manu, IX, 45 47

(*u*) C H I, I, 88, Vedic Index, I, 479, Yajn, I, 75 The dictum attributed to Yajnavalkya in the Satapatha Brahmana that no one cares whether a wife is unchaste or not, has been shown to be a mistranslation The expression '*Parah Pumsah*' means removed from the men who are sacrificing as the wives of the gods are apart from them during the particular rites (Vedic Index, I, 397, 480). The ritual of *Varuna-Praghasah*, in which the wife of the sacrificer names a lover or lovers, was part of an expiatory rite for the wife's unchastity, intended to banish the evil brought on the family by her fall (Vedic Index, I, 396, 397, 480)

The statement about Gandhara Brahmins corrupting and selling their women contained in former editions of this work has now turned out to be a baseless one due to an interpolation in the Rajatarangini (Jolly, L & C, 106).

(*v*) Manu, VIII, 359.

(*w*) Manu, VIII, 371, Gaut, XXIII, 14 (death for adulterous wife), Nar, XII, 91 (shaving and other punishment for adulterous wife), Manu, VIII, 352 (banishment or branding or mutilation for adulterer), VIII, 359 (death for adulterer); VIII, 372 (death or torture for adulterer), VIII, 373 (repetition of offence—heavy fine); VIII, 374, 375 (mutilation and confiscation of property); VIII, 376 (fines), VIII, 379 (from tonsure to capital punishment), XI, 60, 177 (Upapataka for both), Gaut, XXIII, 15 (death for adulterer), Nar., XII, 70 (fine for adultery), Vas, XXI, 8 (penance to be expiated according to Manu, XI, 118), Gaut, XXII, 15, 29, 30, 34, 35 (penance for 2 or 3 years), Gaut, XII, 2 (mutilation or degradation), Brih., XXIII, 12 16 (fine, mutilation, death). Secret meetings, flirtings, etc, were also treated and punished as grades of adultery. Brih, XXIII, 6 9, Dr Jha, H L S, I, 502. Even a man who visited unchaste women and prostitutes was liable to punishment (Dr Jha, H L.S., I, note 95, page 502). Yajn, II, 286 (fine), Vishnu, V, 40, 41, 43, 192, LIII, 1, 2, 8ff Jolly, T.L.L., p 78, L & C, 145, 146

deprived of authority and was compelled to perform penances, being barely maintained (*x*). Both an adulterer and a son born of an adulterous wife or widow (Kunda or Golaka) were excluded from social intercourse as well as from invitations to *sraddhas* or ceremonies (*y*). Where a wife conceived as a result of adultery, her abandonment was ordained and she had no claim even to maintenance (*z*). At the same time, prostitution and illicit unions certainly existed both in the Vedic period and afterwards, though to what extent is not clear (*a*). The very segregation of dancers and prostitutes, while it has focussed attention on that feature, is itself an indication that the standard of average sexual morality was fairly high. The evidence of the whole literature including the Dharma Sastras leads to that conclusion This is confirmed by the fact that Upanishadic teaching had begun at least in the 8th or 7th century B.C. and that Jainism and Buddhism preached lofty principles of morality and virtue as early as the 6th century B C. Brahminism, Jainism and Buddhism, competing with each other and insisting on nobler ideals and a better life, must have helped, notwithstanding foreign invasions and domestic turmoils, to maintain a fair level of morality.

Desire only for *aurasa* son.

§ 66. The desire for male offspring in particular, was very natural in all early societies. Male issue was prized both for the continuance of the family as well as for the performance of funeral rites and offerings (*b*). The Veda declares: "Endless are the worlds of those who have sons; there is no place for the man who is destitute of male offspring" "May our enemies be destitute of offspring". "O Agni, may I obtain immortality by offspring" (*c*). According to the Veda, an Aryan is born burdened with three debts. "He owes the study of the Veda to the *Rishis,* sacrifices to the Gods, and a son to the manes:" "He is free from debt who has offered

(*x*) Manu, XI, 177, Yajn, I, 70.

(*y*) Gaut., XV, 17, 18, Yajn, I, 222, 224 and the Mitakshara on Yajn., I, 90, 222; Manu, III, 174, 175

(*z*) Yajn., I, 72; Vas., XXI, 10; Jolly, T.L.L., 78.

(*a*) Manu, VIII, 362 (actresses and singers); Nar., XII, 78, Baudh., II, 2, 4, 3, Arthas., II, 27; Shamasastri, 148-152.

(*b*) Vedic Index, I, 486, 487, where Drs. Macdonell and Keith say "But this desire for male offspring was not accompanied by any exposure of female children"; thus contradicting the opinion of Dr. Jolly in his T L L at p. 77. For Dr. Jolly's revised view, see L & C 170 On the contrary, a daughter was, in the absence of male issue appointed as a son and had from Vedic times a fairly high position. Vas., XVII, 15.

(*c*) Rig Veda, I, 21, 5 cited in Vas. XVII, 2-4, Vishnu, XV, 45; Manu, VI, 36, 37; IX, 45.

sacrifices, who has begotten a son and who has lived as a student with a teacher" (*d*) This desire for male offspring found extravagant expression in the later works also. Manu emphasised the Vedic injunction regarding the necessity for a son thus: "Through a son, he conquers the worlds, through a son's son, he obtains immortality but through his son's grand-son, he gains the world of the Sun Because a son delivers his father from the hell called *Put*, he was therefore called *Put-tra* (a deliverer from *Put*) (*e*) " So also Yajnavalkya "Because continuity of the family in this world and the attainment of heaven in the next are through sons, son's sons and sons' grandsons, therefore women should be loved and protected" (*f*).

It is clear that, from the Vedic age, while the legitimate son (aurasa) was desired both for spiritual benefit as well as for the continuation of the family, adoption of sons born to others, as secondary sons was not approved Undoubtedly in the Vedic age, there was a tradition from still earlier times of the levirate (*Niyoga*) and the adoption of sons either irregularly born or born to others There are obscure references to the Putrikaputra, to the Kshetraja, to the Kanina and a clear reference to the Dattaka (*g*) These irregular usages were strongly disapproved of in the Veda for it says "O Agni, no son is he who springs from others (*h*)" "A son begotten of another, though worthy of regard, is not to be contemplated even in the mind as fit for acceptance, for, verily he returns to his house Therefore let there come to us a son new born, possessed of food and victorious over foes" (*i*). Therefore, while it is true that the ancient Aryans longed for offspring, they recognised at the same time the need for their wives remaining chaste rather than they should have offspring anyhow The emphasis on the need for male offspring was more than

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(*d*) Taittiriya samhita VI, 3, 10, 5 cited in Vas XI, 48, Manu, VI, 35-37, IX, 106, 107, XI, 66.

(*e*) Manu, IX, 137, 138, Vishnu, XV, 44, 46. Medhatithi explains that the hell called 'put' is only 'the name given to the four kinds of elemental life on the earth' and that all that is meant is that by the birth of a son, the father is "born next in a divine life" Jha, Manu Bhashya, Vol V, 123

(*f*) Yajn, I, 78

(*g*) Rig Veda, VIII, 46, 21, Vedic Index, II, 17 (The reference is to the Prthu-Sravas Kanita—the maiden's son), Kane, 5 and 6, J. C. Ghose, I, 639.

(*h*) Rig Veda cited in J. C. Ghose, I, 639.

(*i*) Rig Veda, VII, 5, 8.

counterbalanced by the emphasis on the need for morality (*f*).

§ 67. Twelve or thirteen kinds of sons are mentioned by the earlier writers: (1) The legitimate son (Aurasa) is one

The following table shows the order in which the different sons are placed by the various authors	Aurasa or legitimate son	Kshetraja or son begotten on wife	Putrikaputra or son of appointed daughter	Kanina or maiden's son	Gudhaja or son secretly born	Paunarbhava or son of twice-married woman	Sahodhaja or son of pregnant bride	Dattaka or son given	Kritrima or son made	Kritaka or son bought	Apaviddha or deserted son	Svayamdatta or son self-given	Nishada or Parasava or son of Sudra wife (*d*).
Gautama, XXVIII, 32-33	1	2	10(*a*)	7	5	9	8	3	4	12	6	11	—
Baudhayana, II, 2, 10-23	1	3	2	8	6	11	9	4	5	10	7	12	13
Apastamba, II, 6, 13	1	—	—	—	—	—	—	—	—	—	—	—	—
Vasishtha, XVII, 9-21	1	2	3	5	6	4	7	8	—	9	11	10	12
Harita, Digest II, 331	1	2	5	4	6	3	10	7	12	8	9	11	—
Kautilya's Arthasastra (*e*)	1	3	2	6	4	8	7	9	11	12	5	10	—
Manu, IX, 158-160	1	3	2 (*b*)	8	6	11	9	4	5	10	7	12	13
Vishnu, XV, 1-27	1	2	3	5	6	4	7	8	—	9	11	10	12
Yajnavalkya, II, 128-132	1	3	2	5	4	6	11	7	9	8	12	10	-
Narada, XIII, 45-46	1	2	3	4	6	7	5	9	11	10	8	12	—
Brihaspati, Digest II, 337	1	8	2	10	12	9	11	3	6	5	4	-	7
Sankha and Likhita, Digest II, 331	1	2	3	5	6	4	8	9	—	10	7	12	11
Devala, Digest II, 332 (*c*)	1	3	2	4	5	8	7	9	11	12	6	10	—
Yama, Digest II, 332	1	2	3	5	6	4	8	9	10	11	7	12	-
Kalikapurana, Digest II, 333	1	2	—	7	5	10	8	3	4	9	6	11	12
Brahmapurana, Digest II, 344	1	2	3	7	5	10	8	4	—	9	6	11	12

Apastamba does not recognise any son except the aurasa son

Vijnanesvara quotes both Yajnavalkya and Manu but seems to follow the latter as to the order of sons; Mit. I, XI, 30-31

Jimutavahana follows Devala Daya Bhaga X, 7 The Smritichandrika follows Manu Ch X

(*a*) Mitakshara (I, XI, 35) explains the low position assigned by Gautama to the son of an appointed daughter as being relative to one differing in tribe

(*b*) Manu mentions the aurasa and the appointed daughter's son together as of equal status and then mentions the aurasa and the eleven secondary sons, altogether thirteen sons

(*c*) See an explanation offered of Devala's text Puddokumaree V Juggut Kishore, (1880) 5 Cal. 615, 630

(*d*) As to Nishada or Parasava, see Mit. on Yajn I,91

(*e*) Arthas, III, 7 (Dr Jolly's edn), Shamasastri 203

(*f*) "Many thousands of Brahmanas who were chaste from their youth, have gone to heaven without continuing their race." "A virtuous wife who after the death of her husband constantly remains chaste, reaches heaven, though she has no son, just like those chaste men." Manu, V, 159, 160. See also Vishnu, XXV, 17.

Different kinds of sons.

begotten by a man upon his lawfully wedded wife. (2) The son of an appointed daughter (Putrikaputra). (3) The son of the wife (Kshetraja) is one begotten upon a man's appointed wife or widow by his brother or near kinsman. (4) The son secretly born (Gudhaja or Gudotpanna) is the son born in a man's house to his wife when it is not certain who the father is (5) The maiden's son (Kanina) is the son born to an unmarried girl in her father's house before her marriage. (6) The son of the pregnant bride (Sahodha) is the son born to a woman whom one, while she is pregnant, knowingly or unknowingly marries (7) The son of a twice-married woman (Paunarbhava). (8) The son given (Dattaka) is the son whom his father or mother gives in adoption. (9) The son made (Kritrima) is the son whom a man himself makes his son with the adoptee's consent only. (10) The son bought (Krita) is one sold by his father and mother or either. (11) The deserted son (Apaviddha) is one who having been discarded by his father and mother is taken in adoption (12) The son self-given (Svayamdatta) is one, who, bereft of father and mother or abandoned by them, presents himself saying 'Let me become thy son' and (13) The Nishada or Parasava is the son of a Brahmin by a Sudra wife (*k*).

Aurasa

§ 68 An aurasa or legitimate son is defined by Manu as one 'whom a man begets on his own wedded wife' (*l*) His commentator Kulluka explains this as referring to the son that the man himself begets on his wife, married as a virgin He is supported by the rule in Manu "The nuptial texts are applied solely to virgins and nowhere among men, to females who have lost their virginity, for such females are excluded from religious ceremonies" (*m*) Yajnavalkya's text and its interpretation by Vijnanesvara make it still clearer (*n*). Therefore, procreation as well as birth in lawful wedlock was necessary to constitute the son as an aurasa son in the strict sense . The decision of the Privy Council in *Pedda*

(*k*) Gaut, XXVIII, 32, 33, Baudh, II, 2, 3, 14-30, Apas, II, 6, 13, 1 11, Vas, XVII, 9-22, Vishnu, XV, 1 27, Manu, IX, 127-140, 158-184, Yajn, II, 128-132, Nar, XIII, 17-20, 45 47, Mitakshara, I, xi

(*l*) Manu, IX, 166, Yajn, II, 128, Mit, I, XI, 2

(*m*) Manu, VIII, 226

(*n*) Mit on Yajn, I, 52 "One who has not been accepted by any other man either by way of gift or enjoyment" (Vidyarnava's trans, p 93.) Visvarupa and Apararka cited in Jha, H L S, II, 175-176.

Ammani v. *Zamindar of Marungapuri* (*o*) that Hindu law does not require procreation, as well as birth, after marriage to render a child legitimate is now binding as law; it is the only convenient and sound doctrine in modern Hindu law. The rule that the nuptial texts should be confined to virgins was not an imperative rule of law but only a moral precept, for re-marriage of widows and marriage of maidens who were not virgins at the time of marriage, such as those who had already a son or who were pregnant at the time of marriage were expressly permitted, though disapproved, and no other form of marriage is provided for non-virgins (*p*). But, historically, the son born to a woman who was not a virgin, at her marriage, was, though legitimate, not an aurasa son in the technical sense.

Putrikaputra.

§ 69. Equal to an aurasa son is the son of the appointed daughter who is a son born to a daughter after her appointment by her father to continue his line. Her son became the son of her father if he had no male issue; and he became so not only by agreement with her husband but by mere intention on the part of her father without any consent asked for or obtained. Hence a man was warned not to marry a girl without brothers, lest her father should take her first son as his own (*q*). Vasishtha quotes a text of the Veda as showing that 'the girl who has no brother comes back to the males of her own family, to her father and the rest. Returning, she becomes their son' (*r*). According to Vasishtha, the appointed daughter herself was treated as a son (*s*). According to Yajnavalkya, as interpreted in the Mitakshara, the term 'putrikaputra' is equally applicable to the son of an appointed daughter or to the daughter herself, becoming by special appointment, a son (*t*). The status of the putrikaputra was that of a son's son, and being the nearest cognate he was a specially adopted son.

Secondary sons.

§ 70. The status of the remaining eleven sons was nothing like that of a legitimate son or a putrikaputra. They were only secondary sons taken in order to prevent a failure of the

(*o*) (1874) 1 I.A., 282, 293. This view of the Privy Council is questioned by Sir Gooroodass Banerjee, M & S, 5th ed., 176-177. See also *Atti Kochuni* v. *Aidew Kochuni* (1919) 24 C.W.N., 173, 175.

(*p*) Manu, IX, 172, 173, 175.

(*q*) Gaut., XXVIII, 19, 20; Manu, III, 11; Yajn., I, 53.

(*r*) Vas, XVII, 16

(*s*) Vas., XVII, 15.

(*t*) Mit., I, xi, 3.

funeral ceremonies (*u*). Manu calls them bad substitutes for a real son and graphically compares the position of the man who attempts to secure salvation through them to the position of one who tries to cross a sheet of water in an unsafe boat (*v*). The adoption of any one of them could only be made in the absence of the legitimate son

Amongst them, the son of the re-married wife and the son of the Sudra wife were, of course, a man's own actual sons, just like the aurasa son, though they were of inferior status.

Paunarbhava

§ 71. The son of a re-married woman (paunarbhava) is one begotten by a man on a twice-married woman whether the first marriage had or had not been consummated (*u*). According to Vasishtha, he ranks next after the kshetraja and the putrikaputra (*x*). As the re-marriage of woman was disapproved (*y*), her son was not in the strict sense an aurasa son. He was not fit to be invited to *sraddhas* nor was he worthy of social intercourse (*z*). Now, after the Hindu Widows' Re-marriage Act (XV of 1856), her son has, of course, the full status of an aurasa son and presumably, out of abundant caution, the legislature has made the ancient nuptial texts applicable to the re-marriage of widows (*a*).

Nishada or Parasava.

§ 72. The son of a Brahmin by his Sudra wife was called the Nishada and to distinguish him from the members of the Nishada caste who are born in the reverse order of castes, he had an alternative name 'Parasava' (*b*). Though he was an aurasa son in the etymological sense, he was not one in the legal sense and was therefore entitled only to a tenth

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(*u*) Manu, IX, 180

(*v*) Manu, IX, 161, "As in default of ghee, oil is admitted by the virtuous as a substitute at sacrifices, so are the eleven sons admitted as substitutes in default of a legitimate son of the body and of an appointed daughter" Brhi., XXV, 34

(*w*) Manu, IX, 175, 176, Yajn, II, 130, Mit, I, xi, 8, Vas, XVII, 72, 74

(*x*) Vas, XVII, 18-20, Baudh, II, 2, 3, 27, and IV, 1-16, these refer to the paunarbhava as the son of a woman, who abandoned by her husband and having lived with others, reenters his family or of a woman who leaves an impotent, outcaste, or a mad or deceased husband and takes another husband.

(*y*) Manu, IX, 65, V, 162, Gaut, XXVIII, 33.

(*z*) Mit, on Yajn, I, 90, 222-224 (Setlur ed, 64, 65, 147-149), and Mit, I, XI, 39, Gaut, XV, 18.

(*a*) Section 6.

(*b*) Mit. on Yajn, I, 91, Vidyarnava's trans 190, Manu, IX, 178; Gaut., IV, 16, Baudh., I, 17, 3 and 4, II, 2, 3, 29-30, Vas, XVIII, 9, 10.

share, even on failure of other male issue (*c*). Jimutavahana says that the Parasava of Manu is the son born to a Brahmin by an unmarried Sudra woman and he takes the Nishada to be a son born to a Brahmin by his Sudra wife, entitling him, if an only son, to a third part of the inheritance (*d*).

Formally adopted sons.

§ 73. The five sons, the son given, the son bought, the son made, the deserted son, and the son self-given, are all adopted sons, different names being given to them only to mark the differences in the modes or circumstances of their actual adoption. There is nothing puzzling about these sons being regarded as sons by adoption, though of inferior status. Adoption was not peculiar to ancient Hindu law. It was known in other countries, especially in ancient Rome (*e*). Of course, the adoption of anyone of these sons was due in part to secular reasons and in part to the need for someone to perform funeral rites. A sonless man would find himself without protection or assistance in sickness or old age and would not like to see his property passing into the hands of distant relations.

Kanina.

§ 74. The remaining four sons, the Kshetraja, the Sahodhaja, the Gudhaja and the Kanina present, at first sight, an anomaly in connection with the ancient Hindu Family Law.

"A maiden's son or Kanina is the offspring of an unmarried woman by a man of equal class and he is son of his maternal grandfather, provided she be unmarried and abide in her father's house but, if she be married, the child becomes son

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(*c*) Manu, XI, 154, Mit, I, xi, 41.

(*d*) Dayabhaga IX, 24-28.

(*e*) In Rome, there were both the adoption of a filius-familias and the adrogation of a pater-familias. When a filius familias was transferred by his father into the potestas of the adopter or when a person gave himself in adrogation, it not only extinguished the patriapotestas where it existed but the bond of agnation to all those who had previously been related to him as agnates was severed. There was no longer any right of succession between him and them on intestacy. After the amendments by the Justinian Law, adoption was no longer followed in all cases by a change of family for the adoptee, but only when the adopter was in fact one of his parents, such as a paternal or maternal grandfather. Muirhead "Historical Introduction to the Private Law of Rome" 27, 118, 378. Even in Modern England, adoption has been introduced by statute in respect of certain matters and subject to certain conditions. In respect of the specified matters, the adopted child stands in the position of a child born to the adopter in lawful wedlock. See the Adoption of Children Act, 1926 (16 and 17 Geo., 5, c. 29) s. 5; 17 Hals. 2nd ed., para 1416.

of her husband" (*f*). The case of the Kanina or the maiden's son offers no problem whatever: a man marries a well dowered maiden who has already a child. It is nothing but the adoption of a step-son. The Kanina was disapproved because he was not begotten by the husband.

Gudhaja.

§ 75. As to the Gudhaja or Gudotpanna, Manu's definition (*g*) evidently refers to a case where it could not be established that the son was born of an adulterous connection but where suspicion arises afterwards. The Dharmasutra of Baudhayana, which is earlier than the Code of Manu defines a Gudhaja as one who is secretly born in the house and whose origin is afterwards only recognised (*h*). The Gudhaja was apparently a son born to a woman while the husband had access to her; he is at first recognised as his son and the necessary rites performed on that footing; afterwards suspicion arises as to his paternity but there is no proof that he is born to another. No doubt, commentators, writing several centuries after these subsidiary sons had become obsolete, refer to him and the son of the pregnant bride (Sahodhaja) as sons born of an adulterous connection. That their view is erroneous is established by three important considerations. In the first place, sons born to a man's wife of an adulterous connection were expressly declared as disentitled to inherit and they were known as Kundas (*i*). In the second place, there was no necessity for the rules and restrictions regarding the *Niyoga* or authorisation of the wife and the kinsman, during his lifetime to raise up issue for him, if sons born to his wife of adulterous connection with another, without any authorisation, were entitled to the status of secondary sons. In the third place, where a woman conceived as a result of adulterous connection, her repudiation or abandonment followed (*j*). The Gudhaja therefore was not the son born of proved adultery (*j*[1]); it was a case of doubtful paternity where the

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(*f*) Mit., I, xi, 7; Yajn., II, 129; Gaut., XXVIII, 33; Baudh., II, 2, 3, 24; Vas., XVII, 21-23, Vishnu, XV, 10-12; Manu, IX, 172; Nar., XIII, 18.

(*g*) Manu, IX, 170.

(*h*) Baudh., II, 2, 3, 22; Yajn., II, 129; Gaut., XXVIII, 32; Vas., XVII, 24; Vishnu, XV, 13-14; Nar., XIII, 45.

(*i*) Manu, III, 174; IX, 143, 144, 147; Smritichandrika, V, 12-14. Mit. on Yajn., I, 90, Vidyarnava's trans. 184-185; Jha., H.L.S., II, 99-100.

(*j*) Yajn., I, 72; Vas., XXI, 10; Parasara, X, 30; Jolly, T.L.L., 78.

(*j*[1]) This view is confirmed by the high position accorded to him by all the more ancient Smriti writers including Manu.

husband might be, or was presumed to be, the father as he had access to the wife. Accordingly, if he was suspected to be not an aurasa son, since he had been recognised, he would certainly be an adopted son.

Sahodhaja.

§ 76. As to the Sahodhaja, where a man marries either knowingly or unknowingly a pregnant maiden, the child in her womb belongs to him who weds her (*k*). Here, there is no reference to a son begotten by another upon her. Very probably, this contemplates a case where a man, before his marriage with a maiden, had access to her (*l*). The reference to his knowledge of her pregnancy as one possibility makes this inference almost certain. The son of the pregnant bride, having been begotten in violation of the law, she not having been a virgin at the time of marriage, was not his aurasa son and therefore could only be adopted by him as a secondary son. Even on the alternative assumption that the Sahodhaja might have been procreated by another, it would simply be a case of adoption as in the case of the Kanina (*l*[1]). Of course, the Gudhaja and the Sahodhaja would now attract the very strong presumption of legitimacy laid down in section 112 of the Indian Evidence Act.

Kshetraja.

§ 77. The Kshetraja or son of the wife undoubtedly ranked high in the list of subsidiary sons. Where the wife of a dead man or of one impotent or incurably diseased was duly appointed, according to the law of the family (*svadharma*), the son begotten on her by the brother or other sapinda of her husband, authorised by the family in that behalf, was called the Kshetraja or the son of the wife (*m*). The *Niyoga* usage was only a particular illustration of the very general levirate prevalent at one time amongst many ancient peoples (*n*). In ancient India, wherever it existed,

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(*k*) Manu, IX, 173; Gaut., XXVIII, 33; Baudh., II, 2, 3, 25; Vas., XVII, 27, Vishnu, XV, 15-17.

(*l*) See *Sethu* v. *Palani* (1926) 49 Mad., 553, 558, per Devadoss, J.

(*l*[1]) See the comments of Sri Krishna and Achyuta on Dayabhaga, X, 7, where they take a Sahodha as 'a son received for adoption'. Stokes, H L.B., 300.

(*m*) Manu, IX, 59, 167, Gaut., XVIII, 4-14, XXVIII, 32, Baudh., II, 2, 3, 17; Apas., II, 6, 13, 4-5, Vas, XVII, 14; Vishnu, XV, 2, Dr. Buhler's trans. of *Svadharma* as 'peculiar' does not bring out its full meaning.

(*n*) Dr. Jolly says: "Recent researches have proved it to be a widely spread custom, occurring amongst many nations which have never practised polyandry. Distinct traces of its former existence have been discovered, *e.g*, in the old laws of my own country, Germany." T.L.L., 155.

it was hedged round by many restrictions. The practice was confined to cases where the husband was either impotent or diseased or dead and where the wife or widow had been authorised either by the husband during his lifetime or, after his death, by the members of the family.

It appears therefore that only when according to the older law, she was entitled to divorce him and remarry, or to remarry on his death, this usage existed. Obviously, its scope must have been very limited and the practice must have been exceptional. There was first the necessity for a special appointment both of the woman and of her husband's brother, sapinda or kinsman (*o*). Onerous conditions were imposed so as to ensure that the begetting of the son was the sole object (*p*). This usage must have resulted as a compromise between the competing claims of the widow on the one hand and the joint family on the other (*q*). The son born to an unauthorised wife or a widow, as a result of adulterous connection with her brother-in-law or other relation and the son born to her, though she was authorised, when she had already a son, were equally disentitled to inherit, so also the son of an appointed wife or widow begotten by her through her brother-in-law or his sapinda, through desire or in a manner contrary to the rules of *Niyoga*, was disentitled to inherit (*r*).

The Vivada-Ratnakara and the Viramitrodaya cite a passage from the Brahmapurana which probably gives the clue to the exceptional recognition of the Kshetraja and other secondary sons. The Kshatriya class was always engaged in warfare and was gradually perishing and was therefore held to be labouring under a curse. The families of chiefs and princes either suffered or were threatened with extinction; when they had neither the legitimate son nor the putrikaputra, they had sometimes these sons, namely, the Kshetraja and the rest. "All of them performed, in the manner of servants or slaves, their sradhs on specified occasions" (*s*). Though it cannot be said that the usage, when it existed in ancient times was confined to the Kshatriyas (*t*), it is clear that the practice was very exceptional. Manu's reference to *svadharma* of

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(*o*) Vas, XVII, 56, Jolly, T.L.L, 153.

(*p*) Manu, IX, 60-63.

(*q*) Vas, XVII, 65.

(*r*) Manu, IX, 143, 144, 147.

(*s*) Vivada-Ratnakara, 74, 75, Viramitrodaya, Setlur trans., 365. Arthas., I, 17, 52, Shamasastri, 37.

(*t*) Arthas., III, 6, 33.

the man for whom the issue is raised in IX, 167 indicates that it was only a usage in particular tribes or families (*u*). If the usage was at all common or favoured, it would not have become obsolete.

Two-fold classification of sons.

§ 78. Manu divides these twelve sons into two classes. The legitimate son, the son begotten on the wife, the son given, the son made, the son secretly born and the deserted son are said to be the six heirs and kinsmen. The maiden's son, the son received with the bride, the son bought, the son of a remarried wife, the son selfgiven and the son of a Sudra wife are not heirs but kinsmen (*v*). Gautama and Baudhayana give the same classification (*w*). Vasishtha, Harita and Narada give a different classification (*x*). Yajnavalkya's order differs from that of Gautama, Baudhayana and Manu. None of the classifications is founded on any intelligible principle. The Arthasastra of Kautilya, however, states a rational rule: while a son begotten by oneself (aurasa or *svayamjata*) can claim relationship with him and his kinsmen, a son begotten by another (*parajata*) can have relationship only with the man who accepts him as son (*y*).

Dr. Jolly's reasons for secondary sons.

§ 79. Dr. Jolly thinks that the majority of the twelve kinds of sons have no blood relationship to their father and some of the twelve are the offspring of the mother's illicit connection with strangers and these constitute the most striking feature of the Indian Family Law. He traces this partly to the doctrine of spiritual benefit found in the Smritis and partly to an economic motive to get for the family as many workers as possible (*z*). The latter observation erroneously assumes that a man was permitted to have at the same time all the twelve kinds of sons. But it was only in the absence

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(*u*) "Rise up, come to the world of life, O woman, Thou liest here by one whose soul has left him, Come, thou hast now entered upon the wifehood of this, thy lord, who takes thy hand and woos thee" Rig Veda, X, 18, 8.

This stanza from the funeral hymn is addressed to the widow who is called upon to rise from the pyre and take the hand of the new husband, doubtless a brother of the deceased, in accordance with the ancient marriage custom. Macdonell, S Lit., 126.

(*v*) Manu, IX, 159, 160.

(*w*) Baudh, II, 2, 3, 31-32, Gaut., XXVIII, 32-33 (except as to putrikaputra).

(*x*) Vas., XVII, 25-27; Harita in Digest, II, 331, Nar., XIII, 45, 46.

(*y*) *Svayamjatah kritakriyayam aurasah. Svayamjatah pitrubandhunam cha dayadah. Parajatah samskartureva, na bandhunam.* Arthas., III, 7, 4, 13-14 (Jolly's ed.).

(*z*) Jolly, L & C, 156, 157, also 107.

of the legitimate issue, that any one of the secondary sons was adopted. A man might have many aurasa sons by several wives of the same caste or in the direct order of castes. It appears that fathers cast off their sons or sold or gave them in adoption. The economic motive to get as many workers as possible does not therefore require further examination. The truth is that there were only two kinds of sons, the aurasa and the adopted son The list of twelve or thirteen sons was obviously due to the systematising habit of Sanskrit writers.

Only two kinds

As already mentioned, neither the Kshetraja son nor the institution of adoption was peculiar to the ancient Hindu law. While five out of the twelve were formally adopted sons, the Putrikaputra and the Kanina were in intention, adopted sons, and the Paunarbhava and the Nishada or Parasava were one's actual sons. We are only left with the Gudhaja and the Sahodhaja sons who were in all probability, either a man's own sons or, adopted by him if born to others, probably because the wife's adultery was difficult of proof or possibly owing to complaisance or compassion Such cases must have been exceedingly rare and cannot support any generalisation about the ancient Hindu Family Law

§ 80. Dr. Jolly's solution of the problem which he sets up is that the son was always assigned in law to the male who was the legal owner of the mother This does not appear to be quite a correct or an adequate explanation. A frequent subject for discussion in Manu and other works is as to the property in a child: "They all say that the male issue of a woman belongs to the lord, but with respect to the meaning of the term 'lord' the revealed texts differ, some call the begetter of the child the lord, others declare that it is the owner of the soil" (*a*). Manu starts the discussion by stating the two opposed opinions and after balancing them, he states in verse 55 his first positive conclusion that the owners of animals, birds and slave girls are also the owners of their offspring, he then discusses the *niyoga*, the rights and duties of wives and sons, and the thirteen sons No definitive conclusion as regards the ownership of sons amongst the Aryans as distinguished from the offspring of slave girls, animals and birds appears to be reached by him till he comes to verse IX., 181, where he states his specific relevant conclusion: "those sons, who had been mentioned in connection with the legitimate son of the body, being begotten by strangers, belong, in reality,

(*a*) Manu, IX, 32, 33, 44

to him from whose seed they sprang but not to the other man who took them" (*b*). Referring to the Kshetraja, Baudhayana says that such a son begotten on a wife has two fathers and belongs to two families. "He shall give the funeral cakes to his two fathers and pronounce two names with each oblation and inherit the property of his two fathers" (*c*). The Arthasastra of Kautilya says that "some teachers say that the seed sown in the field of another belongs to the owner of the field. Others hold that the mother, being only the receptacle for the seed, the child must belong to him from whose seed it was born. Kautilya says that it must belong to both the living parents. On the death of the begetter, the Kshetraja son will be son to both the fathers, follow the gotras of both, and take the property of both" (*d*). Yajnavalkya follows Kautilya: "A son begotten by a sonless man, having permission to that effect, on the wife of another, will be rightful heir to the properties of and the giver of funeral balls to both the real and the reputed father" (*e*).

Probable explanation

The probable explanation therefore appears to be that, with the exception of the Kshetraja son, who was *sui generis*, a son born of the wife's adulterous connection was not in law the son of the husband. If either the mother of the child or the child was not cast off, the child had to be fitted into the legal system for purposes of maintenance and guardianship. The son had also to be fitted into the religious system and the question for which set of manes (*pitrus*) he had to offer the funeral oblations had to be solved. The ingenuity of ancient Hindu lawyers was exercised in attempting to solve it. In the case of offspring begotten by another, the son was assigned to the

(*b*) Verses IX, 48 to 54, appear to be only an arthavada to discourage the adulterer by telling him that he will get no advantage by begetting offspring on others' wives. The *prima facie* view which is stated in verses 48 to 54 is refuted in verse 181. Accordingly, the earlier interpretation was that those described as substitutes should not be appointed, "because, being born of the seed of another man, they are the sons of that man and of none other; *i.e.*, they cannot be the 'sons' of the man that appoints them." (Dr. Jha, Manu with Medhatithi's Bhasya Vol., V, 160). The attempts made by Medhatithi and other commentators to reconcile the texts are not convincing.

(*c*) Baudh., II, 2, 3, 18-19.

(*d*) Arthas., III, 7, 1-7 (Jolly's edn., page 96), Shamasastri, 201-202.

(*e*) Yajn., II, 127; Mit, I, x; see Nar., XIII, 23; compare Manu, IX. 143, 144, 147, 191.

begetter or to the husband of the mother, if he adopted him, or to both in the peculiar case of the Kshetraja (*f*).

No spiritual benefit from irregular sons.

§ 81. It is beyond doubt that, so far as spiritual benefit was concerned, there was none to the husband from the issue of his wife's adulterous connection. The assumption sometimes made by modern writers on Hindu law, that, as the first duty of a man was to become the possessor of male offspring, either the Veda or the Dharmasastras directed him somehow to procure a son, even though such a son was born to his adulterous wife, is wholly baseless (*g*). On the contrary, far from declaring these sons, the Kshetraja, the Gudhaja, the Sahodhaja and the Kanina, to be necessary for a man's spiritual benefit, they emphatically condemned, for that very reason, the acceptance of such secondary sons (*h*) As mentioned already, even in the Rig Vedic age, their acceptance was disapproved (*i*) Aupajandhani, one of the teachers of the White Yajurveda mentioned in the Satapatha Brahmana, declared that the aurasa son alone was entitled to inherit and was a member of the father's family, on the ground, that in the other world, the son belonged to the actual begetter, stressing the view that no spiritual benefit was obtainable through irregularly produced sons (*j*).

Early disapproval.

In the Sutra period, Apastamba (c 6th century B.C.), condemned the Kshetraja and the other secondary sons in unequivocal language: "If a man approaches a woman who had been married before or was not legally married to him, they both commit a sin *Through their sin, the son also becomes sinful*" After citing Vedic authority to the effect that the son belongs to the begetter in the next world and would confer no benefit on the husband, he concludes with the pronouncement that if the marriage vow is transgressed, both husband and wife certainly go to hell.

(*f*) To guard against his mother having even conceived illicit desires, a son had to recite a text see Manu, IX, 20 and Medhatithi and Kulluka on it.

(*g*) The arthavadas in the books on the point do not refer to sons procured in violation of the sacred law Mit, on Yajn, I, 90, Vidyarnava's trans. 184-185.

(*h*) See Sarkar Sastri, Adoption, 2nd edn, 47

(*i*) Rig Veda, VII, 4, 7 and 8.

(*j*) Aupajandhani, quoted with approval by Baudhayana, II, 2, 3, 33-35, he is also mentioned in the Brihadaranyaka Upanishad, II, 6, 3; IV, 6, 1, (Hume's trans, 'The Thirteen Principal Upanishads' pages 106, 148).

"The reward in the next world resulting from obeying the restrictions of the law is preferable to offspring obtained in this manner by means of *Niyoga*" (*k*). It is obvious that the *Niyoga* usage had come to be treated with much contempt, as a flagrant violation of Dharma, and as absolutely worthless from the point of view of spiritual benefit.

When we come to Manu, he prohibits the *Niyoga* altogether: "By twice-born men, a widow must not be appointed to co-habit with any other than her husband; for they who appoint her to another man will violate the eternal law" (*l*). Referring to the fact that in the sacred texts which refer to marriage the appointment of widows is nowhere mentioned, he explains that this practice, which is reprehended as only fit for cattle, is said to have occurred even amongst men, only when the mad King Vena ruled (*m*).

The condemnation from such ancient times shows that it could not have been at any time a widely prevalent usage, but must have been limited to a few tribes or families. The hopeless confusion and contradiction which prevail amongst the writers as to the respective rank of these sons and the shares to which they were entitled and on the question which of them were kinsmen and heirs and which of them were kinsmen only, make it very probable that they were not dealing with any living institution but were merely discussing for completeness the tradition of a bygone age, the exact scope and meaning of which were not within their own knowledge. The Kshetraja, the Gudhaja, the Sahodhaja and the Kanina therefore, even in the period of the Dharma-sutras, could have been little more than stray survivals of pre-vedic usages. They must have fallen into great disrepute and if they were not wholly obsolete, must have become obsolescent (*n*). Notwithstanding the condemnation by

Usage exceptional.

Obsolete.

(*k*) Apas, II, 6, 13, 4-10; II, 10, 27, 6-7; see also Vas, XVII, 9. Apastamba says "Transgression of the law and violence are found among the ancient sages; they committed no sin on account of the greatness of their lustre. A man of later times who seeing their deeds follows them, falls."

(*l*) Manu, IX, 64, Dr. Jayaswal says: "In many respects, the Code of Sumati Bhargava (Manu) was a distinct reaction. But on marriage, the Code was a factor for raising its status to a sacrament—a moral ideal of the highest type. The Code rescued it from contract which in the last analysis resolved into a sale." Jayaswal, M & Y, 231.

(*m*) These verses containing the prohibition are not, according to Dr. Buhler, a modern addition. Manu, IX, 66-68; note at p. 338, S.B.E., Vol. XXV.

(*n*) See *Meenakshi* v. *Muniandi* (1915) 38, Mad., 1144, 1148. per Seshagiri Iyer, J., citing Ghose, I, 637.

Baudhayana and Apastamba, instances might have occurred here and there in Kautilya's time (c. 300 B C.), whose very meagre treatment of the subject is in proportion to its diminished importance. Finally, any such practice, if it existed at all before the compilation of the Code of Manu, must have been put an end to by it (c. 3rd or 2nd Century B C).

Apart from the obvious reasons for the several secondary sons having fallen into desuetude, the great influence of the Dharmasastras was wholly directed towards their discontinuance. Following Manu, Brihaspati says that the various sons including the Kshetraja cannot now be adopted by men of the present age (*o*). Vijnanesvara says that the appointment to raise up issue is reprobated in law as well as in popular opinion (*p*) and according to him, sons born of adulterous connection like the Kanina, Sahodhaja, etc, are born in violation of the law and are therefore illegitimate and not of the same caste (*asavarnas*), unlike the authorised Kshetraja (*q*) Apararka quotes a text of Saunaka that the different classes of sons other than the aurasa and the dattaka are not recognised in this age (*r*). The Smriti Chandrika, the Parasaramadhaviyam, the Subodhini, the Vyavahara Mayukha and the Dattaka Mimamsa—in fact, all the later writers are to the same effect (*s*) Dr Jolly says that the custom of *Niyoga* was obsolete even in the time of some of the oldest Smriti writers (*t*)

The view which is frequently stated (*u*) that the doctrine of spiritual benefit was responsible for the institution of the Kshetraja and other irregularly born sons is therefore seen to be wholly opposed to the evidence of legal history On the contrary, the Kshetraja and the Kanina—and, if we follow the later commentators, the Gudhaja and the Sahodhaja also—were merely ancient customary affiliations, due to entirely secular reasons, but as they could not be fitted into the Aryan

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(*o*) Brih, XXIV, 12, 14

(*p*) Mit, II, 1, 18

(*q*) Mit on Yajn, I, 90, Vidyarnava's trans, 184-186

(*r*) Apararka, trans, in 21, M L J. (journal), 305.

(*s*) Smriti Chandrika, X, 5-6, Parasara Madhaviya, Setlur trans, 332, Subhodhini, 710 (Setlur edn), V Mayukha, IV, 4, 46 (Chaipure's trans, 65), Nirnaya Sindhu, 195 (Nirnayasagar edn), Dharma Sindhu, III, 4 (Bombay edn), Dattaka Mimamsa, I, 64 68, Dattaka Chandrika, I, 9, Digest, II, 416, citing Aditya purana

(*t*) Jolly, T L L, 164

(*u*) See for instance, *Amarendra's* case (1933) 60 I.A., 242, 248, 12 Pat., 642.

religious system which was getting highly developed, they were rejected and the Manava Dharmasastra was able to complete this reform at an early stage in the development of Hindu law, not only by its great authority but also by elevating the position of the son given to a high place (*v*).

All but two now obsolete.

§ 82. Of all these twelve or thirteen sons, except the legitimate and the adopted—and the kritrima son in Mithila and the son of the appointed daughter among the Nambudris of Malabar—the others are long since obsolete (v^1). Jagannatha says that in Orissa it is still the practice with some people to raise up issue on the wife of a brother, but his own opinion is strongly expressed against the legality of such a proceeding (v^2). Mr. Colebrooke states that, in his time, the practice of appointing brothers to raise up male issue to deceased, impotent, or even absent brothers, still prevailed in Orissa. Dr. Rajkumar Sarvadhikari says in reference to this statement: "from all the enquiries we have made on the subject, it appears that the practice is highly reprobated among the higher classes in Orissa, and if it exists among the lower classes at all, it exists in such a form that it is of no importance whatever from a juridical point of view." He adds that, among some of the rich and noble classes in Orissa, the practice of *Niyoga* has probably assumed the modernised form of marriage with an elder brother's widow (v^3).

Nambudri marriage.

§ 83. Among the Nambudris in Malabar, the son of the appointed daughter is still recognised as heir to his maternal grandfather, where the marriage of his daughter has taken place according to the form known as *Sarvasvadhanam;* the formula used being, "I give unto thee this virgin, who has no brother, decked with jewels; the son who may be born of

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(*v*) Manu, IX, 141, 142, 159.

(v^1) *Nagindas* v. *Bachoo Hurkissondas* (1916), 40 I A., 50, 40 Bom., 270.

(v^2) The marriage of a widow with the brother of her deceased husband was sanctioned by Manu in the single case of a girl who had been left a virgin widow (Manu, IX, 69, 70). The practice still exists in many parts of India among the Ideiyars, the Gaudas and the Savaras of Southern India, among the Jat families of the Punjab, and among some of the Rajput class of Central India. In the Punjab, such marriages are considered of an inferior class and do not give the issue full rights of inheritance.

(v^3) Sarvadhikari, 2nd edn., 415, 416. It is not really the modernised form but the more ancient. Vedic Index, I, 477. Dr. Sarvadhikari seems to think that the custom, if well established, would even now legalise the Kshetraja; but surely such a custom would be bad, being opposed to morality and public policy.

her shall be my son" (v^4). Such a marriage can take place only when a Nambudri has no male issue. The result of such an arrangement is that if a son is born, he inherits to, and is for all purposes the son of, his mother's father. If there is no male issue or on failure of such issue, the property of the wife's family does not belong to the husband but reverts to the family of her father (v^5), unless the marriage has been accompanied by a formal appointment of the son-in-law as heir of the Illom (v^6). The Madras High Court has held that the practice of appointing a daughter is obsolete elsewhere and the party relying upon it must prove the existence of the custom (v^7).

§ 84. From the above discussion, it is clear that, in ancient Hindu law, sonship was founded upon marriage or, where a substitute for the son was required, on adoption. A discussion of the marriage law itself will show that, from the Vedic times, marriage has throughout been a sacrament and a permanent union (w).

Eight forms of marriage.

Eight forms of marriage are mentioned by Gautama, Baudhayana, Manu, Vishnu, Yajnavalkya and Narada and six by Apastamba and Vasishtha (x). The Asvalayana Grihya-sutra which is earlier than the Dharmasastras also gives the formulae of eight forms (y). The Arthasastra of Kautilya

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(v^4) *Kumaran* v *Narayan* (1886) 9 Mad, 260, *Vasudevan* v. *Secretary of State* (1888) 11 Mad, 157, *Chemnautha* v. *Palakuzhu* (1902) 25 Mad, 662

(v^5) 11 Mad, 157, 162; 25 Mad, 662, 664.

(v^6) Wigram, 16

(v^7) *Venkata Narasimha* v *Suranent Venkata* (1908) 31 Mad, 310: in *Thakur Jeebnath Singh* v *Court of Wards* (1875) 2 I A, 163 (3 W R P C, 409), the Judicial Committee intimated a doubt whether the son of the appointed daughter might not even now be lawfully instituted in the orthodox parts of India.

(w) "With the early Romans, as with the Hindus and the Greeks, marriage was a religious duty—a duty a man owed alike to his ancestors and himself Believing that the happiness of the dead in another world depended on their proper burial and on the periodical renewal by their descendants of prayers and feasts and offerings for the repose of their souls, it was incumbent upon him above all things to perpetuate his race and his family cult In taking to himself a wife, he was about to separate her, from her father's house and make her a partner of his family mysteries" Muirhead 'Historical Introduction to the Private Law of Rome', 23, 24.

(x) Manu, III, 27-34, Gaut, IV, 6 15, Baudh I, 11, 20, Apas, II, 5, 11, 17-20, II, 5, 12, 1-4, Vas., I, 28-37, Vishnu, XXIV, 17-37; Yajn., I, 58-61, Nar, XII, 38-44

(y) Asvalayana, I, 6 and 7, Vol. XXX, S B E Introdn. 34.

also mentions eight forms (*z*).

Manu describes them as follows:—

The gift of a daughter, after decking her with costly garments and honouring her by presents of jewels, to a man learned in the Veda and of good conduct, whom the father himself invites is called the Brahma rite.

The gift of a daughter who has been decked with ornaments, to a priest who duly officiates at a sacrifice during the course of its performance, they call the Daiva rite.

When the father gives away his daughter according to the rule, after receiving from the bridegroom, for the fulfilment of the sacred law, a cow and a bull or two pairs, that is named the Arsha rite.

The gift of a daughter by her father after he has addressed the couple with the text, 'May both of you perform together your duties,' and has shown honour to the bridegroom is called the Prajapatya rite.

When the bridegroom receives a maiden, after having given as much wealth as he can afford, to the kinsmen and to the bride herself, according to his own will, that is called the Asura rite.

The voluntary union of a maiden and her lover, one must know to be the Gandharva rite, which springs from desire and has sexual intercourse for its purpose.

The forcible abduction of a maiden from her home, while she cries out and weeps, after her kinsmen have been slain or wounded and their houses broken open, is called the Rakshasa rite.

When a man by stealth seduces a girl who is sleeping, intoxicated, or unconscious, that is the eighth, the most base and sinful Paisacha rite (*a*).

Their distinctive features.

§ 85. From these, Apastamba and Vasishtha omit the Prajapatya and the Paisacha rites. According to Asvalayana, a wedding is called the Paisacha where a man carries her off while her relatives sleep or pay no attention; where a man marries her after gladdening her father by money, it is called

(*z*) Arthas., III, 2; Shamasastri, 186.

(*a*) Manu, III, 27-34. The words '*Matta*' and '*Pramatta*' in verse 34 mean in the context 'intoxicated or unconscious'. The commentators of Manu give one or other of these meanings. Sir William Jones and Dr. Jha translate it as 'intoxicated or unconscious' which is preferable to Dr. Buhler's translation 'intoxicated or disordered in intellect'.

the Asura; where a man marries her after a mutual agreement has been made between the lover and the damsel, it is called the Gandharva (*b*). The Rakshasa marriage is defined more simply by Gautama, Baudhayana and Yajnavalkya; "if the bride is taken away by force or in war, that is a Rakshasa wedding" (*c*). Baudhayana pronounces this rite to be lawful for Kshatriyas (*d*). Vasishtha names the Rakshasa and Asura rites as the *Kshatra* and *Manusha* rites respectively (*e*). The Gandharva and the Rakshasa, whether separate or mixed, are declared by Manu to be lawful for Kshatriyas (*f*). Manu altogether prohibits the Asura and the Paisacha for all castes including the Sudra (*g*) and condemns the Paisacha as the basest and most sinful of all (*h*). Narada denounces the Asura, the Rakshasa and the Paisacha as unlawful (*i*): while curiously Baudhayana says that the Paisacha as well as the Gandharva are lawful for Vaisyas and Sudras (*j*).

From the omission by Apastamba and Vasishtha of all reference to the Paisacha as well as the Prajapatya marriages, it may well be inferred that these two forms had become obsolete long before their time. Dr. Jolly however conjectures that they were introduced (*k*) subsequent to Apastamba and Vasishtha but this either overlooks or does not give sufficient weight to the fact that writers earlier than Apastamba and Vasishtha mention them distinctly (*l*). The Prajapatya became obsolete very early; for the difference between it and the Brahma form was only that, in the latter, the father offered his daughter and, in the former, the bridegroom proffered his suit. The Daiva only differed from the Brahma in that the gift was made to a priest officiating at a sacrifice during its performance. In the Arsha form, the nominal character of the sale was clear; for the father's taking from

Prajapatya

Daiva

Arsha.

(*b*) Asavalayana, I, 6, 5-7, S B E, Vol. xxix, 166, 167.

(*c*) Gaut, IV, 12; Baudh, I, 11, 20, 8, Yajn., I, 61.

(*d*) Baudh, I, 11, 20, 12.

(*e*) Vas, I, 34, 35.

(*f*) Manu, III, 26.

(*g*) Manu, III, 25, 34; IX, 98.

(*h*) Manu, III, 34

(*i*) Nar, XII, 43, 44.

(*j*) Baudh, I, 11, 20, 13.

(*k*) Jolly, T L L, 74. Both the Prajapatya and the Paisacha forms must, from their very nature, have been more archaic rather than more recent. If they could not be made intelligible by the earliest Smriti writers, that argues in favour of their having become obsolete long before their time.

(*l*) Asvalayana, Gautama and Baudhayana.

the bridegroom a cow and a bull or two pairs was only in fulfilment of the sacred law, there being no intention to sell the child; and the bull and the cow were received back with the bride by the bridegroom (*m*). The Rakshasa form is simply the marriage by capture. As Dr. Jolly says, the high antiquity of marriage by capture becomes evident from its wide prevalence among other Indo-Germanic peoples and it is well known that it is a universal custom and is particularly connected with exogamy, as is the case also in India. At the present day only a few traces of this marriage by capture seem to be left in India, principally among the rude hill tribes; the sham abduction which owes its origin to the marriage by capture is found more frequently as a marriage ritual, *e.g.*, among the Rajput tribes, that is to say, among the descendants of the ancient Kshatriyas (*n*). During the Vedic times, marriages by capture may have occasionally taken place as knightly feats, as when Vimada carried off Purumitra's daughter, against her father's wish but very probably with her own consent (*o*). Rakshasa.

§ 86. The primitive methods of obtaining a wife were evidently either by forcibly abducting her or stealing her from parental control or by purchasing her from her father or from those who had authority over her. The Rakshasa, the Paisacha and the Asura referred only to those modes Marriage as Medhatithi, the commentator of Manu, says. "has been classified under eight heads on the basis of different methods used for taking wives; and it does not mean that there are eight kinds of marriage"(*p*). These eight methods of obtaining a wife really resolve themselves into three forms of marriage, namely, the gift of the bride, the sale of the bride and the agreement between the man and the woman. In all cases alike, the gift, sale or agreement had to be completed by marriage rites. The Brahma, Daiva, Prajapatya, Arsha and Asura forms all agree in this, that the dominion of the parents over the daughter was fully recognised and the marriage was founded upon a formal transfer of this dominion to the husband. In the Arsha and Asura forms, the transfer of dominion took the form of sale, though, Only three kinds of marriage.

(*m*) Apas., II, 6, 13, 12 (controverting the opinion of Vas., I, 36); also the commentary on Baudh., I, 11, 20, 4.

(*n*) Jolly, L & C, 109.

(*o*) Vedic Index, I, 483; compare the *Pratignayaugandharayana* (Act IV, 1, 24) ascribed to Bhasa (c. 1st cent. B.C.).

(*p*) Medhatithi on Manu, III, 34; VIII, 366, Jha's trans., Vol. II, 55-63, Vol. IV, 393.

in the former, it had come to be merely nominal The transfer of dominion was by way of gift of the daughter to the husband in the Brahma, Daiva and Prajapatya forms. In the Gandharva, Rakshasa and Paisacha forms, there was no recognition or transfer of parental dominion in the first instance but the marriage was only the result of an agreement either at the time of taking her or afterwards. In the Rakshasa and Paisacha forms, the marriage resulted from prior or subsequent agreement, coupled with the performance of marriage rites. In the case of the Gandharva, the marriage was in all cases the result of prior agreement, perfected by marriage rites

§ 87. The ancient Hindu law certainly did not recognise rape and seduction as marriages No assumption could be made that a man was free to violate a maiden. For, abduction and rape were offences then as they are now Yajnavalkya says "He who defiles a maiden shall have his hand cut off and he shall lose his life if she be of a higher class". He who kidnapped a maiden of the same class was heavily fined but if of superior class, was sentenced to death (*q*) Vijnanesvara, commenting on Yajn II, 288 says that if the parent of the girl desired he had to pay the *sulka*—a pair of kine and that, if he did not desire, he had to pay the same, as a fine, to the king But if he had approached an unwilling maiden, he suffered corporal punishment (*r*) The Rakshasa and Paisacha marriages therefore did not legalise violence or fraud; their very names condemned those methods of obtaining a wife. But where, after forcible or secret abduction, with or without her consent, a woman is subsequently married with rites either with the consent of her parents or with her

Paisacha and Rakshasa

(*q*) Yajn, II, 287, 288 "He who violates an unwilling maiden shall instantly suffer corporal punishment If any man, through insolence, forcibly contaminates a maiden, two of his fingers shall be instantly cut off and he shall pay a fine of six hundred *panas*" Manu, VIII, 364, 367, also 366 "When he has connection with a maiden against her will he shall have two fingers cut off If the maiden belongs to the highest caste, death and the confiscation of his entire property shall be his punishment When however he has connection with a willing maiden, he shall bestow ornaments on her, honour her and lawfully espouse her" Nar, XII, 71-72, Brih, XXIII, 3, 10-12 See also Jha, H L S, I, Ch XVIII. Vishnu, V, 40 43, 192

(*r*) Sankha and Likhita say "By whatever limb, a man misbehaves with a woman, that limb should be cut off or a fine of eight and thousand should be imposed" (Jha, H L S, I, 481, Apastamba cited in H L S, I, 482) See also Arthas, IV, 12, Shamasastri, 279-280, Vivada Chintamani, 205, 218 Katyayana says, "When a man has enjoyed a woman by force, he should suffer death' (cited in the Vivada Ratnakara, Jha, H L S, I, 482).

consent, it would certainly be marriage. though disapproved on account of the original violence or fraud (*s*). The true meaning of the Rakshasa and Paisacha marriages appears from the texts of Baudhayana and Vasishtha. Baudhayana expresses it affirmatively: "If one has intercourse with a maiden who is sleeping, intoxicated or out of her senses (with fear or passion) and *weds her afterwards*, that is the rite of the Pisachas (Paisacha)" (*t*). Vasishtha negatives the possibility of any legal nexus otherwise: "If a damsel has been abducted by force and not been wedded with sacred texts, she may lawfully be given to another man; she is even like a maiden" (*u*).

§ 88. The circumstances under which a Gandharva marriage is permitted or recognised are clear enough. The Smritis empower a maiden who is not given in marriage by her father within three years after she becomes marriageable, to choose for herself a bridegroom of equal caste (*v*). She could not however take with her any ornaments given to her by her parents or brothers and the bridegroom was not required to pay any nuptial fee to her father. This prosaic *Svayamvara* of the Smritis enabled a Gandharva marriage to be contracted while the romantic *svayamvara* of the puranic and poetic tradition was confined to the Kshatriyas (*w*).

Both writers on Hindu law and courts have taken Manu's verses as complete definitions of the forms of marriage and as no rites are mentioned by Manu in connection with the Gandharva, Rakshasa and Paisacha forms, they have often erroneously regarded them as merely euphemisms for concubinage, rape and seduction. As Dr. Jolly points out, the silence of the Smritis about the marriage ceremonies is easily explained if we remember that the Dharmasastras are not independent works but parts of a whole, the description of *samskaras* or rites falling within the province of the Grihya sutras (w^1). According to all the writers, the nuptial rites

(*s*) In the Paisacha and Rakshasa forms, the man either willingly made or was compelled by the community or by the King to make an 'honest woman' of her. Sir G. Banerjee criticises MacNaghten's view that the Paisacha is an instance where fraud is legalised by Hindu Law. M & S, 5th edn, 94.

(*t*) Baudh., I, 11, 20, 9.

(*u*) Vas., XVII, 73.

(*v*) Manu, IX, 90-93; Vas., XVII, 67-88. Both Gaut., XVIII, 20 and Vishnu, XXIV, 40, require her, it is said, to wait for three monthly courses. Nanda Pandita, in his Vaijayanti rightly interprets it to mean three years.

(*w*) Jolly, L & C, 109-111.

(w^1) Jolly, T.L.L., 73.

are required in the Gandharva, Rakshasa and Paisacha forms just as much in other forms. The common misconception is dispelled not only by the sutras of Baudhayana and Vasishtha already cited but also by the passages from several other works to be presently referred to.

Approved and unapproved marriages

§ 89. Generally the Smritis regarded the Brahma, Daiva, Arsha and Prajapatya forms as the approved or blameless marriages and the other four Gandharva, Asura, Rakshasa and Paisacha as the unapproved or blameworthy marriages (*x*). Kautilya's Arthasastra mentions the first four as *Dharma-Vivaha*, resting upon the authority and approval of the father The rest require to be sanctioned by both the parents for it is they that accept the sulka (bride price) paid by the bridegroom for their daughter (*y*). This latter statement cannot refer to the Gandharva where no sulka need be paid (*z*). The principal difference between the approved and the unapproved marriages is to be found in the matter of succession to a woman's stridhana; in the former case, the husband's, and in the latter, the parents' family, is preferred. Evidently, the reason was that, originally in the case of approved marriages, she passed into her husband's gotra and in unapproved marriages, she did not.

The difference is explained by Madhava. "In the forms of marriage beginning with Gandharva, as there is no gift of the maiden, the gotra and pinda of the father do not cease"(*a*) The Smriti Chandrika, Nilakantha in his Samskara Mayukha and Kamalakara in his Nirnaya Sindhu take the same view (*b*). Referring to a wife married in the Asura and the Gandharva forms, the Mitakshara also lays down that the father's gotra is retained throughout her life (*c*). Both usage and the inclusion in the Mitakshara of the wife as a sagotrasapinda have given her the gotra of her husband

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(*x*) Manu, III, 24, 39, 41, 42; Gaut, IV, 14, Baudh, I, xi, 20, 10-11; Apas., II, 5, 12, 3

(*y*) Arthasastra, III, 2, 10-12 (Jolly's edn); Shamasastri, 186.

(*z*) Manu, IX, 93.

(*a*) Parasaramadhaviya (trans. in 1 M.L.J., 465 re-print). "And so in the Markandeyapurana, 'the funeral cake and water should be offered as belonging to the husband's gotra, in the case of maiden married in the forms beginning with the Brahma, and as belonging to the father's gotra, in the case of woman married in the forms beginning with the Gandharva by one acquainted with the ceremonial law'." *Bhagwan* v. *Warubai* (1908) 32 Bom., 300, 312-314

(b) Smritichandrika, Samskarakanda, 186 (Mysore edn.); Samskara Mayukha, 52 (Gharpure's edn.), Nirnayasindhu (Setlur's trans.), 563.

(*c*) Ma. on Yajn., I, 254, Vidyarnava's trans, 343-344.

in all forms of marriage. Courts have also held that a wife passes into her husband's family and gotra, without distinguishing between the forms of marriage (*d*). Change of Gotra.

§ 90. Of all these forms of marriage, with the exception of the Brahma, Gandharva and Asura, the others have become obsolete, long ago. All obsolete except three.

The essence of the Brahma form of marriage is that it is a gift of the daughter in marriage; accordingly, it is said that the distinctive mark of the Asura form is the payment of money for the bride as the absence of that payment is of the approved form (*e*). As originally the bridegroom in the Brahma form was 'a man learned in the Vedas', it was inadmissible for a Sudra. But it has long since become lawful for all castes, for, when the form came to be universally adopted by the Brahmins, it was very probably followed by the other classes as a mark of higher social status. The Madras Sudder Court held, as long ago as 1859, that, in the case of Sudras, the mere fact that the bride is given without the bestowal of any gift by the bridegroom constitutes the marriage one of the Brahma form (*f*). Brahma.

§ 91. The presumption of Hindu law is always in favour of a marriage being in the Brahma or approved form as against its being an Asura or unapproved form (*g*). In a case in Bombay, where a man married a divorced woman belonging to the Koli caste, the presumption was pushed to the extent of holding that it could not be regarded as an unapproved form of marriage. It was rested on the ground that, as the Asura form was the only surviving unapproved form of a valid marriage, every other marriage must be regarded as not unapproved (*h*). A similar presumption must be applied in connection with the remarriage of widows (*i*) and has Presumption in favour of approved form.

(*d*) *Lallubhai Bapubhai* v. *Cassibhai* (1880) 7 I.A., 212, 231; 5 Bom., 110, 118, *Vasudevan* v. *The Secretary of State* (1887) 11 Mad. 157, 161; *Mokhoda Dassee* v. *Nundolall* (1900) 27 Cal., 555, 562-563, *Kalgavada Tavanappa* v. *Somappa* (1909) 33 Bom., 669, 674-5.

(*e*) *Authikesavalu* v. *Ramanuja* (1909) 32 Mad., 512.

(*f*) *Sivarama* v. *Bagavan*, Madras Dec., 1859, 44.

(*g*) *Authikesavalu* v. *Ramanuja* (1909) 32 Mad., 512; *Jagannath Prasad* v. *Ranjit Singh* (1898) 25 Cal., 354, 365; *Gojabai* v. *Shrimant Sahaji Rao* (1893) 17 Bom., 114; *Chunilal* v. *Suraj Ram* (1909) 33 Bom., 433, 437; *Hira* v. *Hansji* (1913) 37 Bom., 295, 300; *Mt. Thakur Deyhee* v. *Rai Baluk Ram* (1866) 11 M.I.A., 139, 175, *Sivanagalingam* v. *Ambalavana* (1938) M.W.N., 161.

(*h*) *Hira* v. *Hansji* (1913) 37 Bom., 295, 301.

(*i*) *Moosa Haji Joonus* v. *Haji Abdul Rahim* (1906) 30 Bom., 197.

been applied to the customary form of marriage called the Karao marriage (*j*).

Gandharva

§ 92. The Gandharva form of marriage has been the subject of much misconception; for, without seeking the assistance of established commentaries, an erroneous construction has been placed upon the text of Manu (*k*). Manu's text has evidently been understood by some modern writers and in some of the decisions of Courts to mean that it is nothing but concubinage (*l*). Manu's text merely refers to the distinction that the Gandharva marriage rests upon agreement and that it springs from mutual love. Just as the marriage rites are not mentioned in connection with the other forms, no rites are mentioned here also, but in all cases the marriage rites are implied (*l*[1]). For instance, the gift of a maiden in the Brahma marriage transfers only the ownership over her but the girl does not become wife until the marriage is duly performed (*m*). So also in the Asura form, while the sale transfers the ownership, she becomes a wife only on the performance of marriage rites. The marriage rites are identical in all the forms of marriage, whether it is the Brahma, Gandharva or Asura. The Grihya Sutra of Asvalavana refers to the Gandharva wedding in these words. "He may marry her after mutual agreement has been made" (*n*). Immediately after mentioning the eight forms, Asvalayana states the marriage rites common to all the forms (*o*). The Grihya Parisistha says. "In the Gandharva, the Asura and the Paisacha and in the Rakshasa, the meeting takes place first, and the Homa (sacrifice) is ordained subsequently" (*p*). The Smriti Chandrika (*q*), in order to

Rites necessary for all marriages.

(*j*) *Kishen Dei* v. *Sheo Paltan* (1926) 48 All., 126

(*k*) Manu, III, 32

(*l*) *Bhaoni* v. *Mahraj Singh* (1881) 3 All., 738, 743 (where there was no discussion and no reference to texts and commentaries), but see *Kishen Dei* v. *Sheo Palton* (1926) 48 All., 126, 133. Kumaraswami Sastri, J.'s dictum in *Subramania* v. *Rathnavelu* (1918) 41 Mad., 44, 65 that the four unapproved marriages, the Asura and others, are nothing but pure concubinage is clearly erroneous and opposed to the authorities.

(*l*[1]) Jolly, T.L., 73

(*m*) Medhatithi, commenting on Manu, V, 151 (according to Dr. Jha, Manu, Vol. III, Part I, 175, V. 152, according to Dr. Buhler). The gloss of Kulluka on Manu, V, 152, is to the same effect.

(*n*) Asvalayana, I, 6, 5, S.B.E., Vol. 29, 166

(*o*) Asvalayana, I. 7, S.B.E., Vol. 29, 166

(*p*) Grihya Parisishtha, cited in Parasara Madhaviyam [1 M.L.J. (Journal), 66] (Reprint)

(*q*) Smriti Chandrika (Mysore edn.), Samskarakanda, 230

remove a possible doubt as to how, in the Asura and the Gandharva, in the absence of the Saptapadi and the rest, the relation of husband and wife is created, states that even in those two forms, the marriage rites are ordained after the taking away of the bride—for, in the Asura form as mentioned by Manu, the marriage is performed after the carrying away of the maiden (*r*). Madhava expresses the same opinion very clearly relying upon Baudhayana, Vasishtha, Devala and the Grihya Parisishtha (*s*). All the established commentators recognise the requirements and validity of the Gandharva marriage. The Mitakshara makes the distinction fairly clear by saying that the Gandharva marriage is based upon mutual consent (*t*). Mitra Misra, in his Viramitrodayatika upon the Yajnavalkya Smriti, explaining the texts of Yajnavalkya and Manu, leaves absolutely no room for doubt. "Where the bride and the bridegroom mutually bind themselves, thus, 'You are my husband', 'You are my wife', and a marriage takes place *independently of a gift to be made by the father*, etc., that marriage is the Gandharva. . . . . Accordingly where a maiden chooses the bridegroom (*svayamvara*), it is also the Gandharva form of marriage". He adds that in the Gandharva also the marriage is performed with Vedic ritual (*u*). The same view is expressed in the Madanaparijata of Visvesvarabhatta (*v*). The commentators of Manu, Medhatithi, Govindaraja and Sarvajnanarayana take the same view (v^1). Nilakantha in his Samskara Mayukha (*w*)

(*r*) Manu, III, 31; Dr. Jha brings out clearly the meaning of the term 'apradanam' with the aid of Medhatithi's text. "When one carries away the maiden, after having given, of his own will, as much wealth as he can, to the kinsmen as well as to the bride herself, this is called the Asura form" Vol. II, Part I, 57 For its view, the Smriti Chandrika relies on the texts of Devala and the Grihya Parisishtha.

(*s*) Parasara Madhaviyam. "There need not be any doubt as to the status of husband and a wife, being established in the forms of marriage beginning with the Gandharva for want of the ceremony of, 'going round the seven steps, etc.' For though those ceremonies are absent before taking the bride, they take place subsequently". Trans 1 M.L.J. (Journal), 663—reprint.

(*t*) Mit. on Yajn., I, 61; Vidyarnava's trans, 126-127.

(*u*) Viramitrodayatika, 177 (Gharpure's trans)

(*v*) Madanaparijata, 157 (Calcutta edn.).

(v^1) Medhatithi on Manu, III, 31; VIII, 366, Balambhatta in his commentary on the Mitakshara says that in the case of the Gandharva and other forms of marriage, in order to constitute the legal status of husband and wife, there must be performed the ceremonies of Homa and all the rest up to the Saptapadi (Vidyarnava's trans. of Achara Adhyaya, 128); so also Jagannatha, Digest, II, 614.

(*w*) Gharpure's edn., 64.

and Kamalakara, in his Nirnayasindhu (*x*) state that in the Gandharva, the homam and the wedding rites take place afterwards. In the Brahma form, the wedding takes place first and the co-habitation later. In the Gandharva form, where the union takes place before, the marriage is afterwards. But the union need not take place in all cases before marriage as in the case of the *svayamvara* where a maiden chooses her own husband (*y*)

Lawful for all castes

§ 93. Though the Gandharva form was more favoured among the Kshatriyas in olden days, according to the text of Manu, it was lawful for Brahmins as well as for Vaisyas and Sudras (*z*). According to Baudhayana, the Gandharva form is recommended by some sages as lawful for all castes as it is based on mutual affection (*a*). Narada is clear: "The Gandharva form is common to all castes" (*b*). According to the Viramitrodayatika on the Yajnavalkya Smriti, the Gandharva form is unopposed to law and is available for all the castes (*c*). The Brahma and the Gandharva are therefore lawful for all castes.

Not obsolete

If the Gandharva form of marriage meant, as has been erroneously assumed, concubinage, it was never valid; the statement that it has become obsolete can be correct only if it refers to the view that concubinage at any time constituted marriage under Hindu law. The Gandharva form of marriage, meaning a mutual agreement coupled with the performance of the prescribed or customary marriage rites is certainly not obsolete. *Brindavan* v. *Radhamoney* (*d*) supports this view. In that case, dissenting from MacNaghten's view as to the Gandharva marriage, which was the foundation of all subsequent misconception, the Madras High Court held that, according to the texts, the religious element appears to be indispensable to a valid Gandharva marriage According

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(*x*) This is quoted in Vyavastha Chandrika, Vol. II, 444.

(*y*) Manu, IX, 93.

(*z*) Manu, III, 23

(*a*) Baudh, I, xi, 20, 13-16.

(*b*) Narada, XII, 44.

(*c*) Gharpure's trans., 179.

(*d*) (1899) 12 Mad., 72, *Kishen Dei* v. *Sheo Palton* (1926) 48 All., 126, 133, 1, Strange, H. L, 42, see also *Gajapathi Radika* v. *Sri Gajapathi* (1870) 13, M.I A, 506. The decision in 12 Mad, 72, has been misunderstood in *Maharajah of Kolhapur* v *Sundaram Iyer* (1925) 48 Mad., 1, 39; and the expression of opinion is founded upon the old misconception See *Padayachi* v. *A. Ammal*, A.I.R, 1938, Rang. 59.

to Jagannatha (*e*) and Sir Gooroodass Banerjee (*f*), the Gandharva form is not obsolete; it sometimes takes place (*g*).

Owing to the mistaken view of the Gandharva marriage, Courts have been forced to arrive at startling conclusions by doing violence to the texts of Manu describing the Brahma marriage. While the other requirements of the Brahma form, that the girl should be decked with costly ornaments etc., and that the bridegroom should be a man learned in the Vedas and of good conduct are not legal precepts, the only legal requirement is that there should be a gift of a maiden (*kanyayah danam*). Where a divorced woman or a widow, not a virgin, is married, it cannot, in law, be a marriage in the Brahma form, for in those cases, there is neither a maiden nor a gift of her. Even if the widow is a minor, where her first marriage was consummated, her own consent would be necessary and sufficient (*h*). In the case of a divorced woman or a widow, there is a contract of marriage between her and the man whom she marries, followed of course by the usual rites. This is nothing but a Gandharva marriage. Accordingly Jagannatha says: 'The second marriage of a woman who had already been espoused by another man falls under the description of a Gandharva marriage' (*i*).

So also in the case of any Hindu girl who has attained majority (*i*) under Hindu law, it will be a Gandharva marriage.

Gandharva, an approved marriage.

§ 94. That the Gandharva form is an approved form, just like the Brahma form, for the purpose of determining the order of succession to Stridhana of a woman is clearly stated by Manu and Narada (*j*). While the rule in Manu is clear, the text in the Yajnavalkya Smriti is capable of different interpretations (*k*). "The property of a childless woman married in the Brahma or even (*api*) in any of the four goes to her husband. In the other forms, it goes to her parents". The Smriti Chandrika says of this text: "By the use of the particle '*api*' 'even' in the above text, the marriage of the

(*e*) Digest, II, 614.

(*f*) Banerjee, M & S, 5th edn., 93.

(*g*) In *Visvanath Swamy Naicker* v. *Kamu Ammal* (1912) 24 M.L.J., 271, 282, no marriage was made out The decision simply states that the Gandharva form had become obsolete in the Kambala caste and that perhaps amongst the Kshatriyas, the Gandharva form of marriage has even within recent times, been recognised as prevalent in some parts of India.

(*h*) Hindu Widows' Remarriage Act, Sec. 7.

(*i*) Digest, II, 614; *c.f. Bamdeb* v. *Braja* 17 Pat., 134.

(*j*) Manu, IX, 196, 197; Narada, XII, 44.

(*k*) Yajn., II, 145.

form Gandharva is also included" and thus reconciles it with the rule in Manu (*l*). The Parasara Madhaviyam, the Sarasvati Vilasa, the Vyavahara Mayukha, the Viramitrodaya, the Vivada Ratnakara and the Vivada Chintamani all take the same view (*m*). The Dayabhaga of Jimutavahana cites the text of Yajnavalkya and interprets it so as to include the Gandharva in the approved forms (*n*) The Mitakshara, however, includes the Gandharva in the unapproved forms but does not refer to Manu or seek to reconcile it. This is a case where the texts of Manu and Narada are clear and unambiguous and the text of Yajnavalkya is capable of at least two interpretations. As has happened more than once, the Mitakshara cannot prevail against such of the Smriti texts as are unequivocal, especially where all the leading commentaries of all the schools are agreed amongst themselves (*n*[1]).

§ 95 There does not appear therefore, to be any necessity to classify all marriages, whether they are in accordance with Smritis or with modern notions or with family, local or caste customs, into the Brahma or Asura forms. Where there is no express provision of Hindu law, either on principles of justice, equity and good conscience, or by the Hindu rule of interpretation called analogy, marriages, when they are not strictly Brahma, Gandharva or Asura, can now be regarded as analogus to the Brahma, Gandharva or the Asura, as the case may be

Asura marriage

§ 96 In the Asura form of marriage, both in form and substance there is a sale by the father of his daughter in marriage as distinguished from a gift in the Brahma or an agreement in the Gandharva West, J. considered that the very name of the Asura indicated it as one derived from the aboriginal inhabitants of this country or those occupying it before the Aryan invasion and that that was the reason why it was loathed by the sages of the strict Brahmanical school (*o*) This appears to be very doubtful The

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(*l*) Smriti Chandrika, IX, iii, 27 (Krishnaswami Iyer's trans., 132)

(*m*) Burnell's Dayavibhaga, 44, 45, Foulkes, Sarasvati Vilasa, para 319, page 64, V Mayukha, IV, x, 29, Viramitrodaya, Setlur 453, see also Apararka trans in 21 M L J (Journal) at page 431, Vivada Ratnakara, 39 Vivada Chintamani, 269

(*n*) Dayabhaga IV, Sec iii

(*n*[1]) *Bhugwandeen Doobey* v *Myna Baee* (1867) 11 M I A, 487, Sri Balusu's case (1899) 26 I.A, 113, 22 Mad, 398. *Sheo Shanker Lal* v *Debi Sahai* (1903) 30 I A, 202, 206, 25 All., 468, *Debi Mangal Prasad* v *Mahadeo Prasad* (1912) 39 I A, 121, 34 All, 234

(*o*) *Vijiarangam* v *Lakshmanan* (1871) 8 B H C.O C J, 244, 254, 255.

marriage by purchase appears to have been an institution probably coeval with marriage by capture. It was certainly not unknown among the Vedic Aryans (*p*). Gradually, it became discredited and the name Asura was attached to it, till finally Manu prohibited it for all castes. The Arsha form which is one of the approved forms, appears to be only a survival of the Asura, the substantial price paid for the bride having dwindled down to a gift of slight or nominal value. The Vasishtha Dharmasutra states: "the purchase of the wife is mentioned in the Veda. Therefore one hundred cows, besides a chariot, should be given to the father of the bride" (*q*). Afterwards a practice of returning them to the bridegroom grew up and it became merely symbolical. Though the Arsha had probably taken the place of the Asura so far as the Brahmins were concerned, the Asura appears to have been lawful for an Aryan Vaisya and Sudra before it was completely forbidden (*r*). It is stated generally that the Brahma is the only form in use at present and probably this may be so among the higher classes to whom the assertion is limited by Mr. Steele (*s*). But there is no doubt that the Asura is still practised; and in Southern India, among the Sudras it is a very common, if not the prevailing, form (*t*). In a case in Western India, the Shastries stated that, although Asura marriages were forbidden, it had nevertheless been the custom for Brahmins and others to celebrate such marriages, and that no one had ever been expelled from caste for such an act (*u*).

(*p*) Jolly, L & C., 112-13; Vedic Index, I, 482, 483.

(*q*) Vas., I, 36, Vasishtha refers to the passage of the Chathur masya "she who has been bought by her husband," I, 37; also Kane, 5

(*r*) Manu, III, 25

(*s*) Gibelin, I, 63; Colebrooke, Essays, 142 (ed. of 1858), Steele, 159, Mandlik, 301.

(*t*) *Authikesavalu* v. *Ramanuja* (1909) 32 Mad., 512. Digest, II, 614, 1 Stra. H.L, 43, Mayr., 155; M. Sorg states that among the Tamil population the Asura form of marriage is universal, and that the Brahma form, which is known as Cannigadanam, or gift of a virgin, is not thought reputable, and that the son-in-law so married is considered to become adopted into the family of his father-in-law and loses his right of succession in his natural family (Sorg., H.L, 30-33)

(*u*) *Keshow Rao* v. *Naro* 3 Bor., 198 (215, 221), and see *Nundlal* v. *Tapeedas* 1 Bor., 18 (16, 20), for presumptions as to form of marriages, *Jaganath* v. *Narayan* (1910) 34 Bom, 553, *Chunilal* v. *Surajram* (1909) 33 Bom., 433. In Assam, as a rule, women are looked on as a species of property to be bought with a price, or by service in the father's house. The Gharos and Khasis alone do not purchase their wives (Census report of 1891).

The ceremonies necessary to constitute a valid marriage are the same in the Asura as in the Brahma form, the former having no distinctive ceremonies (*v*).

Bride price

§ 97. The texts speak of the bridegroom giving as much as he can afford to the father of the bride (*w*) or 'gladdening her father by money'. Manu says, that "no father who knows the law must take even the smallest gratuity for his daughter; for a man who, through avarice, takes a gratuity is a seller of his offspring" and the acceptance of the fee, be it small or great, is a sale of the daughter (*x*). According to Manu III, 54, gifts of money or jewels to brides or for their benefit do not make the transaction a sale It has been held that gifts to a bride do not make the marriage an Asura (*y*).

In *Hira* v *Hansji* (*z*) it was held that money paid to the parents of the bride to be paid to her third husband to procure her divorce was not bride price and the marriage was not in the Asura but in the Brahma form. The decision however appears to be open to criticism. The woman was not an unmarried woman; she had been thrice married, and it could not by any stretch of language be called the gift of a maiden in order to constitute a Brahma marriage. It does not appear that she was, at the time of her fourth marriage, a minor whose prior marriages had not been consummated There was no need for her parents' consent under section 7 of the Hindu Widows' Remarriage Act.

Where the paternal or maternal relations of a girl give her in marriage and receive a money consideration for it, it is a sale of the girl. "The taint of the Asura form lies in the gratuity being paid to the giver of the bride for his benefit. not in anything paid to her; and it is the taint which determines the form" (*a*).

(*v*) Banerjee M & S., 5th edn, 102, *Authikesavalu* v *Ramanuja* (1909) 32 Mad, 512, 519, 520.

(*w*) The Arthasastra also says 'plenty of wealth' III, 27 (Jolly's ed.); Shamasastri, 186, so too Manu, III, 31, Asvalayana, I, 6, 6, who says 'after gladdening the father'; Vidyarnava's trans, 126, 'the asura by largely giving', Balambhatti's gloss 'the giving of a large quantity'. Vidyarnava's trans, 127.

(*x*) Manu, III, 51; see also IX, 98, 100

(*y*) In the goods of Nathibai (1878) 2 Bom., 9. 15 (palu to bride), *Authikesavalu* v. *Ramanuja* (1909) 32 Mad, 512 (presents to mother as compliment), *Kailasanatha* v. *Vadivanni* (1935) 58 Mad., 488 (parisam jewel for adorning the bride).

(*z*) (1913) 37 Bom, 295; 17 I C., 941.

(*a*) *Chunilal* v *Suraj Ram* (1909) 33 Bom, 433, 442.

Expenses paid by bridegroom.

§ 98. Where the bridegroom or his party gives a sum of money to the father of the girl towards the expenses of the marriage, it has been held that it is equivalent to bride price and that the marriage should be regarded as an Asura marriage (*b*). It is put on the ground that as the father ordinarily defrays the expenses of the marriage, he is benefited to the extent to which the expenses are borne by the bridegroom. Further, it is immaterial even if there is a usage for the bridegroom to contribute to the expenses. This view appears to go beyond the texts which determine either the form or substance of the Asura marriage. The money given for marriage expenses is not given either as price or as consideration to the father for giving the girl in marriage which is the only question to be considered. As the marriage is for the benefit of both the bride and the bridegroom, the money which is given for the expenses of marriage is for the benefit either of the girl or of both. The money given cannot be said to be appropriated by the father for his own benefit. The text of Manu (*c*) would seem to show that in such a case, there is no sale. It is none the less a gift of his daughter in marriage for it is only when a father makes a profit out of the fulfilment of the duty imposed upon him by Hindu law of finding a suitable husband for his daughter and stipulates for a price that it is an Asura marriage (*d*). It is a direct gain that is contemplated, not some incidental or collateral benefit, such as the avoidance of some detriment or expenditure. In many cases, the marriage of a daughter may be delayed or may not be performed because the father is unable to find the whole amount necessary for the expenses or it may be desired to perform it on a grander scale by the receipt of a contribution from the bridegroom's party. Or the marriage may be celebrated in the bridegroom's house and at his expense. In such cases, one cannot presume as a matter of law that there is an intention to sell in consideration of the sum of money given for the expenses of the marriage. It is purely a question of fact and the inference would ordinarily be it is not intended to be a price (d^1).

(*b*) *Muthu* v. *Chidambara* (1893) 3 M.L.J., 261; *Reverend Gabriel* v. *Valliammai* (1919) 10 M L.W., 491; (1920) M.W.N., 158; *Rathnathanni* v. *Somasundara* (1921) 41 M.L.J., 76; *Samuasari* v. *Anachiammal* (1925) 49 M.L.J., 554; *Kailasanatha* v. *Vadivanni* (1935) 58 Mad., 488.

(*c*) Manu, III, 54.

(*d*) See the opinion of Wallis and Munro, JJ., in their order of reference to the Full Bench in *Venkatakrishnayya* v. *Lakshminarayana* (1909) 32 Mad., 185, 186-187.

(d^1) *Sivanagalingam Pillai* v. *Ambalavana Pillai*, 1938, M.W.N. 161.

Payment to bride's father.

§ 99. Agreements to pay money to a father in consideration of his giving his daughter in marriage are immoral and opposed to public policy, although a marriage when performed in the Asura form is valid (*e*). Such agreements cannot be enforced where the money has not been paid nor can it be recovered back where it has been paid. Where the marriage has not taken place, the money paid under such an illegal agreement can be recovered back (*f*). Where under the form of an Asura marriage the parents contracted for maintenance to be paid to themselves in consideration of giving their daughter to an ineligible suitor, the Allahabad High Court held that the agreement for maintenance was contrary to public policy and could not be enforced It was not contended, however, that the marriage itself was invalid (*g*).

Is Asura marriage valid?

Where consideration has been paid to the father or guardian of a girl for giving her in marriage, Courts have held it to be not merely a valid marriage but a valid Asura marriage The *sale* of one's daughter is as much immoral and opposed to public policy as *the agreement* for the sale of one's daughter in marriage, whether the question is approached from the standpoint of Hindu law or on grounds of justice, equity and good conscience or with reference to s. 23 of the Indian Contract Act. The Smritis have clearly prohibited and declared that such marriages are sales of one's offspring (*h*). Such contracts with the father are also opposed to the Hindu conceptions of morality (*i*). Asura marriages have been upheld, not as a result of any family or local custom but as recognised by Hindu law. The latter however forbids them and any custom of that description would, on the plainest grounds, be immoral and opposed to public policy and to statute. If the agreement for sale is invalid in law, the completed sale itself cannot be valid. To give the illegal bargain just so much validity as is necessary to convert it into a valid Asura marriage, does not appear to proceed upon any sound principle. For an Asura

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(*e*) *Venkatakrishnayya* v *Lakshminarayana* (1909) 32 M., 185, FB, overruling 13 Mad, 83 (S. 23, Ind. Con Act), *Dholidas* v. *Fulchand* (1898) 22 Bom., 658, *Gulabchand* v *Fulbai* (1909) 33 Bom, 411, *Devarayan Chetti* v *Mutturaman* (1914) 37 Mad, 393, *Subbaraju* v. *Narayanaraju* (1926) 51 M.L J, 366, 372

(*f*) *Gulabchand* v *Fulbai* (1909) 33 Bom, 411, *Srinivasa Iyer* v. *Sesha Iyer* (1918) 41 M., 197.

(*g*) *Baldeosahai* v *Jumna Kunwar* (1901) 23 All, 495.

(*h*) Manu, III, 51, 52, 54, IX, 98, 100, Apas., II, 6, 13.

(*i*) See the opinion of the referring judges, Wallis and Munro, JJ., in *Venkatakrishnayya* v. *Lakshminarayana* (1909) 32 Mad., 185, 187.

marriage is only a marriage by sale in form and in substance and it can be valid as an Asura marriage, that is, as a marriage by sale only if the sale were valid. But as the sale is invalid, it cannot be a valid Asura marriage which is a contradiction in terms. But the marriage itself is perfectly valid, when once the marriage rites are completed, though the sale of the daughter is invalid. On principle, the payment of money as consideration for giving the girl in marriage does not affect its validity. The logical conclusion therefore appears to be that while a marriage which purports to be an Asura marriage is a valid marriage, it cannot be valid as a marriage by sale, that is, as an Asura marriage. It can only be treated as the gift of a daughter in marriage in the Brahma form; for the father had both the intention and authority to give her in marriage and gives her accordingly, and by the rites, the relation of husband and wife is created and there is no legal defect in the marriage. The breach of duty on the part of the father or guardian can affect the giver only (*j*) but neither the taker nor the girl given. Neither the payment nor receipt of money can, as against her, operate a sale of her; for it would be a nullity.

This view receives support from the analogous case where the natural father of a boy receives consideration for giving him in adoption. The payment does not affect the validity of the adoption. As Subramania Aiyar, O.C.J., said, "to lay down that the adopted son's status itself would be affected thereby, would be to confound two transactions which, in the eye of law, are independent of each other, since the transaction of the gift and acceptance which affect the status of the son is clearly separable from the agreement or payment which the law prohibits" (*k*).

§ 100. Marriage is one of the necessary *samskaras* or religious rites for all Hindus, whatever the caste, who do not desire to adopt the life of a perpetual Brahmachari or of a Sanyasi. Of course there has never been any doubt as to its being a necessary *samskara* for a Hindu woman of any caste (*l*). While marriage is according to Hindu law a

Marriage a necessary samskara.

(*j*) Compare Mit, I, XI, 10.

(*k*) *Murugappa Chetti* v. *Nagappa* (1906) 29 Mad., 161, 164; *Kothandaramareddi* v. *Thesureddiar* (1914) 27 M.L.J., 416, *Subbaraju* v *Narayanaraju* (1926) 51 M.L.J, 366.

(*l*) *Gopalakrishnan* v. *Venkatanarasa* (1914) 37 Mad., 273 F.B, approving *Kameswara Sastri* v. *Veeracharlu* (1911) 34 Mad., 422 (where there is a full discussion of the subject by Krishnaswami Aiyar, J.) overruling *Govindarazalu* v. *Devarabhotla* (1904) 27 Mad., 206. *Srinivasa Iyengar* v. *Thiruvengadathiengar* (1915) 38 Mad, 556, *Sundrabai* v. *Shivnarain* (1908) 32 Bom., 81; *Debilal Sah* v. *Nand Kishore Gir* (1922) 1 Pat., 266.

sacrament, it is also a civil contract, which takes the form of a gift in the Brahma, a sale in the Asura, and an agreement in the Gandharva (*m*).

Betrothal

§ 101. Marriage therefore is not to be confounded with betrothal. The one is a completed transaction; the other is only a contract. Manu says, "Neither ancients nor moderns who were good men have ever given a damsel in marriage after she has been promised to another man" (*n*). But Narada and Yajnavalkya both admit the right of the father to annul a betrothal to one suitor, if a better suitor presents himself: and either party to the contract is allowed to withdraw from it, where certain specified defects are discovered (*o*). Narada states that a man, who withdraws from his contract without proper cause, may be compelled to marry the girl even against his will (*p*). But it is now settled by decisions that a contract to marry will not be specifically enforced (p^1).

Not specifically enforceable.

Damages for breach.

Where the parties to a contract to marry are *sui juris*, an action for damages for breach of contract by the man or the woman will of course lie. Where the marriage contract is entered into on behalf of minors, Courts have generally awarded damages for breach of contract (*q*). It is well settled that a marriage brocage contract or an agreement to remunerate or reward a third person in consideration of negotiating a marriage is contrary to public policy and cannot be enforced (*r*). An agreement to pay a sum of money to

Marriage brocage.

(*m*) *Muthuswami Mudaliar* v *Masilamani* (1910) 33 Mad., 342 at 355

(*n*) Manu, IX, 99.

(*o*) Narada, XII, 30-38, Yajn, I, 65, 66, Vas, cited Dig, II, 174-175, Katyayana, cited Dig, II, 177, 178

(*p*) Narada, XII, 35.

(p^1) *Umed* v *Nagindas* (1870) 7 Bom., H C.O C., 122, *Nowbut* v. *Mt. Lad Kooer* 5 N W.P, 102, *Re Gunpat Narain Singh* (1876) 1 Cal, 74, *Karibassaka* v. *Karibassana* 3 Mysore, 153.

(*q*) *Umed* v *Nagindas* (1870) 7 B H C O C J, 122 (the agreement being for payment of consideration was invalid as contrary to public policy), *Re Ganpat Narain Singh* (1876) 1 Cal, 74, *Mulji Thackersey* v. *Gomati* (1887) 11 Bom., 412, *Purushotamdas Tribhavandas* v. *Purushothamdas* (1897) 21 Bom., 23, *Kandaswami* v. *Kanniah* (1924) 46 M L J., 366, *Balubai Hiralal* v. *Nanabhai* (1920) 44 Bom, 446 (where damages were not awarded because pending suit, both the plaintiffs died). The plaintiff bridegroom was himself party to the contract both in 7 B H.C O C J, 122 and in 21 Bom., 23; *Atma Ram* v. *Bankumal* (1930) 11 Lah., 598 (antenatal betrothal of children invalid).

(*r*) *Dulari* v. *Vallabadas Pragchi* (1889) 13 Bom., 126, *Vaithianatham* v. *Gangaraju* (1894) 17 Mad., 9, *Dholidas Ishwar* v. *Fulchand* (1898) 22 Bom, 658; *Gulabchand* v. *Fulchand* (1909) 33 Bom., 411; *Hermann* v. *Charlesworth* (1905) 2 K.B., 123 C.A.

a father in consideration of giving his daughter in marriage is equally opposed to public policy and invalid (*s*). Money paid to a father or brother under such an agreement cannot, however, be recovered when once the marriage takes place (*t*): but if the marriage is not performed, it can be recovered (*u*).

Recovery of expenses.

Where there is a breach of contract or withdrawal, the Mitakshara says that, whatever is expended on account of the espousals by the intended bridegroom or by his father or his guardian must be repaid in full with interest by the affiancer to the bridegroom (*v*). There was no doubt that such a betrothal was treated as a binding promise by Yajnavalkya and by the Mitakshara (*w*). But the father was not bound to perform the agreement if there was just cause or if a preferable suitor was available. Accordingly it was held in a Bombay case that where a more eligible suitor was available, there was no cause of action either for breach or procuration of the breach by a third party (*x*). In general, no contract by which third parties, whether parents or guardians or

Agreement revocable.

(*s*) *Dholidas Ishwar* v. *Fulchand* (1898) 22 Bom., 658, *Baldeo Sahai* v. *Jamna Kunwar* (1901) 23 All, 495, *Venkatakrishnayya* v. *Lakshminarayana* (1909) 32 Mad, 185; *Srinivasa Aiyar* v. *Sesha Aiyer* (1918) 41 Mad, 197 (brother), *Baldeo Das* v. *Mohamaya Prasad* (1911) 15 C.W.N, 447 (dissenting on the point from 1 C L.J., 261); see also *Pran Mohandas* v. *Hari Mohan Das* (1925) 52 Cal., 425; *Atma Ram* v. *Ranhumal* (1930) 11 Lah, 598, 610, *Ram Sumram Prasad* v *Gobindas* (1926) 5 Pat, 646, 673, 704, the dictum of Bucknill, J. in 5 Pat., 646 at 704 that an agreement to pay money to parents or guardians of a bride or bridegroom in consideration of their consenting to the betrothal is not necessarily opposed to morality or public policy, is a distinction without a difference.

(*t*) *Venkatakrishnayya* v *Lakshminarayana* (1909) 32 Mad. 185 F.B., *Dholidas Ishwar* v. *Fulchand* (1898) 22 Bom., 658, 665

(*u*) *Dholidas Ishwar* v. *Fulchand* (1898) 22 Bom., 658; *Ramchand Sen* v. *Audaito Sen* (1884) 10 Cal., 1054, see the opinion of the referring judges in *Venkatakrishnayya* v. *Lakshminarayana* (1909) 32 Mad., 185, 187; *Anandiram Mandal* v. *Goza Kachori* (1918) 27 C L J, 459; *Srinivasa Iyer* v. *Sesha Iyer* (1918) 41 Mad., 197, of course, antenuptial contracts by a father to settle property on his daughter are perfectly valid. *Pranmohandas* v. *Harimohan* (1925) 52 Cal, 425.

(*v*) Mit., II, xi, 28; *Balubhai Hiralal* v. *Nanabhai* (1920) 44 Bom, 446 (return of jewels presented); *Mulji Thackersey* v. *Gomti* (1887) 11 B, 412 (expenses and jewels); *Umed* v. *Nagindas* (1870) 7 Bom., H.C O.C J, 122, *Rambhat* v *Timmayya* (1892) 16 Bom., 673 (return of jewels presented).

(*w*) Yajn., I, 65 Mit., II, XI, 26-27; Narada, XII, 30-32.

(*x*) Per Beaman, J., in *Khimji Vassonji* v. *Narsi Dhanji* (1915) 39 Bom., 682, 714 and *Jekisondas Harkisondas* v. *Ranchoddas* (1917) 41 Bom., 137, 141, *Balubhai Hiralal* v. *Nanabhai* (1920) 44 Bom., 446 (for good cause, it may be withdrawn); *Kandaswami Naidu* v. *Kanniah* (1924) 46 M.L.J., 366 (where it is assumed that, even if under Hindu law there was just cause for revocation, one is liable according to the Mitakshara in damages. This is a misconception).

strangers, have a pecuniary interest in bringing about a marriage will be enforced (*y*). In *Devarayan Chetty* v. *Mutturaman Chetty* (*z*), it was held that an agreement between A and B that B's daughter shall marry A's son and that if she fails to do so, B shall pay a sum of money to A, is trafficking in marriage and contrary to public policy. On this view, it would follow that even in the absence of a stipulation by way of penalty or liquidated damages, the contract of betrothal by parents on behalf of minor children would be unenforceable, as, in the case of a breach of contract, they have to pay damages and as, therefore, they have a pecuniary interest in bringing about the marriage (*a*). If the Hindu law on the matter were to be followed, the contract of betrothal would be binding subject to just cause for revocation: but as the Hindu law of contracts is, under the Civil Courts Acts, no longer in force, a contract of betrothal can only be governed by the general law. The rule of Hindu law regarding recovery of money or jewels presented before marriage or of expenses incurred, apart from any question of the parent's betrothal being a valid contract, is certainly enforceable as a rule of justice, equity and good conscience (*b*). But, to award damages for breach of contract, except where the parties intending to marry one another are themselves parties to the contract and are competent to contract, appears open to the objection, that there can be no enforceable contract to marry on behalf of minor children. As the betrothal is revocable where a better match is available, as the interests of the minor children are the paramount consideration and as the old rule as to detention of an affianced daughter, being a punishable offence, is certainly not a rule of law now, the betrothal by parents cannot be held to be binding in any case (*b*[1]).

Whether damages recoverable.

Guardianship in marriage.

§ 102. As regards the persons who are authorised to give a girl in marriage, Narada says: "A father shall give his daughter in marriage himself, or a brother with the father's consent, or a grandfather, maternal uncle, kinsmen, or rela-

(*y*) *Pitamber Ratansi* v *Jagjivan Hansraj* (1889) 13 Bom., 131; *Devarayan Chetty* v *Mutturaman Chetty* (1914) 37 M, 393

(*z*) (1914) 37 Mad, 393.

(*a*) In 7 B H.C (O C J.), 122, the agreement was clearly illegal as there was consideration. In 21 Bom, 23, the question was not raised and it was doubted in 37 Mad., 393.

(*b*) Mit., II, xi, 28-30.

(*b*[1]) But see *Venkata Narasimha* v. *Govinda Krishna* (1937) M.W.N., 1274.

tives. In default of all these, the mother, if she is qualified; if she is not, the remoter relations should give a girl in marriage. If there be none of these, the girl shall apply to the king, and having obtained his permission to make her own choice, choose a husband for herself" (*c*). According to Yajnavalkya, the order of guardianship for giving the girl in marriage is father, paternal grandfather, brother, kinsmen (sakulya) and mother provided the giver is free from defects like madness (*d*). This is the rule for the Mitakshara school. According to the Bengal school, the father, paternal grandfather, brother. sakulya, maternal grandfather, maternal uncle and mother, if of sound mind, are entitled in succession to give the girl in marriage (*e*).

The order of guardianship laid down in the texts for other purposes is different (*e*[1]), and the mother ranks next to the father. This divergence has been explained by holding that the order of guardianship laid down for giving the girl in marriage does not refer to the legal right of disposal, but to the ceremonial competence of those who are to dispose of her and are directory and not obligatory. The right will ordinarily be regarded as an incident of the general power of guardianship, unless it be expressly vested by law in some one other than the natural guardian. In accordance with this view, the Madras High Court has held that where the mother was the proper personal guardian of her minor daughter, she was entitled to select a bridegroom for her and give her in marriage, even though the father of the deceased husband and other male relatives had not improperly or wrongly refused to perform the marriage, and to recover the reasonable expenses of the marriage from the joint family property (*f*). Where a father had abandoned his wife and daughter, the mother would be capable of giving away her daughter (*g*).

(*c*) Narada, XII, §§ 20-22; Vishnu, XXIV, 38, 39, Smritichandrika, Samskarakanda, 223 (Mysore edn.); Samskara Mayukha, 66 (Gharpure's edn.); see the interpretation of this text in *Bai Ramkore* v. *Jamnadas* (1913) 37 Bom., 18, by Chandavarkar, J.

(*d*) Yajn., I, 63.

(*e*) Raghunandana, Udhvahatatva, II, 70; Banerjee, M & S, 5th edn., 49.

(*e*[1]) See Ch. VI.

(*f*) *Ranganaiki* v. *Ramanuja* (1912) 35 Mad., 728. See also *Bai Ramkore* v. *Jamnadas* (1913) 37 Bom., 18; *Mt. Jiwani* v. *Mula Ram* (1922) 3 Lah., 29; *In the matter of Manibai* (1914) 15 M.L.T., 146. *Mt. Indi* v. *Ghania* (1920) 1 Lah., 146.

(g) *Baee Rulyat* v. *Jeychund*, Bellasis, 43; *Khushalchund* v. *Bai Mani* (1887) 11 Bom., 247; *Ghazi* v. *Sukru* (1897) 19 All., 515.

But of course, in no other circumstances would a marriage contract entered into during the father's lifetime be binding without his consent (*h*). And the maternal grandfather has a right of disposal superior to that of the stepmother (*i*). Even before this decision the High Court of Madras refused to allow a divided uncle to dispose of his niece in marriage without consulting her mother. Where the mother was at once the guardian of the girl, and the legal possessor of the estate out of which the marriage expenses must be defrayed, they considered that she was entitled to be consulted on the one hand, and the male relations on the other, but that the Court would probably interfere to compel the marriage of a girl to a suitable husband, if chosen by either party, and rejected without reasonable cause by the other (*j*). Where the paternal relations refuse to act or have disqualified themselves from acting, the maternal relations of a girl can select a bridegroom for the girl and arrange for her marriage (*k*). Where the guardian is about to effect a marriage which is obviously injurious to the girl, the Court has power to interfere, especially where his conduct is actuated by improper or interested motives. Such interference, however, would very rarely, and only in extreme cases, be allowed, where the guardian was the father (*l*).

Interference of Court.

§ 103 The above rules are of importance so long as the marriage rests in contract, and an attempt to give away a girl in marriage by a person not authorised to do so would be overruled by the Court upon a proper application by the person in whom the right was reposed (*m*). A very different question arises where the marriage has actually been celebrated. Even where the marriage is in contravention of an injunction or order of a Court obtained at the instance of the guardian having the preferential right, nevertheless, it has been held that the marriage, when once solemnised,

(*h*) *Nundlal* v *Tapeedas* 1 Bor, 14 (16). *Nanabhai* v *Janardhan* (1888) 12 Bom, 110, *Shenkappa Setiapa* v *Revana* 17 Mysore, 33

(*i*) *Ram Bunsee* v. *Soobh Koonwaree* 7 W R, 321.

(*j*) *Namasevayam* v *Annamma* 4 Mad, H C, 339, *Mt Ruliyat* v. *Madkowjee* 2 Bor, 680 (739); *Kumla Buhoo* v. *Muneeshunkur, ib*, 689 (746)

(*k*) *Kasturi* v *Chiranji Lal* (1913) 35 All, 265, *Kasturi* v *Panna Lal* (1916) 38 All, 520, in 35 All, 265, which is referred to in 38 All., 520, the girl was 16 years old and a major under Hindu law at the time of marriage and she was given in marriage by her maternal relations against the wish of her paternal relations who desired to make a profit by marrying her to a one eyed man *Khanchand* v. *Raushan Das* A I R, 1932 Lah, 129.

(*l*) *Shridhar* v *Hiralal* (1888) 12 Bom, 480.

(*m*) *Khushalchand* v. *Bai Mani* (1887) 11 Bom., 247, 253.

is valid (*n*). The principle running through these cases is that the rules regulating the order of guardianship in marriage are directory and not mandatory and therefore a breach of them does not render the marriage invalid. Where a minor girl is a ward under the Guardians and Wards Act, the Court has no right to force a selection of a bridegroom on the minor girl against her wishes and against the wishes of her personal guardian (*o*). The right of a parent to arrange for the marriage of his children is personal to him which he cannot in his lifetime delegate to another (*p*). In *Venkatacharyalu* v. *Rangacharyalu* (*q*), where a mother caused her daughter's marriage to be duly solemnised without her husband's consent and the purohit was falsely informed by her that her husband's consent had been given, and where, nevertheless, it was found that she acted bonafide in the interests of her daughter desiring to secure a suitable husband, the Madras High Court held that the marriage was valid and irrevocable. They laid down that (1) where there is a gift by a legal guardian and the marriage rite is duly solemnised, the marriage is irrevocable and that (2) where a girl is abducted by fraud or force and married, and there is no gift either by a natural or legal guardian, there is a fraud upon the policy of the religious ceremony and there is therefore no valid religious ceremony (*r*). In a suit for a declaration that a marriage is invalid which can be brought in the ordinary Civil Court, the Court may in proper cases not only declare the marriage null and void but also restrain the person alleging himself entitled to the rights of a husband from enforcing any claim to the custody or person of the woman (*s*).

(*n*) *Khushalchand Lalchand* v. *Bai Mani* (1887) 11 Bom., 247; *Bai Diwali* v. *Moti Karson* (1898) 22 Bom., 509; *Gajja Nand* v *The Crown* (1921) 2 Lah., 288, *Brindabun Chandra Kurmokar* v. *Chundra Kurmokar* (1886) 12 Cal., 140.

(*o*) *Salubai Ganesh* v. *Keshavarao Vasudeo* (1932) 56 Bom., 71, 76. As to the powers and duties of a court in dealing with the marriage of minors under the Guardians and Wards Act, see also *Monjan Bibi* v. *District Judge, Birbhum*, (1914) 42 Cal., 351.

(*p*) *Atma Ram* v. *Banku Mal* (1930) 11 Lah., 598.

(*q*) (1891) 14 Mad., 316, following Norman, J, in *Aunjona Dasi* v. *Prahlad Chandra Ghose* (1871) 6 Beng. L.R., 243, 254.

(*r*) *Bai Rulyat* v. *Jayachand*, Bellasis, 43; *Madhoosoodhan* v. *Jaduo Chander*, 3 W.R., 194; *Brindabun Chandra Kurmokar* v. *Chandra Kurmokar* (1886) 12 Cal., 140, *Khushalchand Lalchand* v. *Bai Mani* (1887) 11 Bom., 247; *Bai Diwali* v. *Moti Karson* (1898) 22 Bom., 509; *Ghazi* v. *Sukru* (1897) 19 All., 515, *Ankamma* v. *Bamaneppa* (1937) M.L.J., 192; *Appibai* v. *Khimji Cooverji* (1936) 60 Bom., 455, 468. A marriage would also be invalid if the girl was abducted by force and fraud and married against her will when she is a major under Hindu law. *Cf. Scott* v. *Sebright*, 12 P.D., 21.

(*s*) *Aunjoona Dasi* v. *Prahlad Chundr*-
253.

Infancy.

§ 104. While, in Vedic times, adult marriage appears to have been common, in the Sutra and later periods, child marriage, so far as the bride was concerned, became normal; but the husband was as before an adult. Girls were married between the ages of 8 and 12 (*t*). Three years after she becomes marriageable, a girl is at liberty to choose a husband for herself (*u*). For all practical purposes, this means the attainment of majority under Hindu law, which is the completion of the fifteenth year as interpreted by the Bengal school, and the completion of the sixteenth year as interpreted by the Mitakshara School (*v*). The age of majority under Hindu law continues to be the same in matters of marriage even after the Indian Majority Act (IX of 1875).

Infant marriages have been common enough in all castes and in all parts of India. But the recent Child Marriage Restraint Act (XIX of 1929) which is the law of British India for all persons, has made it punishable for a male above eighteen years of age to marry a girl below fourteen or for persons to perform, conduct or direct the marriage of males under eighteen, and of females under fourteen. Such marriages, though restrained, are not invalid (v^1). Children of any age can according to the Hindu law be validly married. The marriage of Hindu children is therefore the result of an arrangement between the parents and the children can exercise no volition (*w*).

Physical or mental capacity.

§ 105. The marriage of a lunatic, an idiot or an impotent person is invalid under the Hindu law (*x*). The decision of the Privy Council in *Maujilal* v *Chandrabati* (*y*) so far

(*t*) Manu, IX, 94, Gaut, XVIII, 21, Vas, XVII, 71, Baudh, IV, 1, 11, according to Kautilya's Arthasastra, the age of discretion was 12 for girls and 16 for boys, III, 3, 1, 2, Shamasastri, 190.

(*u*) Manu, IX, 90, Vishnu, XXIV, 40, she can choose a husband after three seasons or years. Vas, XVII, 68, Baudh, IV, 1, 14.

(*v*) Nar, 1, 35, Dig, I, 202, Kulluka's gloss on Manu, VIII, 27; Vyav Dharp, I, 591, Vyav Chandrika, II, 590

(v^1) *Ram* v *Chand* [1937] 2 Cal., 764

(*w*) *Purshotamdas Tribhovandas* v *Purshotamdas Mangaldas* (1897) 21 Bom, 23, 27, 30

(*x*) "A damsel betrothed to one devoid of character and good family or affected by impotency, blindness and the like or an outcaste or an epileptic or an infidel or incurably diseased or to one who is an ascetic or when she has been married to a sagotra, should be taken away from him and married to another" Vasishtha cited in J. C. Ghose, H.L.I, 850. "Madness, being an outcaste, leprosy, impotence, being both of the same gotra, being devoid of sight and hearing and being afflicted with epilepsy, these are stated to be the blemishes in a suitor as also a maiden." Katyayana cited in Parasara Madhavivam [translated 1 M.L.J. (reprint), 664].

(*y*) (1911) 38 I.A., 122, 38 Cal., 700.

as it goes, proceeds on the view that insanity at the time of marriage when it is clearly made out, makes the marriage invalid. In *Venkatacharyulu* v. *Rangacharyulu* (*z*), it was observed that a marriage is "not a mere contract in which a consenting mind is indispensable. The person married may be a minor or even of unsound mind, and yet, if the marriage rite is duly solemnised, there is a valid marriage". This, in so far as the lunatic is concerned, appears to be erroneous. That judgment itself recognised that the mere performance of the marriage rites is inoperative, when there is fraud or force, to make a marriage valid. Because there can be a marriage of children, it is erroneous to assume there can be a marriage of insane persons. In the one case, normal mental capacity is soon reached; in the other case, it is a very abnormal condition which may persist indefinitely. It would be a gross breach of duty on the part of a parent or guardian to marry his infant son or daughter to an insane person. Nor can he have power to give his insane child in marriage. Moreover, authoritative commentators are inclined to the view that impotent persons, lunatics and idiots cannot contract a legal marriage. The text in Manu runs as follows: "If the impotent and the rest should somehow or other desire to take wives, the offspring of such among them as have children is worthy of a share" (*a*). Kulluka's gloss clearly says that the impotent and the rest have no capacity to marry. 'The rest' includes idiots and lunatics as well as outcastes, lame men and those born blind, deaf or dumb. Except impotent persons, lunatics and idiots, the others mentioned above, however, have physical and mental capacity for marriage and their marriages will therefore be valid. Medhatithi inclines to the view that impotent persons and lunatics are not entitled to marry, as they are not entitled to the performance of any religious rites. But he considers that the blind, the lame and the sterile, who is not impotent, are fit for ceremonies and could marry (*a*[1]). Sarvajna Narayana also considers that an impotent person cannot contract a legal marriage (*b*). The commentators generally explain Manu's text as applicable to cases where the disqualification arises after marriage. According to the texts of Yajn. I, 52

Marriage of lunatic invalid.

Also of impotent person.

(*z*) (1891) 14 Mad., 316, 313.

(*a*) Manu, IX, 203.

(*a*[1]) Medhatithi on Manu IX, 203. Jha, Vol. V, 167-168.

(*b*) Kulluka's comment on Manu, IX, 203: "The impotent and the rest have no capacity to marry" ('*Kleebadayah Vivahanarhah*'. See note to Dr. Buhler's trans. S.B.E., Vol. XXV, 373).

and 55, as interpreted in the Mitakshara (*c*) neither an impotent man nor a sexless woman can marry. The provision as to the inheritance of the aurasa issue of lunatics and idiots or impotent persons does not necessarily mean that the defects were congenital or that they were present at the time of marriage (*d*). Accordingly, the Smriti Chandrika, the Parasara Madhaviyam, the Madana Parijata and the Vaidyanatha Dikshitiyam lay down that lunacy, idiocy and impotency are disqualifications for marriage (*e*). The exclusion from inheritance is one thing and the disqualification for marriage is quite a different thing. There is certainly no clear rule of Hindu law that a person who is, at the time of marriage, a lunatic, idiot or impotent man, can validly marry. In the absence of any rule of Hindu law, principles of justice, equity and good conscience must be applied (*f*) and this is in consonance with the injunction in Manu IX, 89 which limits the power of the father." The maiden though marriageable, should rather stop in her father's house until death, than that he should ever give her to a man destitute of good qualities" (*g*). Though marriage is certainly a sacrament, it is also either a contract between the parties or a gift by the parent or guardian.

Just as a marriage within the prohibited gotra or degrees or a marriage brought about by fraud or force is altogether invalid, notwithstanding the performances of the marriage rites, so too, a gift and acceptance by parent or guardian of a lunatic, an idiot or an impotent man being invalid, the performance of marriage rites does not constitute the relation of husband and wife. In the one as in the other, there is a fraud on the policy of the marriage ceremony. This conclusion is in accordance with the clear general principle of Hindu law that marriage is for the perpetuation of one's

(*c*) "Woman"—to prohibit marriage with a sexless woman, the womanhood must be examined (Vidyarnava's trans., 93) "The bridegroom should be one whose manhood has been tested' Yajn., I, 55 (Mandlik, 168).

(*d*) The impotent, the lunatic and the idiot are forbidden to have adopted sons The Kshetraja is now prohibited Vijnanesvara himself admits that the impotent man cannot have an aurasa son (Mit., II, X, 11).

(*e*) Smritichandrika, Samskarakanda, 211, 221 (Mysore edn.), Parasara Madhaviyam [trans. in 1 M.L.J (journal) 664], Madana Parijata, 142 (Calcutta edn.), Vaidyanatha Dikshitiyam, trans. in 6 M.L.J. (journal), 465.

(*f*) *Kenchava* v. *Girimallappa* (1924) 51 I.A., 368, 48 Bom., 569.

(*g*) Manu, IX, 89. The Viramitrodaya construes the word '*Gamya*' as being free from defects. That the maiden is to be free from incurable diseases is also laid down in Yajn., I, 55. In Yajn., I, 63, where a maiden is given a choice, she is to select an eligible bridegroom.

line. It is therefore necessary that the bride and the bridegroom should be physically capable of consummating the marriage if adults, at the time of marriage, or if children, when they would be adults in the course of nature. The exact degree of mental or physical incapacity and whether it is incurable or not, are important considerations in determining the question, whether the disqualification has been clearly made out; and as to impotency, the rule of English law, that third persons have no right to insist upon an enquiry and that the validity of the marriage cannot be impeached on that ground, after the death of one of the parties, appears to be a sound principle of justice, equity and good conscience, properly applicable to India (*h*). Where archaic rules of Hindu law very plainly transgress the rules of justice, equity and good conscience, they cannot be enforced (*i*). The marriage of an impotent person, not being merely sterile, or of a lunatic or of an idiot clearly tends to promote immorality and may also be regarded as contrary to public policy.

Prohibited degrees of marriage.

§ 106. In the early ages, the prohibitions against marriages within the gotra or within certain degrees of kinship which are now so familiar were probably not firmly established. From the Satapatha Brahmana, for instance, it appears that the prohibition extended only to the third or fourth degree (*j*). But, by the time of the Grihya Sutras, the rule had come into force that a man should take for his wife one who is not of the same gotra or who is not a sapinda of his mother (*k*).

(*h*) *Hancock* v. *Peaty* L.R., I, P. & D., 335 *A* v. *B* and another L.R., 1, P. & D., 559. *Newbould* v *Attorney General* (1931), P., 75. The case in *Purshotamdas* v. *Bai Mani* (1896) 21 Bom., 610, does not decide that an eunuch can validly marry. It only decides that an impotent person cannot sue on the ground of her own impotence on the authority of the English cases. The rule however is not absolute. 10 Hals. 2nd edn., para 937. 16 Hals. 2nd edn., para 848 note (*e*).

(*i*) Sir G. Banerjee considers that the marriage of idiots, lunatics and eunuchs cannot be valid, M & S, 5th edn., p. 40. Ghose, H.L.I., 784 points out that idiots, lunatics and others cannot take part in the vedic ceremony of marriage and that such marriages are invalid. In *Kanahi Ram* v. *Biddhya Ram* (1878) 1 All., 549, where impotency was not established, the question whether under Hindu law, marriage could be dissolved on the ground of bridegroom's impotency was raised but was not decided. In *Deo Kishen* v *Budh Prakash* (1883) 5 All., 509 F.B., there is a *dictum* at p. 513 based upon a passage in an earlier edition of this work, that insanity does not disqualify a person for marriage; but see *Moujilal's* case (1911) 38 I.A., 122; 38 Cal., 700.

(*j*) Satap. Brah., I, 8, 3, 6; S.B.E., Vol. XII, 238; Vedic Index, I, 475.

(*k*) Gobhila, III, iv, 4 and 5; S.B.E., Vol. XXX, 82. Hiranyakesin, I, 19, 2; S.B.E., Vol. XXX, 186; see also Jolly, L & C, 137, 138.

According to Gautama and Vasishtha, the prohibited degrees were four on the mother's side and six on the father's side; and according to Vishnu, Yajnavalkya and Narada, five on the mother's side and seven on the father's side (*l*). All these writers add the restriction that the bride and the bridegroom must not be of the same gotra or pravara. The difference in the statement of the rule was evidently due to the fact that the reckoning was, in the former case, exclusive, and in the latter, inclusive, of the bride or the bridegroom. Manu says: "A damsel who is neither a sapinda on the mother's side nor belongs to the same family on the father's side is recommended to twice born men for wedlock and conjugal union" (*m*), and that the sapinda relationship ceases with the seventh person (*n*). Distinguishing between cognates and agnates on the question of degrees, Yajnavalkya enjoins that "a man should marry a girl . . . . who is not a sapinda of him . . . . and who is descended from one whose gotra and pravara are different from his and who is removed five degrees and seven degrees on the mother's and father's side respectively" (*o*).

§ 107 In a well known passage, Vijnanesvara, commenting upon the above text of Yajnavalkya, defines sapinda relationship as arising between two people through their being connected by particles of one body, expressly departing from the previous tradition (*p*). Prior to Vijnanesvara, sapindaship meant only connection by funeral oblations and as a man's six immediate ancestors were either the recipients of undivided or divided oblations, the relationship was confined to members of the same agnatic family (sagotras). The text of Manu that sapinda relation ceases with the seventh person was explained by Medhatithi in that sense and as Kulluka

Older view of 'sapinda'.

(*l*) Gaut., IV, 3, 5, S B E, Vol. II, 196, 197, Vas., VIII, 1, 2; Apas., II, v, 11, 16, S B E, Vol II, 127, Vishnu, XXIV, 10, Yajn, I, 52, 53, Narada, XII, 7.

(*m*) Manu, III, 5 Visvarupa and Kulluka however apply the seven degrees to relations through mother also.

(*n*) Manu, V, 60, the context shows that it is sagotra sapinda relationship that is referred to.

(*o*) Yajn, I, 52, 53

(*p*) For the oblation theory of his predecessors who follow Manu and Baudhayana see, for instance, Visvarupa's Balakrida, 62, 63 (Trivandrum edn.); Medhatithi's comment on 'sapinda' in Manu, V, 60, Nilakantha in his 'Samskara Mayukha' says that Vijnanesvara abandoned the theory of connection through the rice-ball offering and accepted the theory of transmission of constituent atoms. [Samskara Mayukha, Gherpure's edn., 50, translated in *Lallubhai* v. *Mankuverbai* (1876) 2 Bom., 388, 426].

points out, it did not include the maternal grandfather and the rest, though they were connected by pinda (*q*). At the same time it was settled that where there are two branches of sagotra descendants from a common ancestor, they are sapindas and the 'degrees are to be counted from that person from whom the two lines bifurcate' (*r*). Evidently the word 'sapinda' as understood before Vijnanesvara's time did not cover all cases of persons who according to usage had come to be recognised as heirs or to be within prohibited degrees for marriage. And there were no definite rules regarding cognates. Vijnanesvara therefore had to discard the old meaning of the word 'sapinda' on the ground that it did not cover all cases for which the law had either provided or should, in his view, provide. On the older meaning of the word 'sapinda', he considered that there would be no sapinda relationship in the mother's line or in the brother's sons and the rest (*s*). He expressly says: "the sapinda relationship does not depend upon the relationship of the deceased through the offering of pindas and his getting it or not, because such a definition is open to the objection of not including every case" (*t*). Dr. Jolly considers that the new etymology of connection by particles of one's body which Vijnanesvara introduced was thoroughly artificial (*u*). It was certainly original; but the revolution which he effected thereby both in the mode of approach and in the rules of Hindu law has been of abiding value and has had far-reaching consequences. While the rules which he laid down were

(*q*) Manu, V, 60, comments by Medhatithi and Kulluka; Dayabhaga, XI, 6, 12-13

(*r*) See Medhatithi on Manu, V, 60, Jha's trans., Vol. III, part I, 74 and Smriti Sangraha (c. 900 A.D.) cited in the Nirnaya Sindhu and Dharma Sindhu and Balambhatti.

(*s*) Acharadhyaya, Vidyarnava's trans., 97. As to mother's line, they were only sapindas in the older sense of the man's mother. Gaut, XV 13.

(*t*) *ibid*, page 340 on Yajn., I, 254. The word in the Mit. is '*avyapakatvat*' (non-pervasion). Vijnanesvara probably thought that the sons of a man's father's maternal uncle or aunt as well as unmarried daughters of his agnates were not strictly covered by the word 'sapinda' meaning connection by oblations. His reference to brother's sons as not covered by the word in the older sense is more obscure as it is inconsistent with Medhatithi's explanation of 'sapinda' that two branches of agnates from a common ancestor are sapindas. To that extent, connection by oblation must have included not only the direct line of offeror and offeree, but also two lines of agnates offering pindas to one ancestor. The Balambhatti and Madanaparijata which fully accept Vijnaneswara's new definition explain the need for it (cited in Sarvadhikari, 2nd edn., 380-1, 477).

(*u*) Jolly, T.L.L., 171.

generally followed, his definition itself was not universally accepted (*v*).

Mitakshara definition of Sapinda.

§ 108. The passage in the Mitakshara runs as follows: "He should marry a girl who is non-sapinda with himself. She is called his sapinda who has particles of the body of some ancestor, etc., in common with him. Non-sapinda means not his sapinda. Such a one he should marry. Sapinda-relationship arises between two people through their being connected by particles of one body. Thus the son stands in sapinda relationship to his father because of particles of his father's body having entered his. In like manner stands the grandson in sapinda-relationship to his paternal grandfather and the rest, because through his father, particles of his grandfather's body have entered into his own. Just so is the son a sapinda relation of his mother, because particles of his mother's body have entered into his. Likewise the grandson stands in sapinda-relationship to his maternal grandfather and the rest through his mother. So also is the nephew a sapinda relation of his maternal aunts and uncles, and the rest, because particles of the same body (the maternal grandfather) (*v*[1]) have entered into his and theirs; likewise does he stand in sapinda-relationship with paternal uncles and aunts, and the rest. So also the wife and the husband are sapinda-relations to each other, because they together beget one body (the son). In like manner, brothers' wives also are sapinda-relations to each other, because they produce one body (the son) with those (severally) who have sprung from one body (*i e*, because they bring forth sons by their union with the offspring of one person, and thus their husband's father is the common bond which connects them). Therefore one ought to know that wherever the word sapinda is used, there exists between the persons to whom it is applied a connection with one body, either immediately or by descent."

Then after refuting certain objections to his explanation of the word 'sapinda', Vijnanesvara proceeds thus: "In the explanation of the word '*asapindam*' (non-sapinda, verse 52),

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(*v*) Aparaika [translated in 21 M L J. (journal), 314-317] and the Smritichandrika (Samskarakanda, Mysore edn, 180) though later than the Mitakshara, adhered to the older theory of 'sapinda' as connection by offerings. Madhava states both the views and requires that both the rules should be followed in the selection of a bride [Parasara Madhaviyam, Vol I, part ii, 59, trans in 1 M L J. (journal) 463]. See Jolly, T.L.L, 174.

(*v*[1]) The term 'paternal grandmother' in West and Buhler's transn. which is repeated in the cases is a mistake for 'maternal grandfather'. The context is quite clear Mit, Vidyarnava's trans. 94.

it has been said that sapinda-relation arises from the circumstance that particles of one body have entered into the bodies of the persons thus related either immediately or through transmission by descent. But inasmuch as this definition would be too wide, since such a relationship exists in the eternal circle of births, in some manner or other, between all men, therefore the author (Yajnavalkya) says:

Rules of limitation.

"Verse 53:—'After the fifth ancestor on the mother's and after the seventh on the father's side': On the mother's side in the mother's line, after the fifth, on the father's side in the father's line, after the seventh ancestor, the sapinda-relationship ceases; these latter two words must be understood; and therefore the word sapinda, which on account of its etymological import (connected by having in common), particles (of one body) would apply to all men, is restricted in its signification, just as the word *pankaja* (which etymologically means 'growing in the mud', and therefore would apply to all plants growing in the mud, designates the lotus only) and the like; and thus the six descendants, beginning with the son, and one's self (counted) as the seventh (in each case), are sapinda-relations" (*w*).

"In case of a division of the line also, one ought to count upto the seventh ancestor, including him with whom the division of the line begins (*e.g.*, two collaterals, A and B are sapindas, if the common ancestor is not further removed from either of them than six degrees), and thus must the counting of the sapinda-relationship be made in every case"(*x*). "Accordingly it is to be understood that the fifth from the mother is she who is in the line of descent from (any ancestor of the mother) upto the fifth ancestor, beginning with the mother, and counting her father, grandfather and the like. Similarly the seventh from the father is she who is in the line of descent from any ancestor upto the seventh ancestor, beginning with the father and counting his father and the like. Similarly (it is said): In marriage, two sisters, a sister and a brother and a brother's daughter and a paternal uncle, are taken to be two branches by reason of the descent of the two from a common ancestor (from whom

(*w*) Translated by West and Buhler, "Digest of Hindu Law", 3rd ed. (1884), Vol. I, p. 120, quoted in *Ramchandra* v. *Vinayek* (1914) 41 I.A., 290 at pages 300-301, 42 Cal., 384, *Lallubhai Bapubhai* v. *Mankuvarbai* (1876) 2 Bom., 388; *Umaid Bahadur* v. *Udoi Chand* (1880) 6 Cal., 119.

(*x*) Trans. by West and Buhler, cited in *Umaid Bahadur* v. *Udoi Chand* (1881) 6 Cal., 119 at page 125.

computation of the degrees is to be made among their descendants)" (*y*).

According to the Mitakshara, the rule of non-sapinda marriage applies to all classes, because sapinda relationship exists everywhere. Therefore, it applies to Sudras and others who may have no gotras of their own (*z*).

Two divisions of sapindas.

§ 109. Vijnanesvara's definition of sapinda relation and the rules he lays down for the limitation of sapinda relationship, as given in the Acharadhyaya (chapter on 'Established rules of conduct') are applicable not only to marriage but also to inheritance (*a*), for, he says expressly that 'one ought to know that wherever the word "sapinda" is used, there exists between the persons to whom it is applied a connection with one body, either immediately or by descent'. He defines the prohibited degrees within which a man or woman cannot marry; within those degrees are also to be found the heritable sapindas of the deceased owner, whether of the same family or of another family. Taking his comments in the Acharadhyaya and the Vyavaharadhyaya together, his scheme is perfectly clear and logical. He divides all sapindas into two categories, (1) samanagotra or sagotra sapindas and (2) bhinnagotra sapindas or bandhus. The sagotra sapindas are agnates within seven degrees of the common ancestor, for, he says, 'In this manner, upto the seventh, must be understood the succession of samanagotras' (*b*) and the bhinnagotra sapindas are cognates within five degrees of the common ancestor.

Limit of sagotra sapinda.

§ 110. The reasons for the limitation of seven degrees for sagotra sapindas and five degrees for bhinnagotra sapindas are obvious. For, 'one is the giver of the pinda, three, father, grandfather and great-grandfather are recipients of the pinda and three beginning with great-great-grandfather

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(*y*) Yajn, I, 52, 53 and Mit Acharadhyaya, Vidyarnava's trans, 110, Sarvadhikari, 2nd edn, 470-473, Ganapathi Iyer, 443; *cf.* Sarkar, H.L, 7th edn, 84

(*z*) Vidyarnava's trans of Acharadhyaya, 106. Mr. Colebrooke overlooked Vijnanesvara's definition in the Acharakanda and translated the word 'sapinda' as connected by funeral oblations—an error which was corrected by the Bombay High Court only in 1876 in *Lallubhai's* case.

(*a*) *Ramchandra Martand* v. *Vinayek V. Kothekar* (1914) 41 I.A, 290, 302, 303, 42 Cal, 384.

(*b*) Mitakshara, II, V, 5; the words '*Itvevam Asaptamat*' have not been translated by Mr. Colebrooke. See *Buddhasingh* v. *Laltu Singh* (1914) 42 I.A, 208, 218; 37 All, 604, 614, Jolly, T L L, 209-210.

are recipients of divided pindas (*lepas*)' (*c*). Or, as Vijnanesvara himself puts it, the first pinda is efficacious upto the fourth ancestor, the second pinda upto the fifth and the third pinda upto the sixth (*d*). As regards bhinnagotra sapindas, the reason for the limitation of five degrees was that, as a woman causes a change in the family, one had to offer oblations to his mother's father, grandfather and great-grandfather and counting also the mother and himself, it became five degrees. Though Vijnanesvara altered the basis of sapinda relationship from the oblation theory into real consanguinity, as he felt that some limitation of sapinda relationship was necessary, he retained the old limitations for both sagotra sapindas and bhinnagotra sapindas. Vishnu and Yajnavalkya, if not Manu himself, established the rule of offering pindas to the mother's three immediate male ancestors (*e*). When Vijnanesvara refers to the sapinda relationship ceasing in the father's line after the seventh degree, he is evidently referring to the sapinda relationship of sagotra sapindas; the six ascendants beginning with the father are clearly the six ascendants in the male line and the six descendants beginning with the son must equally be in the male line (*f*). When he refers to a division of the paternal line, he refers evidently to the collateral descendants in the male line of his paternal ancestors upto the seventh degree (*g*).

§ 111. Balambhatta, in his commentary on the Mitakshara, says that in counting persons of the same gotra, the sapinda relationship ceases with the eighth degree in the case of the

Limit of Bandhu relation.

(*c*) See the text of Matsya Purana cited by Kulluka in his gloss on Manu, V., 60, (p. 211), Parasara Madhaviya, Vol. I, Part II, 58, and in Nirnayasindhu, 560 (Setlur trans., 555).

(*d*) Mit. on Yajn., I, 254, Vidyarnava's trans, 340.

(*e*) Yajn, I, 242-243; Vishnu, LXXV, 7, Manu, IX, 136. These refer to a daughter's sons' obligations as distinguished from the more ancient obligation of the putrikaputra.

(*f*) *Cf.* Sarvadhikari, 2nd edn., 495.

(*g*) This is necessarily implied from the admitted requirement that the ascending line must be the male line; since, for the sixth descendant of the man himself or for the sixth descendant of any of his ancestors, his (the sixth descendant's) "father's line" will be the line of his ascendants, namely, father, grandfather, etc., in the male line. The Mitakshara in all probability uses the term '*santana*' both here as well as in Ch. II, V, 3 and 4, to mean male line. *Buddha Singh's* case (1915) 42 I.A., 208, 37 All., 604, 616. The observations of Spencer, J., in *Kesar Singh* v. *Secretary of State* (1926) 49 Mad., 652 at 660 that the Sanskrit word '*santana*' does not appear to denote male ancestors and male descendants 'exclusively' and that the word '*Purusha*' means 'a man' are based on a misconception. '*Purusha*' in the context means only 'a degree'.

boy or the girl but in counting persons of bhinnagotra, sapinda relationship ceases with the sixth degree (*h*). Mitramisra, in his Viramitrodayatika states: "Of persons belonging to different gotras, the sixth and the seventh are not included in the sapinda limit" (*h*[1]) In *Ramachandra's* case (*i*), the Judicial Committee held that Yajn. I, 52 and 53 and Vijnanesvara's commentary thereon prescribed the limitation of seventh degree as regards sapindas of the same gotra, and the limitation of fifth degree as regards bhinnagotra sapindas. They further observe that 'this bond comes to an end with the fifth degree when the descent is through *a female*' (*j*). It is immaterial whether it is through one's own mother, one's father's mother or one's grand-father's mother The right view is that the five degree limit is applicable to all bhinnagotra sapindas irrespective of the question whether they are bandhus of the propositus, through his mother or through his father Therefore, the rule is stated comprehensively that sapinda relationship ceases in the case of the bhinnagotra sapindas with the fifth degree from the common ancestor, that is, in the line where a female or females intervene (*k*). As will appear in the course of this discussion, this is the only logical and consistent position on the plain interpretation of the Mitakshara.

Computation. § 112 There is no difficulty in the computation of degrees in the direct line (*l*). It is now well settled that as regards two branches from a common ancestor, whether both the lines are his sagotra sapindas or his bhinnagotra sapindas or whether one line contains his bhinnagotra sapindas and the

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(*h*) Balambhatti, Gharpure's edn, 194, Vidyarnava's trans Acharadhyaya, 111

(*h*[1]) See Viramitrodayatika, Gharpure's trans, 1578, see page 161 as to differing usages

(*i*) *Ramchandra Martand* v *Vinayek V Kothekar* (1914) 41 I A., 290, 307, 308; 42 Cal, 384 "It is quite clear therefore that the limitation of the seventh degree with regard to samanagotra sapindas given by Mitramisra in his Viramitrodaya is taken from the rule enunciated by Vijnanesvara on Yajn. in the Acharakanda in respect of the cessation of sapinda relationship."

(*j*) *ibid*, 41 I.A, 290, 309, 311

(*k*) *ibid*, 41 I A, 290, 312. This was reiterated in *Adit Narain* v. *Mahabir Prasad* (1921) 48 I.A., 86, 95; 40 M.L J, 270; 25 C.W.N., 842. "A bandhu must, in order to be heritable in a female line, fall within the fifth degree from the common male ancestor", see also per Kanhaiyalal, J, in *Harihar Prasad* v *Ram Daur* (1925) 47 All. 172, 176, per Jwala Prasad, J, in *Umashankar* v. *Mt. Nageswari* (1918) 3 Pat L J, 663, 48 I C, 625, 643 F.B.; per Sulaiman, J, in *Gajadhar* v. *Gaurisankar* (1932) 54 All, 698 at p. 714, 716 F.B.

(*l*) The Mitakshara computation is in effect the same as the ordinary method (Sarvadhikari, 2nd edn., 498).

other line contains exclusively his sagotra sapindas, the computation of sapinda-relationship is only from the common ancestor, in all cases, in each line. *Ramchandra's* case has settled this point (*m*). Not only is the Mitakshara quite explicit on this matter but the Balambhatti, the Nirnaya-Sindhu and the Dharma Sindhu are all agreed on it (*n*). The degree of sapinda relationship of a person in each of the lines is to be reckoned by his distance from the common ancestor.

Five degrees for all bandhus.

§ 113. There are dicta in some of the judgments of Courts (*o*) and expressions of opinion by some writers on Hindu law (*p*) relying upon some statements contained in the Nirnaya Sindhu and the Dharmasindhu, two digests of ceremonial law, to the effect that the limitation of five degrees is only as regards bandhus related through one's mother and not to cognates related through one's father's mother. As to the

(*m*) *Ramchandra Martand* v *Vinayek V Kothekar* (1914) 41 I.A., 290, 42 Cal, 384, *Adit Narain* v. *Mahabir Prasad* (1921) 48 I A, 86, see also *Ram Sia* v *Bua* (1925) 47 All., 10, *Harihar Prasad* v. *Ram Daur* (1925) 47 All, 172, *Gajadhar Prasad* v. *Gauri Shankar* (1932) 54 All. 698 F.B., *Kesar Singh* v. *Secy. of State* (1926) 49 Mad, 652. The modes of counting in the following cases are incorrect *Shib Sahai* v. *Saraswathi* (1915) 37 All., 583, where the court counted the degrees from the claimant on the one side to the deceased owner. See also per Jwala Prasad, J., in *Uma Shankar* v. *Mt. Nageswari* 3 Pat., L.J., 663, 48 I C, 625 F.B.; 'Adopting the mode of computation laid down in the Mitakshara, the sister's daughter's son is five degrees removed from the common ancestor', whereas he is only removed by four degrees and a maternal uncle was considered as removed by four degrees from his nephew whereas he is only in the second degree. In *Venkata* v *Subadra* (1884) 7 Mad, 548, the court, in discussing prohibited degrees, counted a man's maternal grandfather's brother's daughter's daughter as standing in the sixth degree and therefore held her eligible for marriage whereas really it was a case of four degrees and so ineligible for marriage.

(*n*) Balambhatta's gloss, see Mitakshara, Acharadhyaya, page 111 (Vidyarnava's trans.), Nirnayasindhu, 216; (here the enumeration must be made from the common ancestor); also Setlur trans., 561; Balambhatti, Gharpure's edn., 190-194, Dharma Sindhu, cited in Mandlik, 347. See also the text of Smriti Sangraha cited in Mandlik, 347, trans. 31 L.W. (journal), p. 17.

(*o*) Per Spencer, J, in *Kesar Singh* v. *Secy of State* (1926) 49 Mad., 652, 660, 664, 665; per Venkatasubba Rao, J., in 49 Mad., 652, 682, 690, *Ram Sia* v. *Bua* (1925) 47 All., 10, 12, per Mukherjee, J., in *Harihar Prasad* v. *Ram Daur* (1925) 47 All, 172, 178, 179, and in *Gajadhar Prasad* v. *Gauri Shanker* (1932) 54 All., 698 F B. In *Babu Lal* v. *Nanku Ram* (1895) 22 Cal., 339 at 345, it is apparently assumed that seven degrees apply to bandhus on the father's side.

(*p*) Sarvadhikari, 2nd edn., 599, 600; Bhattacharya 2nd edn., 90 (notes to diagrams); Mandlik, 345-347, he summarises the rules and tables from Dharmasindhu thus: "Begin with the bride or the bride groom and count, exclusive of both, six or four degrees upwards according as their relationship with the common ancestor is through the father or mother respectively and if the common ancestor is not reached within those degrees on both sides, then only they are not sapindas and marriage between them can be solemnized."

latter, it is said that they must be deemed to be in the father's line and therefore, the limitation of seven degrees applies. In other words, one's father's maternal line is placed on the same footing as one's father's paternal line. The expression 'seven degrees in the father's line' is read as meaning the descendants, upto the seventh degree, through males or females, of paternal ancestors, upto the seventh degree. This involves more than one fallacy.

As already explained, the Mitakshara contemplates, when reckoning from the father, only ancestors in the male line or descendants in the male line or collaterals in the male line as it assumes all of them to be sagotra sapindas. This view is confirmed by what Vijnanesvara says in the Vyavahara-kanda. Sharply differentiating between bhinnagotra sapindas and sagotra sapindas, he applies the seven degree limit only to the latter, and he makes no difference between one kind of bhinnagotra sapindas and another. He nowhere refers to different limits of sapinda relationship for different groups of bhinnagotra sapindas. On the other hand in elucidating Yajnavalkya's text, he relies upon a text of Brihat Manu which confines the seven degree limit only to sagotra sapindas (p^1). And the gloss of Kulluka on Manu v., 60, makes it perfectly clear that the limit of seven degrees in sapinda relation is only with respect to sagotra sapindas (p^2). In the second place, there is no reason why, while one's own maternal line is shortened to five degrees, one's father's maternal line should lengthen the line of sapinda relationship to seven degrees. In the case of a man's own maternal line at least, pindas are offered by him to the immediate male ancestors of his mother but he offers no pinda to the father's mother's male ancestors. Moreover, if we add him and his father to the latter's mother and her three male ancestors, it would make only six degrees which is a fatal objection to the applicability of the seven degree rule to bandhus. Again, when one has to compute through one's father in *his* maternal line, it is contrary to the express indications which Vijnanesvara has given, to call it the father's line, for, the father's line is through his father, grandfather, etc. When the father's mother is counted as a degree, it is really the father's mother's line, it being a different family altogether just as in the case of one's own mother's line, the relationship

(p^1) Mit., II, v, 5, 6.

(p^2) See the whole question discussed fully in the judgment of the District Judge and in the arguments reported in *Ram Chandra* v. *Vinayek* (1914) 20 C.L.J., 573, 580.

in that family is not traced through his father but from his father's mother in her father's line.

It is wrong to impute to Vijnanesvara that he intended, without any principle or reason, to mean by the father's line, also the father's mother's line and that he bracketed together the sagotra sapindas and the bhinnagotra sapindas of one's father in the same category. On the other hand, Vijnanesvara groups pitru bandhus and matru bandhus together and, among atmabandhus, brings in the maternal uncle's and maternal aunt's sons along with the paternal aunt's sons. Moreover, the reasonable inference seems to be that the reference to 'mother' in the limitation of five degrees is for the purpose of indicating cognate relationship generally (*q*). As is not unusual in other parts of the Mitakshara, the word 'mother' may well be taken to refer to any female ancestor whose intervention anywhere in the line causes a change of gotra or family. This inference is supported by Balambhatta's commentary on the Mitakshara: "Therefore, by being in the direct generations and being comprised in the group of five commencing from the *kutastha* and his four descendants, even though she may occupy the position of the second or subsequent, she is to be called 'the mother' (*mata*)" (*r*). From the citation in the Mitakshara referring to two sisters or a sister and her brother, or a brother's daughter and the paternal uncle, forming two branches having a common beginning, it is clear that a woman can intervene in the second or third degree as Balambhatta says.

§ 114. Kamalakara, the author of the Nirnaya Sindhu, says that a bridegroom in the eighth degree may not marry a bride in the second or third degree from the common ancestor. Even though the bride is no sapinda of the bridegroom, as the bride is within five degrees from the common ancestor, he becomes a sapinda of the bride also and no marriage should take place between them (*s*). Balambhatta in his commentary on the Mitakshara ridicules this view as fantastic. He

A
|——D
|——S
|——S
|——B
C

(*q*) In this diagram, A's daughter s great-grand son, B, will be A's bandhu and not B's son C See article by Mr. P. R. Ganapathi Iyer in 8 M.L.J (journal), 323.

(*r*) Balambhatti, Gharpure's edn., 191.

(*s*) Nirnayasindhu, Setlur's trans, 561; the illustration taken by Kamalakara will be academic if it is a case of Brahmins having rishi gotra, for both will be sagotras then. It will be otherwise in the case of Sudras or others who, by custom, do not observe gotra prohibition.

says that if there is absence of sapinda relationship in one direction, there must necessarily be absence of sapinda relationship in the reverse direction also (*t*). This is plainly right, for this mutuality is implicit in all sapinda relationship, sapinda being a term of correlation. It is impossible to see how the last samanodaka, or even one beyond, in one line of the common ancestor, becomes a sapinda, if a collateral in the other line is a sapinda of the same ancestor, or how one who is not a bhinnagotra or sagotra sapinda of the common ancestor in one of the branches can become the bhinnagotra sapinda of anyone in the other branch where a female intervenes (*u*). The Nirnaya Sindhu and the Dharmasindhu make another exception contrary to the Mitakshara. According to them, even where sapinda-relationship is broken in the middle, it continues afterwards like a frog's leap, as where it ceases with the daughters, fifth in descent from the common ancestor Their sons (or son and daughter) are not sapindas but the children of the latter become sapindas (*v*) This is best explained by an illustration.

(*t*) Balambhatti, following earlier commentators like Haradatta, commentator of Gautama and Apastamba Dharmasutras, page 194 (Gharpure's edn). See Prof K V Venkatasubramaniam's article on "the computation of sapinda relationship under Mitakshara law' in 31 M.L.W. (journal), 9 at page 16

(*u*) *Table I* (54 All, 698 at 723) is based on a misconception, for, the question whether S5 is a sapinda of S2 on the left depends upon whether S5 is a sapinda of A, the common ancestor He is not a sapinda of A or even of S1 in his own line S2 is a sapinda of A but not of S5 For, S5 being beyond five degrees from the common ancester is not a sapinda of A, much less of S2 on the left.

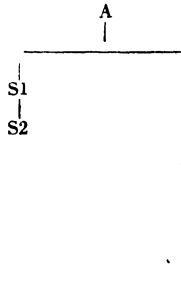
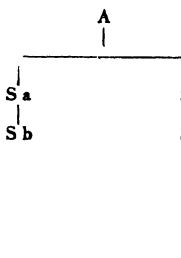
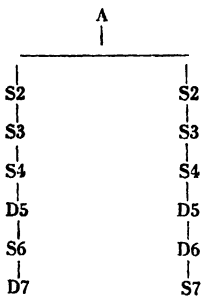


Table II given in 49 Mad., 652, 683 As regards Table II, though the result stated therein is right, it is based upon Manu's text (IX, 187) which has to do only with heritability and not with the computation of sapinda-relationship. Even without it, there is no sapinda relationship between S-b and S4



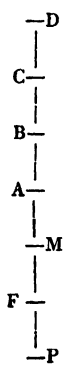
(*v*) Nirnayasindhu, 216, Dharmasindhu cited in Mandlik, 3rd table at page 347. Sastri Sarkar criticises the 'frog-leap' doctrine; see Sarkar, 7th edn., 142.



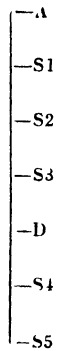
Here, S6 and D6 can marry, both being sixth in descent from the common ancestor through their respective mothers and therefore not related as sapindas. But according to Kamalakara and Kasinath, D7 and S7 cannot marry because D7 claims through her father. In other words, while S6 is not a sapinda of the common ancestor, his daughter or son becomes his sapinda; Balambhatta rejects this extension of sapinda relationship by frog's leap ,altogether. Dr. Sarvadhikari while rightly rejecting this theory of sapindas by frog's leap under his Rule I, really applies it under Rule II stating it as an exception. But he is not altogether satisfied and, after taking seven degrees, in the line, cuts it down to six. And in Rule II he substitutes five degrees for four in the case of the father's bandhus (*w*). He follows the views of the Nirnayasindhu and the Dharmasindhu that computation of seven degrees is not only for sagotra sapindas but also for bhinnagotra sapindas related through the father, though he does not give full effect to their views. They are open to the objections above-stated, and overlook the clear principle that, as the line descends step by step, the ascendants drop out one by one.

To say that the persons in the sixth degree are not sapindas of an ancestor but those in the seventh are, is to introduce confusion and to impute an absurdity to the Mitakshara. In

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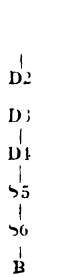


(*w*) Sarvadhikari, 2nd edn., 592, 598-600, and footnote 601. See also observations of Sulaiman. J., in *Gajadhar Prasad* v. *Gauri Shankar* (1932) 54 All., 698 (F.B.), 716. In the illustration given in Sarvadhikari, 2nd edn., 600, it is said that D is a sapinda of P but that F, the father of P is not a sapinda of D and therefore D is not a heritable sapinda of P and must be excluded. But if F is not a sapinda of D, it would follow as an axiom, that P is not a sapinda of D and *vice versa*. This is due to the theory of frog's leap sapinda being brought in again, though said to be omitted. Apart from any question of being heritable bandhus, both F and P, being bhinnagotra sapindas of D, the assumption that D traces his relationship through P's father is not correct; he certainly traces his relationship to P through F's mother who was the daughter born in his own family.



the table in the margin (*x*), S4 from the moment of his birth upto his begetting a son, is not a sapinda of A; but the moment he begets a son, it is said that his son or himself and his son become the sapindas of A. A person who is not a sapinda of a particular ancestor of his or of the common ancestor cannot transmit a non-existing sapinda relationship with such ancestor to his children. Nor can the birth of his son confer upon him that sapinda relationship which ex-hypothesi was not originally in him. Similarly if a man tracing his relationship through his mother is the fifth in descent from the common ancestor, the sapinda-relationship ends with him. But if he begets a son that sapinda-relationship which has ended with him cannot revive and pass to his son and grandson

To take another illustration According to the view of the Nirnayasindhu and the Dharmasindhu, in the table in the margin, while C will not be a sapinda of A because he claims through his mother, B will be a sapinda of A because, he claims through his father Yet in the line A-B there are three women and three changes of gotras, though in the line A-C, there is only one change of gotra (*y*). By what test of propinquity or consanguinity can a man's great-grandson's daughter's son who is only sixth in descent from him be more remote than his daughter's daughter's daughter's great-grandson who is seventh in descent from him? On no intelligible principles can conclusions leading to such anomalous results be supported



(*x*) See also Battacharya, H L, 2nd edn, 90. With reference to a similar illustration Mr. P. R. Ganapathi Iyer in an article in 8 M L J. (Journal), 321-322, says that if a male or a female is not a sapinda of another, much less can the son of that male or female be the sapinda of that other.

(y) The exception which is said to allow marriage after a girl is removed by three gotras even though she is within seven or five degrees only emphasises the fact that the commentators have different conceptions of sapinda relation for different purposes and do not follow the Mitakshara but the Bengal view, Nirnayasindhu, p 562 (Setlur's trans.)

§ 115. On the view that the limit of five degrees applies to all cognates, there is no difficulty in computing degrees of relationship according to the strict letter of the Mitakshara for one has to count the degrees from the mother of the father, grandfather or great grandfather to the common ancestor and then add the degrees below the female in each case to ascertain whether a particular person is a bhinnagotra sapinda within the limit of five degrees or not.

The decision of the Privy Council that the limit of five degrees clearly applies to bhinnagotra sapindas is not confined to such as are related through one's mother. That was a decision given after a discussion of the whole question and cannot be regarded as a mere dictum as has been assumed in some of the cases (*a*).

Even on the strictest construction of the Mitakshara, its limitations refer to sagotrasapindas and to bhinnagotra sapindas related through the mother. In the absence of any express rule laid down as to the limitation applicable to bhinnagotra sapindas through one's father's mother or through one's grandfather's mother, by the application of the principle of analogy recognised by Hindu law, the rule of five degrees applicable to one set of bhinnagotra sapindas, is more appropriate to be applied in respect of another set of bhinnagotra sapindas, not specifically provided for, rather than the rule relating to sagotrasapindas between whom and the above-mentioned bhinnagotra sapindas there is no kind of similarity (*b*).

(*a*) Per Venkatasubba Rao, J., in *Kesar Singh* v. *Secy of State* (1926) 49 Mad, 652, 689, 690, per Mukherji, J, in *Gajadhar Prasad* v. *Gauri Shankar* (1932) 54 All., 698 F B.

(*b*) Kamalakara, who is responsible for the view that there is a difference in the limitation of bandhu relationship according as it is through one's father or through one's mother, recognises three sorts of sapinda relationship, namely, with regard to marriage, pollution and inheritance. Mandlik, 391 note, see also p. 356, Nirnayasindhu, Setlur's trans., 562, e.g., Kamalakara recognises sapindaship of ten degrees for impurity. *Ibid*, page 564. He does not follow the rules of limitation as explained by the Mitakshara for purposes of marriage, but follows other views and texts. He cites a passage from a treatise of one Visvarupa and a text of Narada from Raghunandana of the Bengal School which refers to bandhus of the father and the mother and which does not use the term 'sapinda' at all. As to Visvarupanibandha, see Sarvadhikari, 488. This Visvarupa is different from Visvarupa, the commentator of Yajnavalkya. Kane, 263. The text of Narada quoted by Raghunandana and Kamalakara is "Girls descended from the father's or mother's bandhus are not to be taken in marriage as far as the seventh and fifth respectively, as well as those of the same *gotra* or of equal *pravaras*" (Banerjee's M & S, 5th edn., 67 and Setlur's trans., page 561). Dr. Jolly in (S.B.E., Vol. XXXIII), xii, 7, gives a different reading: "Sagotras and samanapravaras are ineligible

§ 116. On the view that the limitation of five degrees applies to all bhinnagotra sapindas, the correct rule is: count inclusive of the common ancestor in the line or lines in which a female intervenes, five degrees and in the line in which there is no female, seven degrees, if the claimant and the propositus, in their respective lines, are within those degrees, they are bandhus of each other; but if either or both of them are beyond those degrees, they are not bandhus of each other An equally good working rule is begin with the claimant and the propositus (or the bride and the bridegroom as the case may be) and count inclusive of both, seven or five degrees upwards according as their relationship with the common ancestor is in the father's male line or in the line where a female intervenes respectively, and if the common ancestor is reached within those degrees on both sides, then they are sapindas. They are bhinnagotra sapindas if in either or in both lines a woman intervenes. They are sagotra sapindas if in neither line, a woman intervenes

Prohibited degrees in Bengal School

§ 117. The rules relating to prohibited degrees according to the Dayabhaga have been laid down by Raghunandana and are stated by Sir Gooroodass Banerjee (*c*) —

Rule I (*a*) The female descendants as far as the seventh degree, from the father and his six ancestors, namely, paternal grandfather, etc.

(*b*) The female descendants as far as the fifth degree, from the maternal grandfather and his four ancestors, namely, the maternal great-grandfather, etc.

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for marriage upto the fifth and seventh degrees of relationship respectively, on the father's and mother's side" See also Ghose's, Vol I, 583 As pointed out by the Privy Council in *Ramchandra's* case, the earliest expounders appear sometimes to use the term 'bandhu' to signify a sapinda without any idea of including cognates [*Ramachandra* v *Vinayek Kothekar* (1914) 41 I A, 290, 305, 306] The text of Narada used the term 'father's bandhus' to signify agnates of the father, as Dr. Jolly translates it The Bengal School as well as Kamalakara understand the term 'father's bandhus' in Narada's text as meaning only father's cognates, (see Banerjee, M & S, 5th edn, 67) which is the technical meaning which it has acquired since the Mitakshara, ignoring the fact that on that view the father's agnates would not be covered by the limitation of seven degrees While the Mitakshara wanted to restrict the degrees of sapindaship both for purposes of marriage and inheritance, the views of the Nirnayasindhu and the Dharmasindhu in connection with marriage are coloured by their desire to extend the prohibited degrees as much as possible in order to avoid doubts in matters of ceremonial law See also P. R Ganapathi Iyer's article in 8 M.L J., 323, Sarkar Sastri, 7th edn, 91 92.

(*c*) M & S, 5th edn, 67, quoting Udhvahatatva, II, 65.

(*c*) The female descendants as far as the seventh degree from the father's bandhus and their six ancestors, through whom those females are related and

(*d*) The female descendants as far as the fifth degree from the mother's bandhus and their four ancestors through whom those females are related,

are not to be taken in marriage.

Rule II. The daughter and the daughter's daughter of a stepmother's brother are not to be taken in marriage.

Exceptions: (1) A girl who is removed by three gotras from the bridegroom is not unmarriageable, though related within the seven or five degrees as above described.

(2) When a fit match is not otherwise procurable, the Kshatriyas in all the forms of marriage and the other classes in the Asura and other inferior forms of marriage, may marry within the above degrees provided they do not marry within the fifth degree on the father's side and the third degree on the mother's.

Special usages

§ 118. The strictness of the rules as to prohibited degrees is relaxed as regards Western and Southern India by writers who recognise the validity of regional or family customs permitting intermarriages within the forbidden degrees. They expressly refer to marriages between first cousins, such as that of a man with the daughter of his mother's brother or of his father's sister (*d*) Usage permits the union of a man with his own sister's daughter Marriage with a niece has, however, been held by the Bombay High Court to be incestuous (*e*). The Madras High Court, while admitting that the rules among Sudras were not as strict as among Brahmans, and that instances existed of a man marrying his brother's daughter, intimated that such a practice was not warranted by usage (*f*). Where the relationship arises from mere affinity, as distinguished from consanguinity, a marriage may be improper, but is not forbidden, in the sense of being invalid. For instance, a man may marry the daughter of his wife's sister; or his wife's sister, niece or aunt; or the sister or niece of his stepmother; or a paternal uncle's wife's sister, or

(*d*) Mandlik, 403, 413, 416-424, 448, Smritichandrika, Samskarakanda (Mysore edn.), 187-200; Parasaramadhaviyam, Vol I, Part II, 63-69; Nirnayasindhu (Setlur trans., 563).

(*e*) *Ramangavda* v. *Shivaji* cited in Mandlik, 438. But *Venkata* v. *Subhadra* (1884) 7 Mad., 548 at 549, refers to the usage of marrying sister's daughter and maternal uncle's daughter and cites Vaidyanathadikshitiyam, page 98.

(*f*) *Vaithilinga* v. *Vijiathamma* (1883) 6 Mad., 43, 48.

niece (*g*). For marriages under the Special Marriage Act, the prohibited degrees are specially stated in the Act itself (*h*).

Gotra and pravara.

§ 119. The rule that a man of a twice-born class cannot marry a girl of the same gotra or *pravara* is as well established as the rules relating to prohibited degrees (*i*). The Mitakshara expressly states that a girl who is a sapinda, sagotra or *samanapravara* does not acquire the status of a wife on marriage and explains that although Kshatriyas and Vaisyas have neither a gotra nor *pravara* of their own, yet the *pravara* and gotra of their purohit are to be understood (*j*). But the rule as to gotra and *pravara* does not apply to Sudras (*k*). The rules as to prohibited degrees are *prima facie* applied but are largely modified by usage. The restrictions as to gotra and *pravara* are respected and practised among the three higher castes (*l*). Though an adopted son passes from the gotra of his father into that of his adoptive father and acquires the full status of a son in the adoptive family, the prohibitions regarding marriage continue to be applicable to him as if he still continued in his natural family, while in the family of his adoption also, he becomes subject to all the usual prohibitions (*m*)

The question has arisen whether a Hindu widow, on her remarriage, can validly marry a person belonging to her father's gotra. The Allahabad High Court (*n*) has held that she can, on the ground that she retains her husband's gotra This appears to be an obvious error According to the relevant

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(*g*) *Raghavendra Rao* v *Javaram* (1897) 20 Mad. 283. *Ramakrishna* v *Subbamma* (1920) 43 Mad, 830.

(*h*) Special Marriage Act (III of 1872), Section 2, 2nd proviso.

(*i*) Jamadagni, Bharadwaja, Atri, Visvamitra, Gautama, Vasishtha, Kasyapa and Agastya are the eight rishis who are the founders of gotras and the *pravaras* are the groups of rishis differentiating from the rishis who are the founders of the gotras They are 49 in number, see Parasara Madhaviyam translated in 1 M L J (Journal), 534, 535

(*j*) See *Sri Krishen* v *Sham Sunder* A I R, 1933, Lah, 585, where a custom of sagotra marriage among Waish Aggarwals was held to have been made out

(*k*) Banerjee, M & S, 5th edn, 62

(*l*) *Ramachandra* v *Gopal* (1908) 32 Bom, 619, 627, *Minakshi* v. *Ramanadha* (1888) 11 Mad, 49, 51, F B.; *Santappayya* v *Rangappayya* (1895) 18 Mad., 397.

(*m*) Dat Mima, VI, 10, 32, 38, 39, Dat. Chand., IV, 8 9, Sarkar Sastri, Adoption, 2nd edn, 387 In the family of his adoption, his sapinda relationship extends only to three degrees. See post §§ 187, 194.

(*n*) *Radhanath Mukerji* v. *Shaktipado Mukerji* (1936) 58 All., 1053.

text of Yajnavalkya, the bride must not be *descended* from one whose gotra and pravara are the same as the bridegroom's. The Sanskrit expression (n^1) makes it conclusive that it is the gotra of a woman's birth that counts in marriage. When a woman enters into her husband's gotra on her marriage, the gotra-consanguinity is constructive and not physical (n^2). She retains the husband's gotra only in her character as 'wife', during her widowhood, and she cannot retain it for purposes of remarriage. When she is given in marriage, the formula requires that she should be given as the daughter of say, Devadatta, belonging to Bharadwaja gotra. The legislature has expressly recognised that a minor widow reverts to her father's family for purposes of guardianship in remarriage (o). For the same reason, she could, under the ancient Hindu law, as she can now, where there is a custom, marry her husband's brother; it is also the explanation for the *Niyoga*, for a husband's brother or agnate being authorised to raise up issue. Accordingly, a Hindu widow can marry a person belonging to her husband's gotra. Similarly, the prohibited degrees applicable to the case of a re-marrying widow are the prohibited degrees based on her sapinda relation in the family of her birth and not those applicable to a girl born in her husband's family.

Marriage Ceremonies.

§ 120. The status of husband and wife is constituted by the performance of the marriage rites, whether prescribed by the Sastras or by custom. The Sastraic rites observed by the first three castes can be and are ordinarily observed by the fourth caste also, either with or without mantras (p). The Asvalayana Grihyasutra recognises that the customs of different countries and of villages should be observed at weddings though it gives the common form of marriage

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(n^1) *'Asamanarshagotrajam'* Yajn., I, 53; Mandlik, 168. Manu, III, 5 is to the same effect.

(n^2) *Lallubhai* v. *Cassibai* (1881) 7 I.A., 212, 234; 5 Bom., 110, 121 (constructive consanguinity); see also Bhattacharya, H.L., 2nd edn., 96-97.

(o) Hindu Widows' Remarriage Act (XV of 1856), Section 7.

(p) *Kameswara Sastri* v. *Veeracharlu* (1911) 34 Mad., 422, 427, *Authikesavalu* v. *S. Ramanujam* (1909) 32 Mad., 512 (case of sudras), *Maharaja of Kolhapur* v. *Sundaram Iyer* (1925) 48 Mad, 1, Medhatithi (Jha, Vol. IV, 274) commenting on Manu, VIII, 227, says that in the case of Sudras, barring the mantras, all the rest of the procedure is the same. The performance of homam may be done through a Brahmin. Vyavahara Mayukha, IV, 5, 12-14; Banerjee, M & S, 5th edn., 107.

rites (*q*). The performance of the homam, the *panigrahana* or taking hold of the bride's hand and going round the fire with Vedic mantras, the treading on the stone, and the seven steps or Saptapadi—these are the more important rites mentioned by it. The marriage becomes complete and irrevocable on the completion of the Saptapadi or ceremony of seven steps (*r*) and from that moment, the wife passes into her husband's gotra (*s*). Where a Hindu community does not recognise the homam or Saptapadi as essential, their omission will not render the marriage invalid (*t*) If it is shown that by the custom of the caste, or district, any other form is considered as constituting a marriage, then the adoption of that form, with the intention of thereby completing the marriage union, is sufficient (*u*)

In some communities, there is a custom that, after the actual marriage has taken place, a further ceremony must be performed before cohabitation, and if the man who has gone through the first ceremony declines to perform the second, the girl may lawfully marry again (*v*) In Bombay, a custom was proved, and held valid, that mere babies should be married with all religious ceremonies, but that the marriage should not be treated as effectual, unless certain conditions agreed on at the time were performed on either side (*w*) But the legal result of such a custom would appear to be that there is no binding and

(*q*) Asvalayana Grihysutra, 1, 7, 3-22 (Rigvedins), Apastamba Grihysutra, Sections IV, V, VI, VIII (Yajurvedins), Sir G Banerjee gives the forms prescribed for the Samavedins (M & S, 5th edn, 101-107) The forms are more or less similar

(*r*) Manu, VIII, 227, *Venkatacharyulu* v *Rangacharyulu* (1891) 14 Mad, 316, 319, *Chunilal* v *Surajram* (1909) 33 Bom, 433, 438. *Appibai* v. *Khimji* (1936) 60 Bom, 455, *Bulli Appanna* v *Subamal* A I R, 1938, Rang. 111

(*s*) According to the text cited in the Smriti Chandrika (Samskara Kanda, 184-5, Mysore edn.) and the Parasara Madhaviyam (trans. I, M L.J (reprint), 465), a woman becomes one with her husband in pinda, gotra and sutaka (pollution) and on marriage, she loses her father's gotra on the seventh step, Samskara Mayukha, Gharpure's edn., 52; Ghose, Vol. I, 789

(*t*) *Authikesavulu* v *Ramanuja* (1909) 32 Mad., 512, *Muthusami Mudaliar* v *Masilamani* (1910) 33 Mad, 342, 348, *Rampiyar* v. *Deva Rama* (1923) 1 Rang, 129.

(*u*) Manu, III, 35, see futwah, 2 M. Dig, 45, *Gatha Ram* v *Moohito Kochin* (1875) 14 B L R, 298, 23 W R, 179, *Kallychurn* v *Dukhee* (1880) 5 Cal, 692 Mandlik, 404, *Hurry Churn* v *Nimai Chand* (1884) 10 Cal, 138.

(*v*) *Boolchand* v *Janokee* 25 W.R., 386

(*w*) *Bai Ugri* v *Patel Purshottam* (1893) 17 Bom., 400

complete marriage until after the second ceremony, or the performance of the condition precedent. In the absence of any such custom, the marriage is complete. though not followed by consummation and even though, in consequence of the conversion to Christianity of one party. the other renounces the obligations of marriage (*x*).

In a case in Calcutta, it was held that a marriage, amongst a community called Jativaishnabs, by exchange of garlands called the Kantibadal ceremony, was, according to custom, valid (*y*). In a Madras case, where a Kumbla Zemindar married, in the dagger form, a woman of an inferior class, though of the same main caste, with all the customary rites, it was held that the marriage in dagger form was valid but only denoted a wife of inferior rank (*z*). In Phoolbiha marriages, the wives are only of inferior status (*a*). In another Madras case, it was held that the sword marriage was not a valid marriage amongst Sudras and that sword wives are only permanently kept concubines (*b*). In a case from the Central Provinces, a Katar marriage or marriage to the bridegroom's sword or dagger was held by the Privy Council not to be a valid marriage (*c*).

§ 121. The doctrine of *factum valet*, rightly interpreted, is particularly applicable in connection with questions relating to marriage and adoption. The general principles are stated in several cases (*d*). The application of the maxim must be limited to cases where there is neither want of authority to give or to accept nor any imperative interdiction; or where there is no force or fraud. Where a marriage has taken place in violation of a previous agreement to marry another person (*e*) or without the consent of the person whose

Factum Valet.

(*x*) *Administrator-General* v. *Anandachari* (1886) 9 Mad., 466; *Dadaji Bhikaji* v. *Rukmabai* (1886) 10 Bom., 301 at 311.

(*y*) *Benodebehary* v. *Shashi Bhussan* (1919) 24 C.W.N., 958; Banerjee, M & S, 5th edn., 297

(*z*) *Ramasami Kamaya Naik* v *Sundaralingasami* (1894) 17 Mad., 422

(*a*) Banerjee, M & S, 5th edn., 279

(*b*) *Maharaja of Kolhapur* v. *Sundaram* (1925) 48 Mad., 1.

(*c*) *Ramsaransingh* v. *Mahabir* (1933) 61 I.A., 106; A.I.R., 1934, P.C., 74.

(*d*) *Lakshmappa* v. *Ramava* (1875) 12 Bom. H.C., 364, *Gopal Narhar* v. *Hanmant Ganesh* (1879) 3 Bom., 273; *Mulchand* v. *Bhudia* (1898) 22 Bom., 812, *Balusu Gurulingasami* v. *Ramalakshmamma* (1899) 26 I.A., 113; 22 Mad., 398; *Kunwar Basant Singh* v. *Kunwar Brijraj* (1935) 62 I.A., 180, 195; 57 All., 494, 509. *Kshiteesh Chandra* v. *Emperor* [1937] 2 Cal., 221 F.B., see ante § 21; post § 186.

(*e*) *Khooshal* v. *Bhugwan Motee* 1 Bor., 138 (155)

consent ought to have been obtained (*f*), it will be legal and binding. Where the rule is directory and not mandatory, its infringement will not make the marriage or adoption invalid. The breach may be of a mere moral or ceremonial precept; or it may be the breach of a legal rule which falls short of being an imperative rule of law, as for instance, the rule conferring preferential rights of guardianship in marriage, capable of being enforced by injunction or order of Court, before the marriage takes place. The Child Marriage Restraint Act furnishes another illustration, where though the persons responsible for the marriage are punished, the validity of the marriage itself, when once performed, is unaffected (*g*). Under the Hindu Widows' Remarriage Act (XV of 1856) however, marriages of minor virgin widows made without the consent of the persons mentioned in the Act will be held to be void, except where consummation has taken place (s. 7).

Presumption of valid marriage

§ 122. When the fact of the celebration of a marriage is established, it will be presumed, in the absence of evidence to the contrary, that all the forms and ceremonies necessary to constitute a valid marriage have been gone through (*h*) So also where a man and woman have been proved to have lived together as man and wife, the law will presume, until the contrary be clearly proved that they were living together in consequence of a valid marriage and not in a state of concubinage (*i*).

(*f*) *Baee Rulyat* v *Jeychand*, Bellasis, 43, *Gajjanund* v *The Crown* (1921) 2 Lah., 288; *Ram Harakh* v. *Jagarnath* (1931) 53 All., 815.

(*g*) *Munshi Ram* v *Emperor* A.I.R., 1936, All, 11, *Moti* v. *Beni* A.I.R., 1936, All., 852 Semble, even after injunction.

(*h*) *Inderun Valungypooly* v *Ramaswami* (1869) 13 M I.A, 141 at 158, *Ramamani* v *Kulandai* (1871) 14 M I.A, 346, 365, 366; *Brindabun Chundra* v. *Chundra Kurmokar* (1886) 12 Cal, 140, *Moujilal* v. *Chandrabati Kumari* (1911) 38 I A, 122, 38 Cal., 700; *Bai Diwali* v. *Moti Karson* (1898) 22 Bom., 509.

(*i*) *Sastry Velaider* v. *Sembicutty* (1881) 6 A C, 364 (a case of South Indians in Ceylon) following *De Thoren* v *Attorney-General* (1876) 1, A.C., 686 and *Piers* v. *Piers* L.R., 2 H L.C., 331; *Moujilal* v. *Chandrabati Kumari* (1911) 38 I A, 122, 38 Cal, 700 (extremely strong presumption in favour of marriage), *A Dinohamy* v. *W. L. Balahamy* A.I.R, 1927, P.C, 185 (Ceylonese case, following 6 A.C., 364); *Inder Singh* v. *Thakur Singh* (1921) 2 Lah, 207, 216 (Sudras—no presumption where original connection was known to be illicit). But where the parties are at liberty to intermarry, a connection commencing in adultery may, on ceasing to be adulterous, be presumed to be matrimonial evidence of habit and repute. *Campbell* v. *Campbell* L.R, 1, H L. (Sc & D), 182; as to the presumption where repute is divided, see *Lyle* v *Ellwood* L.R, 19. Equity, 98 *Re. Haynes, Haynes* v. *Carter* 94 L T., 431. The presumption is less strong where there is no issue and the invalidity of the marriage is alleged by the parties; 16 Hals, 2nd edn, 599, note (*r*) The case in *Ma Wun Di* v. *Ma Kin* (1907) 35 I.A., 41; 35\Cal., 232, related to habit and repute amongst Burmese and stands on its own

Intercaste marriages.

§ 123. By the time of the Yajurveda, the caste system had become more rigid and marriages between the castes, though still allowed had come to possess differentiating features. Even before the period of the Dharmasutras (c. 600-300 B.C.), inter-marriages between the four *varnas* or castes on a footing of equality, were not allowed. For *pratiloma* marriages, that is, marriages between a woman of a superior caste and a man of an inferior caste were altogether forbidden and no rites were prescribed for them in the Grihyasutras. The issue of such unions were declared to be outside the pale of the sacred law (*j*). The Arthasastra of Kautilya also regarded *pratiloma* sons as sons born of unlawful union (k). *Anuloma* marriages or marriages between a male of a superior caste and a woman of an inferior caste were allowed but limited by discriminatory rules (*l*). The *Panigrahana* rite or the ceremony of joining hands was allowed only for marriages with women of equal class, but when the marriage was with a woman of an inferior class, the bridegroom's arrow or goad or the hem of his garment was, in that order, substituted for the bridegroom's hand in the case of the Kshatriya, Vaisya and Sudra brides (*m*). The wedding with a Sudra wife was to be without mantras (*n*). The issue of the marriage with a woman of the inferior caste had neither the caste of the father nor the status of his *savarna aurasa* son (*o*).

The marriage of a *Dvija* and in particular, of a Brahmin or a Kshatriya with a Sudra bride was prohibited by Gautama, Apastamba and Vasishtha (*p*). Manu, after referring to the view that *anuloma* wives are permitted, (III, 13) and explaining that, even in ancient tradition,

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facts. It can have no general application under Hindu law where there is a sharp distinction between legitimacy and illegitimacy and between wives and concubines and there is the religious duty of offering pindas. Where, however in particular families, there is no clear distinction between marriage and concubinage, the presumption cannot easily be applied or it is easily rebutted. *Maharaja of Kolhapur* v. *Sundaram Iyer* (1925) 48 Mad., 1, 44.

(*j*) Gaut., IV, 25, 27, 28, Manu, X, 24, 29, 30, 31, 67, Yajn, I, 93-95; Nar., XII, 109-113; Daya Bhaga, IX, Viramitrodaya (Setlur trans.), 409-410.

(*k*) Arthas., Shamasastri, 203.

(*l*) Baudh., I, 8, 16, 2-6; Vas., I, 24; Manu, III, 13; Yajn., I, 57, Vedic Index, I, 476.

(*m*) Manu, III, 43, 44; Vishnu, XXIV, 5-8.

(*n*) Paraskara Grihya, I, 4, 11; S.B.E., Vol. 29, p. 277; Vas., I, 25.

(*o*) Except perhaps in the case of a son born to a Kshatriya wife, see Baudh., I, 8, 16, 6.

(*p*) Gaut., IV, 26; Apas., II, 6, 13. 4-5; Vas., I, 25,•26

a Sudra woman was not the first wife of a Brahmin or a Kshatriya, though they could not get *savarna* wives (III, 14), concludes by prohibiting it altogether (III, 15-19). Yajnavalkya after stating the opposite view, rejects such a marriage even more unmistakably (I. 56) and omits the Sudra wife altogether in the case of the Brahmin, Kshatriya and Vaisya (*q*). He provides only the rites for Kshatriya and Vaisya brides in *anuloma* marriages, leaving out the rites for the Sudra bride (I, 62) and omits the son of a Brahmin by a Sudra wife from Manu's list of sons (II. 128-132) Vishnu and Narada allow *anuloma* marriages while the latter advises that marriages are best made in one's own caste (*r*)

When there were sons born to wives of different castes, out of ten shares, the sons of such wives were entitled to four shares or three, two or one respectively in the order of castes (*s*). The son of a Brahmin by his Sudra wife (Nishada or Parasava) was not heir to his father's kinsmen but was only entitled to a tenth share of his father's estate even in the absence of preferable sons as against the sapinda of his father and he was disentitled to any share in his landed estate (*t*). He was entitled, according to Kautilya and Devala to one-third share, and according to Vishnu to one-half share, the other heirs of the Brahmin taking the remainder (*u*) According to Gautama he was entitled only to a provision for maintenance (*v*) Sons born of marriages, between women of superior castes and men of inferior castes (*pratilomajas*) were placed on the same footing as sons of a Brahmin by his Sudra wife (*w*)

(*q*) "The taking of a Sudra wife by the twice-born is indeed ordained by some but it is not agreeable to my views, because from her he is himself born." "Three, two, or one wife to the Brahmanas, Kshatriyas, and Vaisyas is laid down according to the priority of classes, and respectively, *i e*, to a Brahmana, a Brahmana, Kshatriya and Vaisya wives and so on, to the Sudra is a wife born in the same class.' Yajn, I, 56, 57 Mandlik, 168.

(*r*) Vishnu, XXIV, 1-8, Nar, XII, 4-6

(*s*) Manu, IX, 152-155, Yajn, II, 125, Baudh, II, 2, 3, 10, Vishnu, XVIII, 1-27, Brih, XXV, 27-29, different rules are given by Vasishtha, XVII, 47-49, as for Gaut., see XXVIII, 35-39 The son of a Brahmin by his Sudra wife took one-tenth, the son of a Kshatriya by his Sudra wife took one-sixth, the son of a Vaisya by his Sudra wife took one-third.

(*t*) Manu, IX, 154, Brih XXV, 32, Mit I XI, 41 42, Mayukha, IV, 4, 28. Mit. I, xi, 30-31

(*u*) Shamasastri, 201, Digest II, 320, Vishnu XVIII, 32

(*v*) Gaut., XXVIII, 39.

(*w*) Gaut., XXVIII, 45, Mayukha, IV, 4, 31, Vivadaratnakara, XIII, 28.

§ 124. The rules in the ancient law books regarding marriages between persons of different castes have long ago become obsolete (*x*). Visvarupa, the earliest commentator on Yajnavalkya commenting upon Yajn. I, 56 states that the marriage of a Sudra girl by a twice born is prohibited (*y*). In his gloss on Yajn. II, 125 he reiterates that no son by a Sudra wife is sanctioned for the twiceborn (*z*). The Smriti-chandrika also prohibits intercaste marriages: "Even a son of the body does not become a legitimate son when he is born of a wife of an unequal class, the marriage of a woman of unequal caste, being itself prohibited in the Kali age" (*a*). The Parasara Madhviyam after quoting the conflicting texts on the question of marriage of persons of different castes, says, "Distinguishing the different ages, the law is clearly established by a Smriti, which referring to the marriage of persons of any of the twice-born castes with persons of other castes, declares "The learned say that these practices must not be followed in the age of Kali" (*b*). So also Raghunandana in his Uddhvahatatva (*c*) and Sri Krishna Tarkalankara in his Dayakramasangraha (*d*). Kamalakara in his Nirnayasindhu says: "The marriage of a *dvija* with a maiden of a dissimilar class is prohibited in the Kali age" (*e*). Jagannatha cites two texts from the Brihan-Naradiya

Obsolete.

(*x*) Muttuswami Iyer, J., says, that the pratiloma marriage was a prohibited connection [*Ramaswami Kamayya Naik* v. *Sundaralingaswami* (1894) 17 Mad, 422, 435]. Coutts-Trotter, J., in *Pudiava* v. *Pavanasa* [(1922) 45 Mad, 949, 971, 972 F.B.], says that there is a consensus of opinion that intermarriages between persons of different castes have in practice long ceased to exist. Colebrooke's trans. of the Mitakshara, I, VIII, 2, "under the sanction of law, instances do occur," is erroneous. It should only read "by the text beginning with *Tisro Varnanu Purvyena*" (Yajn., 1, 57), for a Brahmin 4 wives, for a Kshatriya 3 wives, for a Vaisya two wives and for a Sudra one wife, have been shown."

(*y*) Visvarupa's Balakrida, 65 (Trivandrum edn.).

(*z*) Visvarupa's Balakrida, 247; the verse is there numbered as II, 129

(*a*) Devannabhatta further says "we have not therefore detailed the laws relating to partition of property amongst sons of unequal classes; as it would tend in vain to swell the work, such a partition being in the present age obsolete"; Smriti Chandrika (Krishnaswami Iyer's trans.), p. 142, X, 7 (Mysore edn.) Vyavaharakanda, 669.

(*b*) Parasara Madhaviyam, Vol. I, Part II, 97-98 (Bom. edn.); also cited by Chandavarkar, J., in 14 Bom. L.R., 547, 552, 553.

(*c*) Uddhavahatattva, II, 62.

(*d*) D.K S., I., 2, 7: "The marriage with a woman of unequal class is prohibited in the Kali or iron age."

(*e*) Nirnayasindhu, 275 (Nirnayasagar edn.). See Mandlik, note at page 218 on Yajn., II, 125.

and the Adityapurana to the same effect (*f*). The rules permitting a Brahmin to have a son by a Sudra wife (Nishada or Parasava) as well as other secondary sons have been clearly stated to be obsolete both in the Sanskrit works, and by modern writers (*g*). When Hindu writers say that certain practices have become prohibited in the Kali age, they do not merely mean that the ancient practices are now prohibited and are therefore no longer law. The prohibition was due to a new consciousness and wide disapproval, to a new usage, discontinuing or abrogating the old usage.

Inter-caste marriages invalid

§ 125. Marriages between persons belonging to different castes are therefore invalid in the absence of a usage to the contrary (*h*). In a number of cases, marriages between persons of different castes were held to be prohibited without distinguishing between *anuloma* and *pratiloma* marriages (*i*). Of course, marriages between persons belonging to different divisions of the same main caste are perfectly valid (*j*) All the cases dealing with the marriages between sub-divisions of the same caste proceed upon the view, sometimes expressed

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(*f*) Digest, II, 324

(g) Bri, XXIV, 13, 14, Apararka, trans 21 M.L.J (journal), 305; Smriti Chandrika, X, 5, 6. Parasara Madhaviyam, Vol, I, Part II, 97, 98 (Setlur trans, 332), Subodhini, 710 (Setlur's edn), Nirnayasindhu, 195, V Mayukha, IV, 4, 46 (Gharpure's trans, 65). See also note (*h*) infra

(*h*) Strange, H L I, 39-40, Steele, 26, 29, 30, Bhattacharya H L, 2nd edn, 85, Vyav Chandrika, II, 454, Vyav Darpana, I, 173, Banerjee, M & S, 5th edn, 76 82, Trevelyan II L (III edn), 41, J C Ghose, I, 791-2, 809-810 The general observation in *Melaram* v. *Thanooram* (1868) 9 W R, 552 (Dome Brahmin and Haree girl) and in *Narain Dhara* v *Rakhal* (1878) 1 Cal, 1, 4 was sound enough, though its application to marriages between subcastes of the same main caste was wrong

(*i*) *Lakshmi* v *Kalian Singh* (1900) 2 Bom, L R, 128 (Kshatriya and Brahmin woman), *Munnilal* v *Shiama* (1926) 48 All, 670 (Sudra and Vaisya woman), *Sespuri* v *Dwaraka Prasad* (1912) 10 A L J, 151 (Thakur and a Brahmin woman), *Padam Kumari* v *Suraj Kumari* (1906) 28 All, 458 (Brahmin and Chhattri woman).

(*j*) *Inderun Valungypooli* v *Ramaswamy* (1869) 13 M I A, 141, affirming 1 M H C R, 478, *Ramamani* v *Kulandai* (1870) 14 M I A, 346, *Gopekrishna* v *Mt Jaggo* (1936) 63 I A, 295, 58 All, 397, *Upoma Kochain* v *Bholaram* (1888) 15 Cal, 708, *Fakirgauda* v. *Gangi* (1898) 22 Bom, 277, *Mahantava* v *Gangava* (1909) 33 Bom, 693, *Muthuswami* v *Masilamani* (1910) 33 Mad, 342, *Harprasad* v. *Kewal* (1925) 47 All, 169, *Sohan Singh* v *Kabla Singh* (1929) 10 Lah, 372, *Biswanath Das* v *Shorasibala* (1922) 49 Cal, 926, 936, 954, *Rajaninath Das* v *Nitaychunder* (1921) 48 Cal, 613, 714, F B, *Nalinaksha* v *Rajanikanta Das* (1931) 58 Cal, 1392, *Appibai* v *Khimji* (1936) 60 Bom, 455, 462, *Suram Chand* v *Indar* A I R, 1934, Lah., 550 *Ratanchand* v. *Anandbai* A I R, 1933, Sind. 93 (between Aryasamajist and a Brahmo) *Kshiteesh Chandra* v *Emperor* [1937] 2 Cal, 221 F B

but almost always implied, that marriages between persons of two different castes are invalid under Hindu law (*k*). In a Bombay case, Chandavarkar, J., after a review of the texts, says that "according to the leading authorities on Hindu law as recognised in this Presidency, a Sudra wife is not permitted to a Brahmin, a Kshatriya, or a Vaishya" (*l*). The case itself was one where a Brahmin woman had married a Sudra and even in Bombay it is settled that *pratiloma* marriages are invalid (*m*). But the Special Marriage Act as amended by the Act of 1923, enables persons belonging to different castes validly to marry, even when they declare themselves to be professing Hindus. It no doubt requires a civil marriage but does not prevent a religious ceremony being added to it. It gives the wife and the offspring full status and full rights. The Special Marriage Act does not, of course, affect the validity of any marriage not solemnised under its provisions. No doubt, as observed by the Judicial Committee, in their recent judgment (*n*), there is at present a tendency to ignore caste distinctions in the matter of marriage (*o*).

Bombay view discussed.

§ 126. The Bombay High Court, however, has in two cases held that, according to the Hindu law as administered in the Bombay Presidency, *anuloma* marriages between members belonging to two different castes are valid. In *Bai Gulab* v. *Jiwanlal* (*p*), a marriage between a Vaisya and a woman who was assumed to be a Sudra was held to be valid. In *Natha* v. *Mehta Chotalal* (*q*), it was held that the marriage between a Brahmin and a Sudra woman was valid and the son born

(*k*) "The rule of Hindu law is that you must marry within your own caste" per Sir Shadi Lal in *Gope Krishna* v. *Mt. Jaggo* (1936) 63 I.A., 295, 298; 58 All, 397, *Inderun Valungypooly* v. *Ramaswamy* (1869) 13 M I A, 141, 158; *Ram Lal Shookool* v. *Akhoy Charan* (1903) 7 C.W.N, 619, 633, *Balraj Singh* v. *Jai Karan Singh* A.I.R., 1931, All., 407,410.

(*l*) *Bhai Kashi* v *Jamnadas* (1912) 14 Bom., L.R., 547, 552; evidently the dictum of Chandavarkar, J., is misunderstood by Venkatasubba Rao, J, for he says in *Morarji* v. *Administrator-General* (1929) 52 Mad, 160, 173, that "Chandavarkar, J, in *Bhai Kashi* v *Jamnadas*, after an examination of the Smritis and the commentaries also arrives at the conclusion that anuloma marriages are valid"; see *per* Shah, J., in 46 Bom, 871, 885.

(*m*) *Lakshmi* v. *Kalian Singh* (1900) 2 Bom. L.R, 128, *Bai Gulab* v. *Jiwanlal* (1922) 46 Bom., 871; *Natha Nathuram* v. *Mehto Chotalal* (1931) 55 Bom., I.

(*n*) *Gopee Krishna* v *Mt. Jaggo* (1936) 63 I.A., 295, 58 All., 397.

(*o*) Apart from custom, most intermarriages between the principal castes that are now taking place are, it is believed, celebrated under the Special Marriage Act.

(*p*) (1922) 46 Bom, 871

(*q*) (1931) 55 Bom, I

of that union was entitled to succeed to his father's brother's estate for a tenth share. The ground of decision in both cases is that the texts of Manu and Yajnavalkya as interpreted by the Mitakshara are only directory and do not prohibit such marriages and that, from the fact that the marriages are obsolete, no prohibition follows. The Court therefore applying the ancient rules on the subject holds that the son born of an *anuloma* union has not the same status as a son born of a wife of equal class but is only entitled to one-tenth share even when his father leaves no other son. It is evidently considered that there is something peculiar in the law as administered in the Bombay province which justifies the view. The question however is of general importance and nothing turns on any peculiarity of the Maharashtra school on this point. The view of the Bombay High Court in the two cases above referred to is opposed not only to Chandavarkar, J.'s considered dictum but also to the doctrine generally received in all the Schools till now, namely, that marriages between the different castes, as distinguished from marriages between sub-divisions of one and the same principal caste are invalid in the absence of a contrary usage

§ 127. The inconveniences resulting from the view taken by the Bombay High Court are obvious. It revives an archaic set of rules wholly unsuited to modern conditions, for it introduces into the general law the doctrine of inferior wives and secondary sons, the creation of new intermediate castes and the intensification of existing differences by the addition of new inequalities. The actual decision in *Natha* v. *Mehta Chotalal* (*r*) is itself contrary to the very rules which it invokes. In the first place, according to the Mitakshara, a Brahmin's son by his Sudra wife is not an heir to his father's brother (*s*). In the second place, a son by a Sudra wife is not entitled to the landed estate of his father or uncle, for while land obtained by gift cannot go to a son of the Kshatriya or Vaisya wife, no landed estate whatever can go to the son of a Sudra wife (*t*).

The reasons given by the Bombay High Court do not appear to be valid. The prohibition by Manu seems to be express and fairly clear. The Smritis also, like the much later commentaries on them, sometimes state one

(*r*) (1931) 55 Bom., I.

(*s*) Manu, IX, 159, 160; Mit., I, xi, 30-32, his existence would not prevent adoption; Apararka cited in Jha, H L S , II, 233; also translated in 21 M.L.J. (journal), 254-255, 305.

(*t*) 55 Bom., I. 19 overlooks Brihaspati, XXV, 32 and Mit , I, viii, 9.

view, then state the reasons against it and conclude with their own views (*u*). Manu III, 14 states only one reason against the view presented in III, 13. Medhatithi's comment on III, 14 does not appear to recognise an option as stated by Shah, J. and Patkar, J. (*v*). His conclusion, to state it in his own words, is: "Since the rule is not absolute, it follows that in times of difficulty or in the event of not finding a girl of his own caste, while the Sudra girl shall never be married, those of the other two castes may be married" (*w*). The purport of Kulluka's comment appears to have been misconceived. He does not say that the prohibition in III, 14 refers to *pratiloma* marriages in the ordinary sense, for the prohibition in verse 14 itself refers to an *anuloma* marriage. What Kulluka says is that the prohibition in verse 14 refers to marrying a Sudra wife in the wrong order, that is, before a Brahmin, Kshatriya or Vaisya wife (*x*). This rule would mean that for a Brahmin to marry a Sudra wife, he should first have married a Brahmin wife also. But, the real prohibition in Manu is contained not in verse III, 14 but in verses III, 15-19 and in verse IX, 178 (*y*).

The text of Yajnavalkya (I, 57) is mandatory and contains a clear prohibition (*z*). The comment in the Mitakshara which is relied on by the Bombay High Court in the two later cases has been understood by Chandavarkar, J. in the opposite sense (*a*). The Mitakshara apparently considers that a Sudra wife may be taken for inferior purposes, as an irregular or

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(*u*) This will explain the apparent contradiction between one set of passages and another set of passages occurring in the same Smriti as for instance, in the case of the Kshetraja son. Omission to recognise this feature has been responsible for much misconception in some matters.

(*v*) Shah, J., in 46 Bom., 871, 879; Patkar, J., in 55 Bom., I, 5.

(*w*) Jha's trans. of Manu with Medhatithi's Bhashya, Vol. II, Part I, 40.

(*x*) Dr. Buhler's translation of III, 14, appears to be right. So it is understood by Nandana, another commentator of Manu. See Apas. II, 7, 17, 21; S.B.E., Vol. II, 145.

(*y*) See Kulluka's gloss on Manu, IX, 178.

(*z*) Mr. Mandlik says "Manu mentions a Sudra wife as allowable; himself condemns such a union further on. Vasishtha speaks of it as being mentioned by one *acharya* but condemns it distinctly. Yajnavalkya pronouncedly follows them in discarding it altogether." Mandlik, 168.

(*a*) *Bhai Kashi* v. *Jamnadas* (1912) 14 Bom. L.R. 547, 552.

morganatic wife (*b*). and that, by a person who has married a wife of equal class and has got a son or has lost her. It nowhere permits a *dvija* to take her as a first or only wife. But the crucial texts in the Mitakshara are decisive against such inter-marriages between a *dvija* and a Sudra woman; for it defines an aurasa or legitimate son as one begotten by a man of a woman of the same caste, lawfully wedded by him (*c*). A Sudra wife of a Brahmin cannot be his *patni* and heir according to the Mitakshara for the term means "a woman espoused in lawful wedlock, implying thereby a connection with religious rites" (*d*). Since his mother is not a *patni*, Manu and the Mitakshara following him call the son born to her as only a substitute for a son (d^1). The conclusion of the Mitakshara on this matter is stated in I. 11, 43 (d^2) which finally excludes him from inheritance The Bombay High Court says that Nilakantha does not express his opinion on the Sudra wife's son's right of inheritance (*e*), the reason is obvious: he did not recognise him as an aurasa son and a secondary son is forbidden (e^1)

Whatever may be the correct interpretation of the Mitakshara on the point, marriages between members of different

(*b*) Vijnanesvara's comment on Yajn., I, 56, is (Vidyar tran. 120) "Yajnavalkya prohibits a Sudra wife for one desirous of begetting a *naityaka* (necessary) son But in the case of not being able to produce a *naityaka* son, in producing an optional son, for a Brahmin, a Kshatriya and a Vaisya woman, and for a Kshatriya, a Vaisya woman, are allowed" This on the face of it is a prohibition of a marriage with a Sudra woman His comment on Yajn, I, 57, explains why the son of a Sudra woman was referred to later and it seems to suggest that it is not a perfectly legitimate wedlock The reading in Setlur's edition (page 38) makes it clear that it is a prohibition under all circumstances The Madanaparijata treats the verse in Yajn as a clear prohibition (Cal edn, 145) And the expression *Nantarıyaka-sayotpannasya* means 'does not refer to twice-born in lawful wedlock" (Vidyarnava's trans, page 122), or "one begotten in an inferior mode' [1 M L J (journal), 150]. Balambhatta also understands the Mitakshara as prohibiting the marriage of a Sudra woman by a Brahmin The expression '*Vinna*' in Yajn, I, 92, can only refer to marriage in fact and does not touch on the question of its validity which is dealt with earlier in I, 56 57, and later in the Vyavaharakanda

(*c*) Mit, I, xi, 12

(*d*) Mit, II, 1, 5

(d^1) According to the Mitakshara, sapinda relationship extends only to three degrees amongst *anulomaja* sons

(d^2) Mit, I, xi, 43 "Hence it appears that the son of a Kshatriya or Vaisya wife takes the whole of the property, on failure of issue by woman of equal class"

(*e*) (1931) 55 Bom, I, 19

(e^1) Nilakantha says "there is no acceptance as sons of others than the dattaka or an aurasa, for they are forbidden in the Kali age." V. Mayukha, IV, 4, 42, 46 (Gharpure's trans., 64-65).

castes have been prohibited and discontinued by the usage of the community for such a length of time that the only legal course is to treat them as invalid, except where there is a custom or enactment to the contrary.

Opinion of caste.

§ 128. The view that it is enough that a caste accepts a marriage as valid appears to be very doubtful (*f*). In the first place it is not a caste matter within the jurisdiction of the caste. The validity of a marriage cannot be determined solely with reference to the position which the caste people may take up with regard to it. It can be decided only with reference to the provisions of law, subject of course to the proof of any special usage having the force of law (*g*). In the second place, absence of objection by the caste to a marriage is hardly a test; for the only legal and effective way of ascertaining the approval of the caste is by ascertaining what the usage of the caste is. But it may be that on questions relating to the validity of the marriage, usage is more easily held to be established than in a case where a custom in derogation of a rule of inheritance is set up.

Polygamy.

§ 129. From Vedic times, though monogamy has been the rule, polygamy has, as an exception, existed, side by side. The rules relating to *anuloma* marriages allowed a man more than one wife. But the wife who was first wedded was alone the wife in the fullest sense (*h*). Apastamba says that if a man has a wife, who is willing and able to perform the religious duties and who bears sons, he shall not take a second wife (*i*). One text of Manu seems to indicate that there was a time when a second marriage was only allowed to a man after the death of his former wife (*j*). It was only when a wife was barren, diseased, or vicious, that she could be superseded and a second marriage was valid; as also

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(*f*) *Muthuswami Mudaliar* v. *Masilamani* (1910) 33 Mad., 342, 355.

(*g*) Per Shah, J., in *Bai Gulab* v. *Jiwanlal* (1922) 46 Bom., 871, 877, 878.

(*h*) Vedic Index, 1, 478; Jolly, L & C, 140.

(*i*) Apas., II, 5, 11, 12-13.

(*j*) "Having thus kindled the sacred fires and performed funeral rites to his wife, who died before him, he may again marry, and again light the nuptial fire." Manu, V, 168; and see IX, 101, 102. Monogamy is one of the tenets of the Modern Brahmo Samaj Sect. *Sonaluxmi* v. *Vishnu Prasad* (1904) 28 Bom., 597.

when she consented (*k*). On the supersession of a wife, the husband had to make provision for her (*l*). Other passages provide for a plurality of wives, even of different classes, without any restriction (*m*).

A peculiar sanctity, however, seems to have been attributed to the first marriage, as being that which was contracted from a sense of duty, and not merely for personal gratification. The first married wife had precedence over the others, and her first-born son over his half-brothers (*n*). It is probable that originally the subsequent wives were considered as merely a superior class of concubines, like the handmaids of the Jewish patriarchs. It is now settled in the Courts of British India that a Hindu is without restriction as to the number of his wives, and may marry again without his wife's consent, or any justification (*o*). Custom, however, prevents in some cases any second marriage without the consent of the first wife and without making provision for her (*p*).

Monogamy by statute

§ 130. Marriages contracted between Hindus under the Special Marriage Act are now made monogamous by statute (*q*). So also, the marriages of the Nairs and others who are governed by the Marumakkathayam law of Malabar are strictly

(*k*) Yajn, I, 73; Manu, IX, 77-82. This seems still to be the usage among some castes of the Deccan. Steele, 30, 168 and in Bengal, *Kally Churn* v. *Dukhee* (1879) 5 Cal, 692 The Pondicherry Courts, upon the advice of their Consultative Committee, have decided in 1893, that the husband cannot, without the consent of the first wife, take a second, unless the first is suffering from some incurable disease, or has failed to produce male offspring. A wife who is barren may be replaced after eight years, one whose children are dead after ten years, and one who has only given birth to females after eleven years A second marriage, contracted otherwise than under the above conditions, may be annulled at the instance of the first wife, and when annulled neither the second wife, nor her children can inherit (Sorg H.L., 51, Co. con., 265, 306, 364, 371). These decisions appear to have been given on the authority of Manu and other writers as well as upon actual usage They accord with the observation of the Abbe Dubois, he says that polygamy was tolerated among persons of high rank, though even among them it was looked upon as an infraction of law and custom, in fact an abuse (Dubois, 210).

(*l*) Yajn, II, 148, Manu, IX, 77-82

(*m*) Manu, III, § 12, VIII, § 204, IX, §§ 85-87.

(*n*) See Manu, III, §§ 12, 14, IX, §§ 107, 122-125.

(*o*) Daya Bhaga, IX, § 6, note; 1 Stra. H.L., 56, Steele, 168; *Huree Bhaee* v. *Nuthoo*, 1 Bor., 59 (65), *Viraswamy* v. *Appaswamy* 1 Mad. H.C., 375, *Binda* v. *Kaunsilia* (1892) 13 All, 126, 163, *Thapita* v. *Thapita* (1894) 17 Mad., 235, 239.

(*p*) See *Palaniappa Chettiar* v. *Alagan Chetti* (1921) 48 I.A., 539, 543; 44 Mad., 740, 744, 749.

(*q*) The Special Marriage Act (III of 1872) Ss. 15 and 16.

monogamous as they are now governed by the Madras Marumakkathayam Act, 1932, which prohibits polygamy (*r*). The marriages of all Nambudris in the province of Madras who are not governed by the Marumakkathayam law of inheritance are now regulated by the Madras Nambudri Act (XXI of 1933) which revives the old Hindu law rule. No Nambudri, while there is a Nambudri wife living, can marry another Nambudri woman except where the former is afflicted with an incurable disease for more than five years or where she has not borne him any child within ten years of her marriage or where she has become an outcaste (*s*).

Second marriages of women formerly allowed.

§ 131. The prohibition against second marriages of women, either after divorce or upon widowhood, has no foundation either in early Hindu law or custom. Passages of the Vedas quoted by Dr. Mayr sanction the remarriage of widows (*t*). And the second marriage of women who have left their husbands for justifiable cause, or who have been deserted by them, or whose husbands are dead, is expressly sanctioned by the early writers (*u*).

The authority of Manu is strongly on the other side; but it is plain that this is an instance where the existing text is the result of amendments or modifications in the old text to suit the changed conditions of society. According to the Arthasastra of Kautilya, a wife or husband may obtain divorce from the other, either on the ground of mutual enmity or apprehension of danger from the other. But the provision was confined to marriages in the unapproved forms. Detailed provisions are given concerning the remarriage of women whether their first marriage was in approved or unapproved forms (*v*). Manu declares that a man may only marry a virgin, and that a widow may not marry again (*w*). The only exception which he appears to allow is in the case of a girl whose husband has died before consummation, who may be married again to the brother of the deceased bridegroom (*x*). On

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(*r*) The Madras Marumakkathayam Act, 1932 (XXII of 1933), S. 5.

(*s*) The Madras Nambudri Act (XXI of 1933) S. 11.

(*t*) Mayr, 181. It is now restored by Act XV of 1856.

(*u*) Nar., XII, §§ 97-101, see, too, §§ 18, 19, 24, 46-49, 62, Devala, Dig., II, 165; Baudh., II, § 20; Vas., XVII, § 13; Katyayana, Dig., II, 171.

(*v*) Shamasastri, 191, 195; Jolly, L & C, 143, 144; Ghose, I, 795.

(*w*) Manu, VIII, § 226, V, §§ 161-163. See, to the same effect, Apastamba, II, VI, 13, § 4.

(*x*) Manu, IX, §§ 69, 70; Vas., XVII, 74 places no restriction on her second choice.

Probable omission in present text of Manu

the other hand, two other texts appear to recognize and sanction the second marriage, either of a widow, or of a wife forsaken by her husband (*y*). At IX., § 76, a wife, whose husband resides abroad, is directed to wait for him eight, six, or three, years according to the reason for his original absence Nothing is said as to what is to happen at the end of the time Kulluka Bhatta inserts a gloss:—"after these terms have expired, she must follow him" (*z*). Now if we look to the corresponding part of Narada, who had an earlier text of Manu before him, we find that he lays down that "there are five cases in which a woman may take another husband, her first husband having perished, or died naturally or gone abroad, or if he be impotent, or have lost his caste." Then follow the periods during which a woman is to wait for her absent husband, and the whole matter is made into sense by the direction that, when the time has expired, she may betake herself to another man (*a*). Nothing is said about her following him, which after such an absence would probably be impossible or useless. If a similar passage had followed § 76 in Manu, the texts at § § 175, 176 would be intelligible and consistent.

When second marriages were no longer allowed, these passages seem to have been left out, and others of an exactly opposite character were inserted, the texts at § § 175, 176 then became unmeaning, but they were retained to explain the phrase, "son of a re-married woman," which had already appeared in the list of subsidiary sons. It is probable that the change of usage on this point arose from the influence of Brahmanical opinion, marriage coming to be looked upon as sacrament creating an indissoluble bond.

Usage of other tribes

§ 132. When we examine the usages of the aboriginal races, or of those who have not come under Brahmanical influence, we find a system prevailing exactly like that described by Narada. Among the Jat population of the Punjab, not only a widow, but a wife who has been deserted or put away by her husband, may marry again, and will have all the rights of a lawful wife The same rule exists among the Lingayats of South Kanara (*b*). In Western India, the second

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(*y*) Manu, IX, §§ 175, 176 See 1 Gib, 34, 104

(*z*) This is apparently founded on a text attributed to Vasishtha, XVII, 75—which is to the same effect.

(*a*) Narada, XII, §§ 97-101

(*b*) Punjab Customary Law, II, 131, 174, 190, 192, 193, Punjab Cust., 95, *Virasangappa* v. *Rudrappa* (1885) 8 Mad., 440.

marriage of a wife or widow (called *Pat* by the Mahrattas, and *Natra* in Guzerat) is allowed among all the lower castes (*c*). The cases in which a wife may remarry are stated by Mr. Steele as being, if the husband prove impotent, or the parties continually quarrel; if the marriage were irregularly concluded; if by mutual consent the husband breaks his wife's neck ornament, and gives her a *chorchittee* (writing of divorcement), or if he has been absent and unheard of for twelve years. Should he afterwards return, she may live with either party at her own option, the person deserted being reimbursed his marriage expenses. A widow's *pat* is considered more honourable than a wife's, but children by *pat* are equally legitimate with those by a first marriage (*d*). The right of divorce and second marriage has been repeatedly affirmed by the Bombay Courts (*e*). So, in Southern India, including Cochin and Travancore, the marriage of widows is not forbidden by either religious or caste custom to the majority of the population. The prohibition exists among the Brahmins, Kshatriyas and Vaisyas and also among the higher classes of Sudras who claim either equality or wear thread or who are otherwise high in the social scale or who emulate or follow Brahmin customs (*f*). In the absence of any custom permitting remarrige of widows, it was prohi-

(*c*) *Mani* v. *Zaboo* A.I.R., 1926, Nag., 488.

(*d*) Steele, 26, 159, 168; W. & B., 391 to 394, 368, 369. The futwahs recorded at pp. 112, 114, 139, 141 were evidently given by Shastries, who treated such second marriage as illegal. See, too, *Huree Bhaee* v. *Nuthoo* 1 Bor., 59 (65), note. As regards Karao marriages, see *Kishan Dei* v. *Sheo Paltan* (1926) 48 All., 126, *Balraj* v. *Jaikaran* A.I.R., 1931, All., 407.

(*e*) As to divorce, see *Kaseeram* v. *Umbaram* 1 Bor., 387 (429); *Kasee Dhoollubh* v. *Rutton Baee*, *ib*. 410 (452), *Muhashunker* v. *Mt. Oottum* 2 Bor., 524 (572), *Dyaram* v. *Baeeumba*, Bellasis, 36, *R.* v. *Karsan* (1864) 2 Bom. H.C., 117; *R.* v. *Sambhu* (1876) 1 Bom., 347; *Government of Bombay* v. *Ganga* (1880) 4 Bom., 330; *Empress* v. *Umi* (1882) 6 Bom., 126. As to widow marriage, *Hurkoonwar* v. *Rutton Baee* 1 Bor. 431 (475); *Treekumjee* v. *Mt. Laro Laroo* 2 Bor., 361 (397); *Baee Rutton* v. *Lalla Munnoohur*, Bellasis, 86, *Baee Sheo* v. *Ruttonjee* Morris, Pt. I, 103; *Khemkor* v. *Umiashankar* (1873) 10 Bom., H.C., 381. See per *curiam Rahi* v. *Govind* (1876) 1 Bom., 97, 114. *Mohammad Jan* v. *Mt. Sundar* A.I.R., 1934, All., 884 (remarriage among low classes).

(*f*) Widow-marriage and divorce are common among the Vellalans of the Palanis, the Maravers [*Kattamanachiar* v. *Doraisinga Tevar* (1871) 6 M.H.C., 310; *Murugayi* v. *Viramakali* (1878) 1 Mad., 226], the Kallans, the Malyalis of North Arcot, the Bhat Rajahs, the potters [*Sankaralingam Chetty* v. *Subban Chetty* (1894) 17 Mad., 479], barbers and tank diggers, and many others who are now included in the Scheduled Castes. In the Lower Provinces of Bengal and Eastern and Western Bengal, they are not practised by the higher classes; widow marriage is recognised among the Namosudras of

Remarriage legalised.

bited by Hindu law. But since the Hindu Widows' Remarriage Act (XV of 1856), it has become perfectly legal.

Marital duties

§ 133. On marriage, the wife passes into the dominion of her husband. The husband is the legal guardian of his minor wife (*g*) and on his death, the guardianship of the wife, if still a minor, passes to her husband's relations (*h*). Hindu law expects every husband to live with his wife and to maintain her and mutual fidelity is the legal duty, both on the part of the husband and the wife (*i*). The husband is therefore entitled to require his wife to live in his house from the moment of the marriage, however young she may be, but this right does not exist where, by custom or agreement, the wife is to remain in her parent's house until her puberty (*j*) or as in the case of some tribes, even afterwards. Such a custom is neither immoral nor opposed to public policy (*k*). Agreements between a husband and wife to live apart or agreements enabling a wife to avoid a marriage are forbidden by Hindu law and contrary to public policy and can be no answer to a suit for restitution of conjugal rights by the husband against the wife (*l*)

Restitution of conjugal rights

§ 134. Where the marriage is once completed, if either party refuses to live with the other, the remedy is by a suit

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Bengal, *Hurrychurn* v *Nimaichand* (1884) 10 Cal, 138 In *Bihar*, the Banias adopt widow marriage In the Northern parts of Bihar, in Orissa and in Chota Nagpur, it is generally practised except among the Brahmins, Kayasthas, Banias and Rajputs It is universal among the Darjeeling tribes and also in Assam except a few of the higher castes *Kudomee* v *Jotee Ram* (1878) 3 Cal, 305 (customary divorce). The various Census Reports and Manuals contain full information

(*g*) *In re* Dhuronidhur (1890) 17 Cal, 298.

(*h*) *Khudiram* v. *Bonwarilal* (1889) 16 Cal, 584, *Chinna Alagum Perumal* v *Vinayagathammal* (1928) 55 M.L J, 861, but see *Tota Ram* v. *Ram Charan* (1911) 33 All., 222 (where father of a minor widow was appointed her guardian in preference to her husband's relations).

(*i*) Manu, IX, 101, 102

(*j*) *Katee Rom* v. *Mt Gendhenee* (1875) 23 W.R., 178, *Suntosh Ram* v. *Gera Pattuck* (1875) 23 W.R., 22, *Surjyamoni* v. *Kalikanta* (1901) 28 Cal, 37, *Arumuga* v *Viraraghava* (1901) 24 Mad, 255; *Navnit Lal* v *Purushotam* (1926) 50 Bom, 268

(*k*) *Lenga Lalung* v. *Penguri* (1915) 22 C L.J., 92, 20 C W N., 406.

(*l*) *Sitaram* v. *Aheeree* (1873) 11 Ben. L R., 129; *Tekait Monmohini* v. *Basanta* (1901) 28 Cal, 751, *Paigi* v. *Sheo Narain* (1886) 8 All, 78; *Krishna Aiyar* v. *Balammal* (1911) 34 Mad, 398 (where an agreement providing for separate living was held invalid), *Venkatapathi* v. *Puttamma* (1936) 71 M.L J, 499, 504, but see *Lenga Lalung* v. *Penguri* (1915) 22 C L J, 92, 20 C W N, 406 (according to tribal custom, among the Lalungs, the wife may refuse to go to husband's house and require her husband to stay with her)

for restitution of conjugal rights (*m*). It has long since been settled that such a suit would lie between Hindus and the decree in such a suit will be enforced according to Or. 21. Rules 32 and 33 of the C. P. Code (*n*). The Court has always a discretion in the matter and may refuse to pass a decree for restitution of conjugal rights against the wife if the husband is suffering from incurable and contagious disease (*o*) or if he adopts another religion (*p*) or if he keeps a concubine in the house (p^1) or is guilty of cruelty which need not be physical violence but may be conduct calculated to undermine the wife's health (*q*). In deciding questions of cruelty, the entire conduct of the husband must be looked at and he is not always entitled to a decree in the absence of a plea of cruelty by the wife. Restitution can be defeated on the ground of desertion of the wife for a long period, and continued disregard of his marital obligations towards her; it is not necessary to prove actual cruelty (*r*). In a case in Allahabad (*s*), the Court refused restitution on the ground of the husband's continued misconduct. Restitution has also been refused where there is a great disparity in age when the marriage has not been consummated at all (*t*). When a wife pleads desertion and want of *bona fides*, she should be allowed to lead evidence so that the Court may

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(*m*) *Tekait Mon Mohini* v. *Basanta Kumar* (1901) 28 Cal., 751; *Dadaji* v. *Rukmabai* (1886) 10 Bom., 301.

(*n*) *Kondal Rayal Reddiar* v. *Ranganayaki Ammal* (1923) 46 Mad., 791, 801.

(*o*) *Bai Preem Kuvar* v. *Bhika* (1868) 5 Bom. H.C.A.C, 209; *Shinnappaya* v. *Rajamma* (1922) 45 Mad., 812, 814. It is no defence to such a suit that the defaulting party is, from illness or other cause, unfit for conjugal intercourse, though if the complainant was the party so unfitted and if the incapacity was of a permanent and incurable nature, it would *prima facie* be a bar to the relief sought for. *Purshotam Das* v. *Bai Mani* (1896) 21 Bom., 610.

(*p*) *Paigi* v. *Sheo Narain* (1886) 8 All, 78.

(p^1) *Dular Koer* v. *Dwarkanath* (1907) 34 Cal, 971 (low caste prostitute); *Gantapalli* v. *Gantapalli* (1897) 20 Mad., 470 (on adultery of husband, wife can get separate maintenance).

(*q*) *Kondal Rayal* v. *Ranganayaki* (1923) 46 Mad., 791; *Moonshe Buzloor* v. *Shumsoonissa* (1867) 11 M.I.A., 551., *Yamunabai* v. *Narayan* (1876) 1 Bom., 164.

(*r*) *Kondal Rayal* v. *Ranganayaki* (1923) 46 Mad, 791; *Baburam* v. *Mt. Kokla* (1924) 46 All., 210 (reasonable apprehension of bodily injury enough); *Mt. Chilha* v. *Chedi* (1929) 4 Luck., 355; A.I.R., 1929, Oudh., 121 (living in adultery with wife's sister). *Ude Singh* v. *Mt. Daulat Kuer* (1935) 16 Lah., 892; *Rukmani* v. *T. R. S. Chari* (1935) 69 M.L.J., 210; A.I.R., 1935, Mad., 616; *Venkatapathi* v. *Puttamma* (1936) 71 M.L.J., 499.

(*s*) *Husaini Begam* v. *Md. Rustam Ali* (1907) 29 All., 222.

(*t*) *Gurumukh Singh* v. *Mt. Harbans* A.I.R. 1928 Lah, 902 (husband 54 years, wife 7 years).

be in a position to judge whether the relief sought for by the husband should be granted or not and if so, on what conditions, if any (*u*) While the husband's adultery in the past which is no longer persisted in, will not be a good ground for refusing restitution, if he persists in a life of immorality, whether living in adultery with a woman or not, that will be a sufficient ground, on principles of justice, equity and good conscience to disentitle him to the relief of restitution (*v*). While decided cases have gone so far as to hold that taking a second wife is not by itself a ground for refusing restitution of conjugal rights (*w*), other circumstances making it very difficult for the first wife to live in the same house as the second wife may afford ground for refusing restitution. Clear condonation of adultery or cruelty will probably disentitle a person from setting up that plea in bar of restitution.

Marriage expenses.

§ 135 As already seen, marriage is a necessary samskara for all castes and the expenses of marriages of members of the family are to be met out of the joint family property by the father or any other person in whom the family properties are vested for the time being (*x*). As long as the family is undivided, all marriageable sons (*y*) and daughters (*z*) can get married at the expense of the family estate but after the severance of the joint status, there can be no provision for the expenses of a co-parcener's marriage (*a*) nor can any provision be made in his favour for such purposes in a decree for partition, after a suit has been instituted But the right of the daughter to her marriage expenses is based on her right

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(*u*) *Bai Jivi* v *Narsingh* (1927) 51 Bom, 329

(*v*) *Binda* v *Kaunsilia* (1892) 13 All, 126

(*w*) *Virasami* v *Appasami* (1863) 1 M H C, 375, *Motilal* v *Bai Chanthal* (1902) 4 Bom L R, 107, *Arumugam* v *Tulukanam* (1884) 7 Mad, 187, *Mt Kishan Dei* v *Mangal Sen*, A I.R, 1935, All, 927

(*x*) *Kameswara Sastri* v *Veeracharlu* (1911) 34 Mad, 422

(*y*) *Sundrabai* v *Shivnarayan* (1908) 32 Bom, 81, *Bhagirathi* v. *Jokhu Ram* (1910) 32 All., 575, *Gopalakrishnan* v *Venkatanarasa* (1914) 37 Mad., 273, F B., *Debi Lal* v *Nand Kishore* (1922) 1 Pat, 266

(*z*) *Vaikuntam* v *Kallapiran* (1900) 23 Mad, 512 *Sundari* v. *Subramanyam* (1903) 26 Mad, 505 (father not liable for expenses of his daughter's marriage in the absence of family property), *Malayandi* v *Subbaraya* (1911) 21 M L J, 521, *Ranganathi* v *Ramanuja* (1912) 35 Mad., 728, *Srinivasa* v. *Thiruvengadatha* (1915) 38 Mad, 556.

(*a*) *Subbayya* v *Anantaramayya* (1930) 53 Mad, 84, *Ramalinga* v *Narayana* (1922) 49 I A, 168, 45 Mad, 489, *Venkatarayudu* v. *Swarama* (1934) 67 M L J, 486, overruling in effect *Gopalam* v. *Venkata* (1917) 40 Mad, 632

to or interest in the joint family property and not based on the natural obligation of a father to maintain his children and can be enforced against a son's share on partition (*b*). A widow can alienate a reasonable portion for making a gift to her son-in-law at the time of the marriage (*c*) and a daughter can alienate a portion of the estate vested in her for the marriage of her son, if her husband is too poor (*d*). A guardian in charge of the estate of a minor can pay for the expenses of his sister's marriage as the minor's estate is liable to bear the same (*e*). A separated brother (*f*) and a maternal uncle (*g*) celebrating the marriages of a sister and niece respectively can re-imburse themselves out of the paternal estate of the girl. A widow is not bound to spend out of her private funds for her daughter's marriage and she may alienate her husband's estate for the same (*h*). The ceremonies of Grahapravesam and Ritusanti form part of the marriage ceremony of a girl of the Brahmin caste and expenses incurred for them are payable out of the estate of the father (*i*).

(*b*) *Subbayya* v. *Anantaramayya* (1930) 53 Mad., 84.

(*c*) *Ram Sumran Prasad* v *Gobind Das* (1926) 5 Pat., 646, 683. *Gundappa* v. *Narasappa* A.I.R., 1927, M., 455. *Ramaswami* v. *Vengidu Sami* (1899) 22 Mad., 113.

(*d*) *Mallayya* v. *Bapireddi* (1932) 62 M L J., 39 (son), *Kamla Prasad* v. *Lalji* (1930) 9 Pat, 721.

(*e*) *Dedar Singh* v. *Bansi* A.I.R, 1925, Lah., 520 (sister).

(*f*) *Fulsingh* v. *Ganesh* A I R., 1931, Nag, 147.

(*g*) *Khan Chand* v. *Raushan Das* A.I.R., 1932, Lah., 129.

(*h*) *Satis Chandra* v. *Haripada* (1925) 41 C.L.J, 209, A.I.R, 1925, Cal., 689, but see *Anandarao* v. *Venkatasubba Rao* (1930) 58 M.L.J., 127; A.I.R, 1930, Mad, 287.

(*i*) *Vaikuntam* v. *Kallipiran* (1903) 26 Mad, 497.

CHAPTER V.

FAMILY RELATIONS.

ADOPTION.

Adoption in early times.

§ 136. It is a singular circumstance that while the entire law of inheritance has been developed out of two verses of Yajnavalkya and half of a verse in Manu (*a*), and the doctrines of ancestral property and right by birth have been built upon a single verse of Yajnavalkya (*b*), the adopted son, even in early times, should have attracted greater attention in the Smritis. Nevertheless the adopted or dattaka son had not in ancient India the great vogue which he has since acquired. But he was not unknown even in Vedic times. The legend of Sunahsepa in the Aitareya Brahmana refers to his father having sold him in adoption to King Harischandra and to his subsequent adoption by the sage Visvamitra who had aurasa sons of his own (*c*). Another vedic story tells of Rishi Atri who gave an only son in adoption to Aurva (*d*). Apart from the exceptional kshetraja son, the prominence of the *putrika-putra* or the son of an appointed daughter is an indication of the prevailing usage which was all in his favour. His equality in status with the aurasa son both for spiritual and temporal purposes was established from the earliest times and he had to offer *pindas* both to his father and to his maternal grandfather and he took the estate of his own father if he left no other son (*e*). In many respects therefore, he was like the son of two fathers and it must have been increasingly felt that his father should not be deprived of the continuance of his own line. The son of the appointed daughter, in offering *pindas* to his mother, had to recite the *gotra* of his maternal grandfather, as in the *putrikakarana* marriage the gift of the girl was not complete (*f*). For religious purposes, this anomalous position of a son of two fathers must have been found to be unsatisfactory and, as a consequence, there was the repeated injunction not to marry brotherless maidens,

Putrika-putra losing importance.

(*a*) Yajn, II, 135-6, Manu, IX, 187

(*b*) Yajn, II, 121.

(*c*) Ait Brahm, VII, 3, Vas, XVII, 30 to 35

(*d*) Kane, H D.S, 6.

(*e*) Manu, IX, 132, 133, 140, Yajn., II, 128, Vishnu, XV, 47.

(*f*) Mit. in Yajn., I, 254, Vidyarnava's trans, 343 344. Manu in IX, 127, refers to an appointed daughter and in 130 to a daughter, though commentators think otherwise Arthas. III, 7, Shamasastri, 202

which would make it difficult to secure suitable bridegrooms if the institution of *putrika-putra* was insisted upon. There was also the injustice to his uterine brothers who were excluded by their appointed brother from the enjoyment of their maternal grandfather's property. Besides, the daughters other than the appointed daughter appear to have come into their own by the time of the Arthasastra of Kautilya (*g*). This must have led to the gradual recognition as heirs to the maternal grandfather of sons of daughters without any appointment, while at the same time the *putrika-putra's* duty to offer *pinda* to the maternal ancestors was imposed also on the daughter's son (*h*). But as the daughter's son was only a bhinnagotra sapinda, it became necessary that an adoption of a son should be made whenever a continuation of the direct line was desired either for spiritual or temporal purposes. All these reasons must have powerfully operated to bring the adopted son into a new prominence. Accordingly Manu provided for the identity of the adopted son with the family into which he was adopted (*i*).

Daughter's son.

§ 137. It is evident that the adopted or dattaka son had become important by the time of Gautama, Baudhayana and Manu, for all of them place him in the first set of six sons who are both heirs and kinsmen and next only to the aurasa and kshetraja sons (*j*). On the other hand, Apastamba who does not recognise any secondary son expressly states that "the gift, or acceptance of a son, and the right to buy or sell a child, is not recognised" (*k*). Vasishtha, notwithstand-

Dattaka

Different views as to his rank.

(*g*) Arthas., III, 5; Shamasastri, 197.

(*h*) Manu, IX, 136: "Through that son whom a daughter, either not appointed or appointed, may bear to a husband of equal caste, his maternal grandfather has a son's son, he shall present the funeral cake and take the estate." Yajn., I, 228, 242; II, 135-136; Manu's text applies to daughter's son *(douhitra)* and this is in accordance with the opinions of Govindaraja, Sarvajnanarayana and Nandana. Medhatithi and Kulluka differ from this but the former's comment itself shows the weakness of his position that it only applies to the appointed daughter's son whose case is already covered by the express text of Manu, IX, 132. From a historical point of view, there can be little doubt that Yajn. was not the first to provide for the inheritance of the daughter's son who is not mentioned by him but is supposed to be included by him in the word 'and' *(cha)* and Yajn's rule regarding offering of *pindas* to maternal ancestors only follows that of Manu; but see Dr. Sarvadhikari (2nd edn., 45) and Mullick, J., in *Umashankar Prasad* v. *Mt. Nageswari Koer* (1918) 3 Pat L.J., 663, 676

(*i*) Manu, IX, 141, 142.

(*j*) Gaut., XXVIII, 32, 33; Baudh., II, 2, 3, 31, 32; Manu, IX, 159, 160.

(*k*) Apas., II, 6, 13, 11; see also a text of Katyayana cited in Dat. Mima., I, 7-8; Mit., I, XI, 10 refers this prohibition to the giver, not to the taker of the son.

ing the fact that in ten *sutras* he lays down the rules relating to adoption and stresses its importance, gives him the eighth place (*l*); so also Vishnu. Yajnavalkya gives him the seventh place (*m*). The Arthasastra of Kautilya and Narada rank him as the ninth (*n*). His low rank was evidently due to the fact that he was not recognised by these writers as heir to anybody but to the man who took him in adoption. These differences, however, do not justify any inference that by a subsequent alteration in the text of Manu, the adopted son was promoted to the third place, for we find the more ancient Dharmasutras of Gautama and Baudhayana giving him the same prominence as Manu does (*o*) The existing compilation of Manu was clearly earlier than the Smritis of Yajnavalkya and Narada and the early importance of the adopted son is further attested by the fact that the Grihyasutra of Baudhayana contains the rules about the adoption of a son, substantially similar to those in the Vasishtha Dharmasutra of the Rigvedins The Saunakasmriti also contains the rules for the adoption of a son (*p*). The low rank assigned to the adopted son by Yajnavalkya and Narada was only due to the difference of opinion in the law schools of their days and not to the infrequency of adoptions in actual practice. Asahaya (c. 600 A D), the commentator of Narada and Visvarupa (c. 800 A.D.), the earliest commentator on the Yajnavalkyasmriti, however rank the dattaka as the third The difference between Manu, Yajnavalkya and Narada, as regards the place assigned to the adopted son was probably due to the difference in local customs as suggested in the Viramitrodaya (*q*).

(*l*) Vas., XVII, 26, 28; Vishnu, XV, 18

(*m*) Yajn., II, 128-132

(*n*) Arthas, Shamasastri, 202, Nar, XIII, 45-47

(*o*) Gaut, XXVIII, 32, 33. Baudh., II, 2, 3, 31-32, Dr. Buhler's criticism that the third and the fourth *prasnas* of Baudhayana Dharmasutra appear to be subsequent additions does not affect the passage in question. Baudhayana's *sutras* on adoption, taken from the Grihyasutra of Baudhayana and translated by Dr. Buhler are to be found as an appendix to the Baudhayana Dharmasutra in S.B.E., Vol. XIV, part II, pp. 334-336

(*p*) Saunaka's *Putrasangravidhi*, as to its antiquity and authority, see *Bhagwansingh* v. *Bhagwansingh* (1895) 17 All., 294, 320. The entire passage from the Saunaka Smriti is cited in the Dat. Mima in several places· I, 4, II, 2, 74; IV, 1; V, 2-21, and in the V Mayukha (IV, V, 8-10).

(*q*) Visvarupa, 249; for Asahaya, see Jayaswal, M. & Y., 252; Viramit., Setlur, 370.

Where any one of several brothers had a son, the latter was considered to be the son of all the brothers; Kulluka Bhatta actually adds a gloss: "So that if such nephew would be the heir, the uncles have no power to adopt a son"; and the same view was maintained by Chandesvara and other commentators (*r*). But even where a brother's son existed, still an adoption would be necessary, "for the celebration of name, and the due perpetuation of lineage" (*s*) especially as partition and self-acquisition became more common. The reconciliation between the claims of the agnatic kindred and the right of a man to adopt a son for religious or secular purposes was effected by the requirement that the son adopted must, as far as possible, be a near kinsman (sapinda). Brother's son inadequate.

§ 138. It is evident that the spiritual motive was not mainly responsible for the increasing vogue of the dattaka. When, owing to wars and other causes, families tended to become extinct, or rights to large estates and principalities were in jeopardy on the extinction of leading families and when claims had to be advanced before the rulers of the country for the recovery of estates, adoption must have become a fertile expedient for reviving or enforcing such claims. Adoption of a son to the last owner was a simple and intelligible device compared to the difficulty of proving or establishing the claim of a widowed *rani* or a remote male heir. It is not surprising therefore that in India, after the Gupta empire and especially in the Mohammedan period, adoption became even more important. Accordingly, when the Mitakshara was written, Vijnanesvara, in commenting upon Yajnavalkya who assigns the adopted son to the seventh rank and does not treat him as an heir to the adopted father's collaterals, treats of him adequately and restores him to the position assigned to him by Manu (*t*). The Smritichandrika is even more emphatic when it says that, in the Kali age, the adopted son is alone acknowledged, besides the aurasa son and prohibits the appointment of a daughter (*u*). Since the sale of a son was blameworthy and gift was spiritually the most meritorious form of transferring dominion, it became the normal mode of adoption. The other adopted sons, the son bought (Krita), the deserted son (Apaviddha) and the son self-given (Svayamdatta) disappeared except the son made Reasons for dattaka's prominence

(*r*) Vas., XV, 8; Vishnu, XV, 42; Manu, IX, 182, Dat. Chand., I, 21; Dig., II, 419, referring to the Ratnakara.

(*s*) Dat. Chand., I, 22; Vyav. Darp., I, 292.

(*t*) Mit., I, XI, 9-15, 30-31.

(*u*) Smritichandrika, X, 5, 12, 16.

(Kritrima) in Mithila (*v*). The Kritrima son however is not an adopted son in the full sense. When the texts say that a man should adopt after giving intimation to the king (*w*), it is evident that the adoption partook more of a secular character than of a religious one as such intimation was obviously necessary in the case of relatively large possessions

Religious motive only secondary.

The religious motive for taking a son in adoption could not have been very great if Vishnu, Yajnavalkya and Narada could assign him only a very low place. While his identity with the immediate agnatic family is now fully established, it is noteworthy that the adopted son's sapinda relationship in the adoptive family extends only to three degrees and not to the usual seven degrees, and the period of pollution extends only to three days and not to the usual ten days What is even more important is that on the anniversary of his adoptive father's death, he performs the *sraddha* in the *ekoddishtha* form in honour of the deceased only *i.e.* consecrated to a single ancestor and he does not, like the aurasa son, offer divided oblations to the fourth, fifth and sixth ancestors, even when he performs the *sraddha* in the usual way (*x*). While the continuance of the prohibition to marry in his own natural family is intelligible on grounds of consanguinity, that he should occupy a position greatly inferior to the son from the religious point of view, shows that the recognition of the institution of adoption has been more due to secular reasons than to any religious necessity.

Influence of secular motives

§ 139. It must not be supposed that the religious motive for adoption ever excluded the secular motive. The propriety of this motive was admitted by the Sanskrit writers themselves. In the ceremonial for adoption given by Baudhayana, the adopter receives the child with the words: "I take thee for the fulfilment of religious duties. *I take thee to continue the line of my ancestors*" (*y*). The Dattaka Mimamsa quotes a

(*v*) See as to the obsoleteness of the Krita form, 1 Stra. H L, 132, 1 N C, 72. *Eshankishor* v. *Haris Chandra* (1873) 13 B.L.R. Appx., 42, 21 W R, 381. As to the Svayamdatta, *Bashetiappa* v. *Shivlingappa* 10 Bom H C, 268. As to a form called paluk putro, *Kalee Chunder* v *Sheeb Chunder* 2 W R, 281 Other forms might perhaps be valid, when sanctioned by local custom, as the Krita system is said still to exist among the Gosains, 1 W MacN. 101

(*w*) The comment that 'king' includes the chief of a town or village emphasises it as adoption becomes commoner

(*x*) Dat Mima, VI, 32, 39, VIII, 6, IX, 8, Sarkar 'Adoption', 2nd edn., 387-388, Vaidyanatha Dikshitiyam, Setlur, 578, Ghose, H L, Vol. I, 654, but see Vyav Mayukha, IV, V, 31-36; Mandlik, 62, 63.

(*y*) The whole passage is translated by Dr. Buhler in his article on Saunaka, Journ. As. Soc. Bengal, 1866, and in his edition of Baudhayana, VII, 5, 11

text that a man should adopt a son "for the sake of the funeral cake, water and solemn rites, and for the celebrity of his name" (*z*). And the author of the Dattaka Chandrika admits that, even where no spiritual necessity exists, a son may, and even ought to, be adopted, for 'the celebration of name, and the due perpetuation of lineage' (*a*). In fact, the earliest instances of adoption found in the Hindu legend are of daughters (*b*). The *Kritrima* form of adoption, which is still in force in Mithila, has no connection with religious ideas. Among the tribes who have not come under Brahmanical influence, we find that adoption is equally practised; but without any of the rules which spring from the religious fiction. One Sanskrit purist actually laid it down that Sudras could not adopt, as they were incompetent to perform the proper religious rites (*c*). As a matter of fact they always did adopt, but were expressly freed from the restrictions which fettered the higher classes. They not only might, but did adopt the son of a sister, or of a daughter, who was forbidden to others So in the Punjab, adoption is common to Jats (*d*) and Sikhs, but with them it is simply the appointment of an heir. Similarly in Western India amongst the Talabda Koli caste and Kadwa Kunbi caste, though no religious significance attaches to adoption, the right to adopt has been upheld by the Courts (*e*). The Jains have so generally adopted the Hindu law that the Hindu rules of adoption are applied to them in the absence of a contrary usage (*f*) and adoptions are quite common among them. But since they repudiate the Brahminical doctrine of obsequial ceremonies, the offering of oblations for the salva-

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(*z*) Dat. Mima., VII, 30-38.

(*a*) Dat. Chand., I, 22, cited in *Kannepalli Suryanarayana's* case (1906) 33 I.A., 145, 154; 29 Mad., 382, 389.

(*b*) Dat. Mima., VII, 30-38. The Thesawaleme shows that such adoptions were practised among the Tamil races of Southern India In Jaffna, the Tamil people adopt both boys and girls, and so little is there any idea of a new birth into the family, that the adopted son can marry a natural born daughter of the adopting parents, and, where both a boy and a girl are adopted, they can intermarry The secular character of the transaction is even more forcibly shown by the circumstance that the person who makes the adoption must obtain the consent of his heirs. If they withhold it, their rights of inheritance will be unaffected. Thesawaleme, II, 1, 4, 5, 6.

(*c*) Vachaspati, cited in Dat. Mima., I, 26.

(*d*) *Basant Singh* v. *Brij Raj Saran Singh* (1935) 62 I A., 180. 57 All., 494.

(*e*) *Bhala Nahana* v. *Parbhu* (1878) 2 Bom., 67; *Patel Vandravan* v. *Patel Manilal* (1892) 16 Bom., 470.

(*f*) *Sheokuarbai* v. *Jeoraj* (1920) 25 C.W.N., 273. 275 P.C (Sitambari Jains).

tion of the soul of the deceased and do not believe that a son either by birth or by adoption confers spiritual benefit on the father, the objects and motives of such adoptions are purely secular (*g*).

Amongst the vast majority of Hindus, mere gift and acceptance which are quite sufficient to constitute adoption. are held to be secular, though the son adopted is expected to and does perform the customary funeral rites. In Mithila. where the Hindus are as religious as in the rest of India. the religious duty of a widow is not recognised and she is not entitled to make an adoption in the dattaka form. The prohibition shows that adoption is treated as a secular institution, though it may carry with it religious obligations on the part of the son adopted. Again. a widow who has the authority of her husband or the assent of his sapindas is not bound to adopt a son to perform the *sraddhas* for her husband The religious motive here is very much weakened. Where as in Bombay, a widow has the right to adopt, even without the permission of her husband or the assent of his sapindas. but need not, the reasonable inference is, that it is her right because adoption may be a proper act but not a religious duty on her part The religious motive must therefore be admitted to be not very appreciable, even in Bombay, especially as a man is allowed to adopt one older than himself, or a married man with children (*h*) Even in cases where the Court has held that there is a mandate to the widow to adopt, she is not bound to make an adoption. In most cases, the authorities given by husbands in wills and other documents are purely permissive, showing no consciousness on the part of the husband of the religious necessity for adopting a son. On the other hand, a husband often purely from secular motives empowers his wife to adopt a son after his death to continue his line and to inherit his property and keep up his name (*i*). His authority merely equips the widow with either a sword or a shield for her protection against the reversioners. In *Venkatanarasimha* v. *Parthasarathy Appa Rao* (*j*), in construing a will containing an authority to adopt, the religious motive was not allowed to aid the construction, and the Privy Council held that. in the

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(*g*) *Sheosingh* v *Mt Dukho* (1876 78) 5 I A., 87; 1 All, 688. *Dhanraj* v. *Sonibai* (1925) 52 I A, 231, 241, 52 Cal., 482, 494, *cf Amava* v *Mahadgauda* (1898) 22 Bom., 416, 422

(*h*) See also *Baswant* v *Mallappa* (1921) 45 Bom, 459

(*i*) See *Rajendra Prasad* v. *Gopala Prasad* (1930) 57 I.A., 296, 302; 10 Pat., 187, 195.

(*j*) (1913) 41 I.A., 51, 72; 37 Mad., 199, 223.

absence of a direction by the testator that there should be an adoption, as he would naturally have done, had he wished in all events to secure that there should be a son to perform the due religious rites, the language of permission pointed to the predominance of the secular motive.

The acceptance of an only son in adoption, in contravention of a strict religious precept, is certainly against the attribution of a religious motive. So too, any family or local usage which permits the adoption of one's daughter's son or sister's son or a mother's sister's son, in contravention of a rule which is both religious and legal, cannot be held to indicate anything but an overmastering secular motive. It is, however, undeniable that, in the vast majority of cases amongst the Hindus, there is a religious motive, if varying in degree (*k*), though it is equally undeniable that the secular motive is in almost all cases the more dominant. The question whether an adoption is inspired by secular or religious motives has naturally arisen in the case of adoptions by widows, made long after their husbands' death. In many of the cases, it cannot be said that such adoptions by widows are made from religious motives. They are often made to divert the course of succession, or to dispossess an heir in whom the inheritance has already vested. Religious motives, in such cases, are in fact conspicuously absent.

Religious motive undeniable but secular motive dominant

At the same time, it is unsafe to embark upon an enquiry in each case as to whether the motives for a particular adoption were religious or secular. An intermediate view is possible, that while an adoption in itself may be a proper act, inspired in many cases by religious motives, courts are concerned with an adoption, only as the exercise of a legal right by the widow and not as the fulfilment by her of a religious duty; and that the limits to the exercise of her power should be set, not from the religious point of view but from the point of view of conflicting rights. The controversy, however, must be taken to have been set at rest in favour of the conventional view by a recent judgment of the Judicial Committee (*l*) which, reiterating "the well-established doctrine as to the religious efficacy of sonship", gives full effect to it.

(*k*) Medhatithi's gloss upon Manu's text, IX, 138, (a son is called *putra* because he delivers his father from the hell called *put*), is that it is only a declamatory statement. According to him, *Put* does not mean hell but only the four kinds of elemental life on the earth "And from this is the father delivered by his son, as soon as he is born; which means that he is born next in a divine life." Jha Medhatithi Bhashya, Vol. V, 123.

(*l*) *Amarendra's* case (1933) 60 I.A., 242, 12 Pat, 642.

Early texts.

§ 140. The whole Sanskrit law of adoption is evolved from a few texts and a metaphor. The metaphor is that of Saunaka, that the boy to be adopted must bear 'the reflection of a son' (*m*). The texts are those of Manu, Vasishtha, Baudhayana, Saunaka and Sakala. Manu says: "That boy, equal by caste, whom his mother or his father affectionately give, confirming the gift with a libation of water, in times of distress to a man as his son, must be considered as an adopted son (Datrima)". "Of the man who has an adopted (Datrima) son possessing all good qualities, that same son shall take the inheritance, though brought from another family". "An adopted son shall never take the family name and the estate of his natural father, the funeral cake follows the family name and the estate, the funeral offerings of him who gives his son in adoption cease as far as that son is concerned" (*n*) Vasishtha says, "(1) Man formed of uterine blood and virile seed proceeds from his mother and his father as an effect from its cause. (2) Therefore the father and the mother have power to give, to sell, and to abandon their son (3) But let him not give or receive in adoption an only son; (4) For he must remain to continue the line of the ancestors. (5) Let a woman neither give nor receive a son except with her husband's permission (6) He who desires to adopt a son, shall assemble his kinsmen, announce his intention to the King, make burnt-offerings in the middle of the house, reciting the *Vyahritis*, and take as a son a not remote kinsman, just the nearest among his relatives" (*o*) To the same effect is Baudhayana in his Grihyasutra (*p*). Saunaka lays down rules

(*m*) Dat Mima., V, 15 It seems possible that this metaphor is itself a mistake Dr Buhler translates the verse, "He then should adorn the child, which (now) resembles a son of the receiver's body, that is, which has come to resemble a son by the previous ceremony of giving and receiving ' See Journal As. Soc. Bengal, 1866, art Saunaka Smriti. The translation, as given in the Dattaka Mimamsa, is, however, followed by Mr Golapchandra Sarkar, at p. 308 of his work on Adoption, and by Mr Mandlik, p 52, in his translation of the Mayukha where the passage occurs in full, and was accepted in preference to that of Dr. Buhler by Banerji, J, in *Bhagwan Singh* v *Bhagwan Singh* (1895) 17 All, 294, 321 F B Edge, C J, was of the opposite opinion, *ibid*, p 386

(*n*) Manu, IX, 168, 141, 142. The translation of Sir W. Jones which appeared in previous editions runs thus· "He whom his father or mother gives to another as his son, provided that the donee have no issue, if the boy be of the same class, and affectionately disposed, is considered as a son given, the gift being confirmed by pouring water"

(*o*) Vas, XV, 1-6, cited by Lord Hobhouse in *Sri Balusu Gurulingaswami* v *Sri Balusu Ramalakshmamma* (1899) 26 I A., 113, 130, 22 Mad., 398, 410.

(*p*) Baudh. Grihyasutra given as appendix in S.B.E., Vol. XIV, part II, 334-336.

substantially similar but the following which is not covered by the other writers is important. "The adopter having taken the boy by both hands, with the recitation of the prayer, ... having inaudibly repeated the mystical invocation . . . .; having kissed the forehead of the child; having adorned with clothes, and so forth, the boy, *bearing the reflection of a son;* . . . . accompanied with dancing, songs and benedictory words, having seated him in the middle of the house . . .; and having performed the homa or burnt sacrifice with the holy texts, should complete the remaining part of the ceremony. The adoption of a son, by any Brahmana, must be made from amongst sapindas . . .; or on failure of these, an asapinda may be adopted; otherwise let him not adopt. Of Kshatriyas, in their own class positively: and (on default of a sapinda kinsman) even in the general family, following the same *guru*. of Vaisyas, from amongst those of the Vaisya class; of Sudras, from amongst those of the Sudra class. Of all, and the tribes likewise, (in their own) classes only: and not otherwise. But a daughter's son, and a sister's son, are affiliated by Sudras. For the three superior tribes, a sister's son is nowhere (mentioned as) a son (*q*). By no man, having an only son, is the gift of a son to be ever made. By a man having several sons, such gift is to be made. on account of difficulty" (*r*).

Sakala says: "Let one of a regenerate tribe destitute of male issue on that account adopt as a son the offspring of a 'sapinda' relation particularly: or also next to him one born in the same general family. If such exist not, let him adopt one born in another family: *except a daughter's son, and a sister's son, and the son of the mother's sister*" (*s*).

These texts apply only to the dattaka form. From these texts and the commentaries, a body of law has been developed which will be considered under the following heads:—First, who may take in adoption; Second, who may give in adoption; Third, who may be adopted; Fourth, the ceremonies neces-

(*q*) The sentence, "For the three superior tribes, a sister's son is nowhere (mentioned as) a son" is given in the Dat. Mima. (II, 74. V, 18) but not in the Vya. May.; see also Jolly, T.L.L., 162

(*r*) The entire passage from the Saunaka Smriti is cited in parts in the Dat. Mima. in several places (V, 2-21; II, 2, 74). V. Mayukha, IV, V, 8-10 (Gharpure's edn., 69, 70; Mandlik's edn., 52, 53).

(*s*) The text of Sakala is quoted in Dat. Chand, I, 11, and also in *Bhagwansingh* v. *Bhagwansingh* (1899) 26 I.A., 153, 160, 21 All., 412, 418.

sary to an adoption; Fifth, the results of adoption; Sixth, the evidence of adoption.

Adopter must be without issue

§ 141. FIRST, WHO MAY ADOPT. An adoption may either be made by the man himself, or by his widow on his behalf. But in either case it is a condition precedent that he should be without any male issue living at the time of adoption (*t*). 'Male issue' is taken in the wide sense peculiar to the term in Hindu law, and means three direct descendants in the male line. Accordingly, if a man has a son, grandson, or great-grandson, actually alive, whether natural or adopted (*u*), he is precluded from adopting. The simultaneous adoption of two or more persons is invalid as to all (*u*[1]). But the existence of a great-great-grandson, or of a daughter's son, or of an illegitimate son who may inherit, is no bar to an adoption (*v*) Nor is the pregnancy of the adopter's wife, even where he is aware of it, a bar to his adopting a son (*w*) It is now settled that an adoption by a bachelor or by a widower is valid (*x*).

Only one son can be adopted

Pregnancy

By bachelor or widower

Where a man's only son has become an ascetic or has entered a religious order, there can be no doubt that the father can make an adoption (*y*). So also where an only son professing to be a Hindu, Buddhist, Sikh or Jaina marries under the Special Marriage Act, his father has the right to adopt a son (*z*)

(*t*) Dat Mima., I, 4, 13, Dat Chand., I, 4, 6

(*u*) *Rungamma* v *Atchamma* (1846) 4 M I A, 1, *Gopee Lal* v *Chandraole* (1872) I A Sup Vol 131, *Mohesh Narain* v *Taruck Nath* (1893) 20 I A, 30, 20 Cal, 487, see also *Lallu* v *Jagmohan* (1896) 22 Bom., 409, 412

(*u*[1]) *Akhoy Chunder* v *Kalapahar* (1886) 12 I A, 198, 12 Cal, 406, *Soorendra Keshav* v *Doorgasoondery* (1892) 19 I A., 108, 19 Cal, 513

(*v*) F MacN, 149, 1 W Mac., 66 note See *Maharaja of Kolhapur* v. *Sundaram* (1925) 48 Mad, 1 (illegitimate son)

(*w*) *Nagabhushanam* v *Seshamma* (1881) 3 Mad., 180; *Hanmant Ramachandra* v *Bhimacharya* (1888) 12 Bom, 105; *Daulat Ram* v *Ram Lal* (1907) 29 All., 310

(*x*) Suth. Syn, 664, 671, Dig, II, 393, 1 W. MacN., 66, W. MacN., 175, *Gopal Anant* v *Narayan Ganesh* (1888) 12 Bom, 329 (bachelor), *Nagappa* v *Subba Sastri* (1865) 2 Mad H C, 367 (widower), *Chandrasekharudu* v *Bramhanna* (1869) 4 Mad H C., 270 (widower). See also *Sundaramma* v *Venkatasubba Ayyar* (1926) 49 Mad., 941 (widower) *Sountharapandian* v *Periaveeru Thevan* (1933) 56 Mad, 759 F.B (widower) But in Pondicherry a Brahman bachelor is considered to be incapable of adopting. (Sorg H L, 121, Co. Con, 375)

(*y*) See Vivada Chintamani, 246, Mit., II, X, 3, Daya Bh, I, 31.

(*z*) Sec 26.

Adoption where son is disqualified.

Where an only son becomes an outcast or renounces the Hindu religion, his father will be entitled to adopt another as his son (*a*). According to a text which is cited in the Dayabhaga and which is ascribed to Apastamba by the Viramitrodaya, to Sankha and Likhita by the Vivada Ratnakara and to Katyayana by Apararka, "Of one who is excommunicated, the heritage, the oblation of food, and libations of water, cease" (*b*). Since the Caste Disabilities Removal Act XXI of 1850, the outcast son will not forfeit any legal right by loss of caste, but he will not retain the religious capacity to perform the obsequial rites, and the father's right as it stood under the Hindu law to make an adoption when his son becomes an outcast is not taken away. Nor would the existence of a son of the outcast son be a bar as the Act does not protect him (*c*). Those who are treated in the books as disqualified heirs stand on the same footing, for they are all equally disqualified to perform religious ceremonies and to offer oblations to their ancestors (*d*). On the doctrine of religious efficacy of sonship recently emphasised by the Privy Council (*e*), where an only son is a *patita* or a disqualified person according to the Smritis, the father will be entitled to adopt. In Madras, it has been rightly held that the existence of a son, who is not only disqualified from inheritance but also incompetent to perform ceremonies is no bar to an adoption by his father, dissenting from the contrary view in a Bombay case (*f*). Both the cases however were prior to the Hindu Inheritance (Removal of Disabilities) Act (XII of 1928), according to which only a congenital lunatic and an idiot are still excluded from inheritance and partition. The Act does not affect the law of the Dayabhaga School, nor does it apply to religious offices or to trusteeship of religious or charitable endowments. It does not certainly remove the religious disability of disqualified persons to perform funeral

(*a*) It is suggested by Mr. Sutherland and assented to by Mr. Mac-Naghten, that if the son, natural or adopted, became an outcast, and therefore unable to perform the necessary funeral rites, an adoption would be lawful; and a practice to that effect is stated to exist in Bombay—2 W. MacN., 200; Steele, 42, 181.

(*b*) Daya. Bh V, 3, Vivada Ratnakara, p. 19.

(*c*) *Mitar Sen Singh* v. *Maqbul Hasan Khan* (1930) 57 I.A., 313, 35 C.W.N., 89

(*d*) The disqualified persons are not entitled to perform the rites prescribed by the Sruti and the Smriti. Vivada Chintamani, 242-243; Vivada Ratnakara, 20; Viramitrodaya, Setlur's ed., 464, Smriti-chandrika, V, 6; Dat. Mima., II, 6, 2; Ghose, H.L., Vol. I, 669, 670; Sarkar, 'Law of Adoption', 196.

(*e*) *Amarendra* v. *Sanatan* (1933) 60 I.A., 242, 12 Pat., 642.

(*f*) *Nagammal* v. *Sankarappa* (1931) 54 Mad., 576; dissenting from *Bharmappa* v. *Ujjangouda* (1922) 46 Bom., 455.

rites or to offer *pindas*. Where an only son is disqualified under the Dayabhaga law or is a congenital lunatic or an idiot in a case governed by the Mitakshara law, and an adoption is made, the adopted son will have the usual rights. Where however an adoption is made by a father whose son's disqualification is now removed by the Act (XII of 1928), the adopted son will not be entitled to inherit or to share on partition and his adoption for all but religious purposes will be invalid Whether he will be entitled to maintenance is open to doubt.

Adoption by disqualified person

§ 142 Where a person is disqualified from inheriting by any personal disability such as impotency, lunacy, idiocy, leprosy, blindness, by being lame or dumb or the like, only his aurasa son is entitled to his share (*g*). The Mitakshara in II, X, 11 says that 'the specific mention of legitimate issue and offspring of the wife is intended to forbid the adoption of other sons' (*h*) The Dayabhaga also recognises as sons of disqualified persons only the aurasa or kshetraja sons (*i*). The Dattakachandrika (*j*) says that a son adopted by a disqualified person has no right to the estate of his paternal grandfather but to maintenance only While admitting that a son adopted by a disqualified person cannot have the full status of a dattaka son, it allows adoption of a qualified character purely for religious purposes But the Mitakshara expressly and the Dayabhaga impliedly give nothing to the adopted son of a disqualified person A disqualified person therefore cannot make a valid adoption The decision in *Ramabai* v. *Harnabai* (*k*) proceeds upon the footing that leprosy of a virulent and disgusting type would disentitle one to make an adoption In *Sukumari Bewa* v. *Ananta* (*l*), it was held that, in Bengal a Sudra leper can adopt a son, having the full rights of a

(*g*) *Seiachetumbra* v *Parasucty* Mad. Dec. of 1857, 210 This incapacity is not recognised by the custom of Pondicherry; Sorg H.L., 120, Co Con, 375 In the Punjab a man who is blind, impotent, or lame can adopt, though the Brahmans deny the right of one who was always impotent Punjab Customary Law, II, 154.

(*h*) Golapchandra Sarkar Sastri questions the correctness of Colebrooke's trans and gives his own literal translation· "The specific mention of aurasa and kshetraja is intended to exclude other sons from inheritance" His rendering necessarily implies the prohibition of the dattaka son, who, if his adoption is valid, must take the share Sarkar, Adoption, 2nd edn, 202.

(*i*) Dayabhaga, V, 19.

(*j*) Dattaka Chandrika, VI, 1.

(*k*) (1924) 51 I.A., 177; 48 Bom., 363; see also *Bhagaban Ramanuja Das* v. *Ram Praparna* (1895) 22 I.A., 94, 105; 22 Cal., 843, 858

(*l*) (1901) 28 Cal, 168

dattaka because no ceremonies are required. It overlooks the rules in the Mitakshara and the Dayabhaga which negative an adoption by a disqualified person, though the disability to participate in the religious ceremony of adoption may not be a ground of objection. As regards congenital lunatics and idiots, they continue to be still disqualified persons in all schools of Hindu law and cannot adopt. But in the case of persons whose disability has been removed by the Act of 1928, and who are themselves entitled to inherit, adoption can be validly made by them as the reason for the prohibition no longer exists.

Adoption by a minor.

§ 143. It is well settled that a person who is a minor under the Indian Majority Act can adopt or authorise his widow to adopt when he has attained the age of discretion according to Hindu law (*m*). In *Jamoona* v. *Bamasoondari* (*n*), the Privy Council held that the age of 15 or 16 was, according to the law prevalent in Bengal, to be regarded as the age of discretion. It corresponds to the age of majority which is fixed by the Dayabhaga School at the completion of the fifteenth year (*o*). According to the Mitakshara School, it is the completion of the sixteenth year (*p*). It may be the same for the Mitakshara School also, as it is quite possible to interpret the relevant rule as meaning the completion of the fifteenth year (*q*). The age of discretion cannot certainly be fixed earlier than the completion of the fourteenth year since the Legislature now treats a girl below 14 as a child for purposes of marriage. The age of discretion must be fixed by the law and cannot be treated as a question of fact in each case.

Age of discretion

There can be little doubt that Hindu law never contemplated a person below the age of majority as having attained the age of discretion. Narada says: "A youth who, though independent, has not yet arrived at years of discretion, is not

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(*m*) *Jamoona* v. *Bamasoondari* (1876) 3, I.A., 72, 1 Cal, 289, followed by the Privy Council in *Amarendra* v. *Sanatan* (1933) 60 I A 242, 260, 12 Pat., 642, 660-663; *Rajendra* v. *Saroda* 15 W R., 548. *Patel Vandravan* v. *Patel Manilal Chunilal* (1891) 15 Bom., 565 *Sattiraju* v. *Venkataswami* (1917) 40 Mad., 925, 929, explaining the dictum in *Ranganayakamma* v. *Alwar Chetti* (1890) 13 Mad., 214, *Basappa* v. *Sidramappa* (1919) 43 Bom., 481.

(*n*) (1876) 3 I.A, 72, 1 Cal., 289, *supra*

(*o*) Dig., I, 202; *Mothoor Mohan* v. *Soorendro* (1876) 1 Cal., 108 114, F.B.

(*p*) Vyav. Chand., I, 590; *Ramesh Chandra Das* v *Maharaja Birendra* (1924) 29 C.W.N., 287, 289, 1 Stra. H.L., 72.

(*q*) Per Sadasivier, J., in 40 Mad., 925, 929 *supra*.

capable of contracting valid debts" (*r*). As adoption is an important act and as a widow must be able to judge of its consequences, it would follow that the widow herself must have attained the age of discretion, whether she adopts in her own right, as in Bombay, or with the assent of kinsmen (*s*) But it has been held that if she has been directed to adopt a particular boy by her husband, then she could adopt even though she was about twelve (*t*), if it is not shown that she had not sufficient maturity of understanding to comprehend the nature of the act. This view is open to the objection that an adoption is always a matter of discretion on the part of the widow, as she is not bound to make the adoption at all or within a particular time, and the onus is also wrongly placed Where an adoption is made by a person who has not attained the age of discretion, it cannot be subsequently ratified (*u*) On principle, an adoption made by a person who, at the time, is of unsound mind, though not a congenital lunatic, is altogether invalid and so it has been held in a case in Madras (*v*) The wife of a lunatic cannot adopt for him during his lifetime, even where his mother consents on his behalf (*w*)

By a lunatic

By wards.

The various Court of Wards Acts contain provisions prohibiting disqualified proprietors from making an adoption or giving permissions to adopt without the consent of the Court

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(*r*) Narada, I, 31 The Sanskrit word "*Praptavyavahara*" has been explained by the commentator Bhavaswamin in the light of Nar, I, 35 to mean the age of majority, *i e*, the sixteenth year

(*s*) In *Murugeppa* v. *Kalawa* (1920) 44 Bom, 327, it was held that a widow of 12 years cannot make a valid adoption. In *Parvatava* v *Fakirnaik* (1922) 46 Bom., 307, adoption by a widow aged 12 years and 6 months was held invalid. In Oudh the age of discretion is 16 years *Mata Baksh* v *Ajodhia Baksh* A.I R 1936 Oudh, 340

(*t*) *Mondakini* v *Adinath* (1891) 18 Cal., 69, see *Sattiraju* v. *Venkitaswami* (1917) 40 Mad, 925, 931. (This decision apparently follows s. 83 of the Indian Penal Code, but the age given for the purpose of criminal law cannot be the standard for the purpose of adoption which is more analogous to a contract or disposition of property).

(*u*) *Sattiraju* v *Venkitaswami* (1917) 40 Mad., 925 (per Sadasivier, J., 930, per Oldfield, J., 936-937) dissenting from *Sri Raja Venkata Narasimha Appa Row* v *Sri Raja Rangayya* (1906) 29 Mad., 437; see also *Seshayyar* v. *Saraswati Ammal* (1920) M.W N., 721

(*v*) *Seshamma* v. *Padmanabha Rao* (1917) 40 Mad., 660: It was held that the fact that he was previously adjudicated a lunatic under Act XXXV of 1858 was not conclusive as to his incapacity to adopt and may be rebutted by evidence. See also *Tayammal* v. *Seshachalla* (1865) 10 M.I A, 429, 434-5

(*w*) *Ramakrishna* v. *Lakshminarayan* (1920) 22 Bom. L.R., 1181.

of Wards (*x*). Adoptions made in violation of the Court of Wards Act are invalid (*y*). The consent of the Government is not necessary in the case of adoptions by Zemindars, Jaghirdars or other landed proprietors, as was once supposed (*z*).

By unchaste widow.

§ 144. An unchaste widow cannot adopt, even with the express authority of her husband, because her dissolute life entails a degradation which renders her unable to perform the necessary ceremonies (*a*). In Bombay, it has been held that a Sudra widow, though unchaste, can make a valid adoption (*b*). An untonsured widow has been held to be competent to make a valid adoption (*c*).

By a remarried woman.

Apart from the Hindu Widows' Remarriage Act, 1856, a Hindu widow on her remarriage loses her status as her husband's widow for all purposes and has no longer any spiritual or temporal ties with the family of her first husband. She cannot therefore adopt a son to her first husband while she is the wife of another (*d*).

(*x*) The Madras Court of Wards Act, 1902, s. 34 (1) c, Bengal Act IX of 1879, s. 61; see *Amarendra* v. *Sanatan* (1933) 60 I.A., 242, 245, 12 Pat., 642, 646, U P. Act IV of 1912, s. 137. There is not in Bombay, as elsewhere, any prohibition of adoption, made without the sanction of the Court of Wards. Trevelyan on Minors, 432. Apparently confirmation by the Court of Wards after the adoption may suffice under Sec 34 of the Madras Act, compare *Balasubrahmanya* v *Subbayya* (1938) 65 I A., 93, 42 C.W.N., 449.

(*y*) *Jumoona* v. *Bamasoondari* (1876) 3 I.A., 72, 1 Cal, 289, *Neelkaunt* v. *Anundmoyee* S.D. of 1855, 218; *Anundmoyee* v. *Sheebchunder* (1862) 9 M.I.A., 287. It has been held that the corresponding provision in Bombay, Act II of 1863, s. 6, cl. 2, only applies as between Government and the person claiming as adopted son, and cannot be taken advantage of by third parties for the purpose of invalidating the adoption. *Vasudevanant* v. *Ramakrishna* (1878) 2 Bom., 529. See also *Mata 'Baksh* v. *Ajodhiya Baksh* A.I R. 1936 Oudh., 340.

(*z*) Steele, 183; *Bhasker Bhachajee* v. *Narro Ragoonath* Bom. Sel. Rep., 24; *Ramachandra* v. *Nanaji* (1871) 7 Bom. H.C. (A.C.J.), 26. *Narhar Govind* v. *Narayan* (1877) 1 Bom., 607; *Rangubai* v. *Bhagirthibai* (1878) 2 Bom., 377, Bell's Empire in India, 127; Bell's Indian Policy, 10; Sir C Jackson's Vindication of Lord Dalhousie, 9, see *Balaji Ramachandra* v. *Datta Ramachandra* (1903) 27 Bom , 75. By Lord Canning's proclamation the right to adopt has been recognized in the case of feudal chiefs and jaghirdars.

(*a*) *Sayamalal* v. *Saudamini* (1870) 5 B.L.R., 362, approved by Mitter, J., in *Kerry Kolitanee* v. *Moni Ram Kolita* (1874) 13 B.L.R., 1, 14, 19 W.R., 367.

(*b*) *Basavant Mushoppa* v. *Mallappa* (1921) 45 Bom., 459, 462. (Where the decision in (1870) 5 B.L.R., 362 *supra*—a case of unchastity, not of the giver but of the person receiving in adoption—was misunderstood). See also *Keshav* v. *Govind* (1885) 9 Bom., 94.

(*c*) *Ravji Vinayakrav* v. *Lakshmibai* (1887) 11 Bom., 381, 392; *Lakshmibai* v. *Ramachandra* (1898) 22 Bom., 590; W. & B. 998.

(*d*) *Panchappa* v. *Sanganbasawa* (1900) 24 Bom., 89, 94; see *Fakirappa* v. *Savitrawa* A.I.R. 1921 Bom., 1, 23 Bom. L.R., 482, F.B., 485, 486, overruling *Putlabai* v. *Mahadu* (1909) 33 Bom., 107.

During Pollution.

The pollution of a person taking in adoption does not render his act invalid. Pollution is only a bar to a religious act and renders the religious ceremony inefficacious but gift and acceptance are only secular acts which may be supplemented by *datta homam*, where necessary, after the expiry of the period of pollution (*e*) As amongst Sudras no religious ceremony is necessary, an adoption during pollution is valid (*f*)

Adoption by wife.

§ 145. As an adoption is made solely to the husband and for his benefit, he is competent to effect it without his wife's assent, and notwithstanding her dissent (*g*). For the same reason, she can adopt to no one but her husband (*h*), not even to herself (*i*) An adoption made to herself, except where the *Kritrima* form is allowed, would be wholly invalid (*j*) Nor can she ever adopt to her husband during his lifetime, except with his assent (*k*). Her competency to adopt to him, after his death, whether with or without his assent, is a point which has given rise to four different opinions, each of which is settled to be law in the province where it prevails "All the schools accept as authoritative the text of Vasishtha, which says, 'Nor let a woman give or accept a son unless with the assent of her lord' But the Mithila School apparently takes this to mean that the assent of the husband must be given *at the time of the adoption*, and therefore that a widow cannot receive a son in adoption, according to the dattaka form, at all (*l*). The Bengal school interprets the text as requiring an express permission

Adoption by widow

Mithila

Bengal.

(*e*) *Santappayya* v *Rangappayya* (1895) 18 Mad., 397, *Asitamohan* v *Nirode Mohan* (1916) 20 C W N, 901, see also *Ramalinga* v *Sadasiva* (1864) 9 M I A, 506, where it seems to have been assumed that an adoption would be invalid if made during pollution

(*f*) *Thangathanni* v. *Ramu Mudali* (1882) 5 Mad, 358, there does not appear to be a decision on this point in *Ranganayaki* v *Alwar Chetti* (1890) 13 Mad, 214, where the invalidity of adoption turned upon other grounds, *ib*, 222

(*g*) Dat. Mima, I, 22, *Rungama* v. *Atchama* (1846) 4 M I.A., 1; *Annapurni Nachiar* v *Collector of Tinnevelly* (1895) 18 Mad., 277, 283, affirmed in (1900) 26 I A, 240, 23 Mad, 1, ('her consent is unnecessary'), *Sundaramma* v. *Venkatasubba Ayyar* (1926) 49 Mad, 941, 946, *Sowntharapandian* v *Periaveeru Thevan* (1933) 56 Mad, 759, F B, per Ramesam, J, at 770, per Ananthakrishna Ayyar, J., at 778-779.

(*h*) *Puttu Lal* v *Parbati Kunwar* (1915) 42 I A., 155, 37 All, 359.

(*i*) *Chowdry Pudum* v. *Koer Oodey* (1869) 12 M I A, 350, 356, *Narendra Nath* v *Dina Nath* (1909) 36 Cal, 824

(*j*) (1869) 12 M.I.A., 350, 356 *supra.*

(*k*) Dat. Mima., I, 27, *Narayana* v. *Nana* (1870) 7 B.H.C. (A.C.J.), 153.

(*l*) Dat. Mima, I, § 16, Vivada Chintamani, 74, 1 W. MacN., 95, 100; *Jai Rani* v. *Musan Dhani* 5 S.D., 3.

given by the husband in his lifetime, but capable of taking effect after his death (*m*); while the Mayukha, Kaustubha, and other treatises which govern the Mahratta school, explain the text away by saying, that it applies only to an adoption made in the husband's lifetime, and is not to be taken to restrict the widow's power to do that which the general law prescribes as beneficial to her husband's soul" (*n*). In the Benares school as in the Bengal school, the law has been interpreted to allow a widow to adopt only where she has her husband's authority (*o*). A fourth and intermediate view was established by the Judicial Committee in the *Ramnad* case, *viz.*, that in Southern India the want of the husband's assent may be supplied by that of his sapindas. The result is that, in the case of an adoption by a widow, in Mithila, no consent is sufficient; in Western India no consent is required; in Bengal and Benares the husband's assent is required; in Southern India the consent either of the husband or of the sapindas is sufficient. Amongst the Nambudri Brahmans of Malabar, as in Western India, a widow can adopt without her husband's authority or kinsmen's assent (*p*). In a case from Oudh, the Judicial Committee held that a Hindu widow governed by the Mitakshara who had not the authority of her husband could adopt by virtue of a family custom (*q*).

Mahratta.

Benares.

Southern India.

Nambudris.

Among the Jains, except in the Madras Presidency (*r*), a sonless widow can adopt a son to her husband without his

Jains

(*m*) 1 W. MacN., 91, 100; 2 W. MacN., 175, 182, 183; *Janki Dibeh* v. *Suda Shoo* 1 S.D., 197 (262); *Mt Tara Munee* v. *Dev Narayun* 3 S.D., 387 (516).

(*n*) *Per curiam, Collector of Madura* v. *Mootoo Ramalinga* (1868) 12 M I.A., 397, 435, Mandlik, 463.

(*o*) *Haiman* v *Koomar* 2 Kn., 203; *Chowdry Padum Singh* v. *Oodey Singh* (1869) 12 M.I.A., 350; *per curiam, Collector of Madura* v. *Mootoo Ramalinga* (1868) 12 M.I.A., 397, 440; *Tulshi Ram* v. *Behari Lal* (1890) 12 All., 328 F.B., where it was also held that the want of proper authority could not be cured on the principle of *factum valet*. *Babu Motising* v *Durgabai* (1929) 53 Bom., 242; *Biswanath* v. *Jugal* (1923) 50 I A, 179, 181; 45 M.L.J, 215; 28 C.W.N., 790, the view of the Viramitrodaya, though its authority is next only to the Mitakshara in the Benares School, that a widow can adopt with the assent of her husband's sapindas has not been accepted in that School, Viramit., II, 2, 8; Setlur's ed., 361-362.

(*p*) *Vasudevan* v. *Secry of State* (1888) 11 Mad., 157, 178, 187.

(*q*) (1923) 50 I.A, 179 *supra*.

(*r*) *Peria Ammani* v. *Krishnaswami* (1893) 16 Mad., 182. *Gettappa* v. *Eramma* (1927) 50 Mad., 228.

authority or the consent of his sapindas (*s*). In one case, the Court said of this class:—"They differ particularly from the Brahmanical Hindus in their conduct towards the dead, omitting all obsequies after the corpse is burnt or buried. They also regard the birth of a son as having no effect on the future state of his progenitor, and consequently adoption is a merely temporal arrangement, and has no spiritual object" (*t*). The widow's right was affirmed even though the family, originally Jain, was converted to Vaishnavism (*u*). In Madras, a Jain widow cannot adopt a son to her husband without his authority or the consent of his sapindas (*r*).

Punjab

In the Punjab the custom appears to vary. In Gurgaon a widow can adopt without any consent, if she selects a son from her husband's agnates. She cannot adopt any one else without the consent of such agnates. In Rohtak and several other districts, the husband's consent is necessary. In three cases, the Punjab Courts set aside adoptions by a widow for want of her husband's permission, two of these cases being from Lahore and Delhi respectively. (*v*).

Widow alone can adopt for husband

§ 146 A husband can authorise only his widow to adopt a son to him. He cannot give such an authority to any other person, separately or jointly with his widow (*w*) Where a man authorised his widow and two others whom he had appointed executors and trustees to make an adoption, both the joint power and the adoption made in pursuance of it were held to be invalid (*x*). As the widow alone can adopt

(*s*) *Govindnath Ray* v *Gulal Chand* 5 S D, 276 (322), *Sheo Singh* v. *Mt. Dakho* 6 N.-W.P., 382, affd. (1879) 5 I A, 87, 1 All, 688, *Lakshmi Chand* v *Gatto Bai* (1886) 8 All, 319, *Manik Chand* v. *Jagat Sattani* (1890) 17 Cal, 518, *Harnabh* v *Mandil* (1900) 27 Cal, 379, *Manohar Lal* v *Banarsi Das* (1907) 29 All, 495, *Asharfi Kunwar* v. *Rup Chand* (1908) 30 All., 197, on appeal *Rupchand* v. *Jambu Prasad* (1910) 37 I A, 93, 32 All, 247, *Banarsi Das* v. *Sumat Prasad* A I.R. 1936 All, 641, where judicial notice was taken of Jain usage and it was said that "Jains are governed by the Hindu law of adoption, except in the matters of (1) authority for adoption, (2) restrictions as to the adoptee's qualification and (3) religious ceremonies."

(*t*) *Per curi*, 6 N-W P, 392, quoted with approval in *Dhanraj* v. *Sonibai* (1925) 52 I A, 231, 242, 52 Cal, 482

(*u*) (1890) 17 Cal, 518 *supra*

(*v*) Punjab Customary Law, II, 154, 178, 205, III, 87, 89, 90.

(*w*) *Amrito Lal* v *Surnomoyi* (1898) 25 Cal, 662, affd (1900) 27 I.A, 128, 27 Cal, 996. A direction by a testator to his son's widow to adopt might justify an adoption to the son, but not to the testator. *Karsandas* v *Ladkavahu* (1888) 12 Bom, 185 See *Sathiraju* v. *Venkataswami* (1917) 40 Mad, 925, 927, *Rajendra* v. *Gopal* (1931) 57 I.A., 296, 303, 10 Pat, 187, 195.

(*x*) (1900) 27 I A., 128 *supra*

a son to her husband, she cannot delegate her authority to any other person (*y*). The reason probably is that she is looked upon not merely as his agent, but as the surviving half of himself (*z*), and, therefore, exercising an independent discretion, which can neither be supplied, nor controlled, by anyone else. It is no doubt upon the same principle, that an express authority, or even direction, by a husband to his widow to adopt, is, for all legal purposes, absolutely non-existent until it is acted upon. She cannot be compelled to act upon it unless, and until, she chooses to do so (*a*). The Court will not even recognise the authority to the extent of making a declaration as to its validity (*b*). In the absence of an express direction to the contrary, there is no limit of time within which a widow may exercise the power conferred upon her (*c*). Her right to her husband's estate is not affected by her refusal to adopt. Till she does act, her position is exactly the same as it would be, if the authority had never been given. She is entitled to be in possession of her husband's estate in her own right, and not as trustee for any son to be adopted (*e*). If she is not the heir, she can claim no greater right to interfere with the management of the estate, or to control the persons in possession, than if she had no authority. The only mode of giving it effect is to act upon it (*f*). If a husband directs his widow to adopt

Her discretion absolute.

No limit of time.

(*y*) *Bhagwandas* v *Rajmal* (1873) 10 Bom. H.C, 241; *Lakshmibai* v. *Ramachandra* (1898) 22 Bom., 590, 593.

(*z*) Brih, XXV, 11, Yajn, I, 156.

(*a*) *Bamundoss* v. *Mt. Tarinee* (1858) 7 M.I.A., 169, 190; *Uma Sundari* v. *Sourobinee* (1881) 7 Cal., 288; *Mutasaddi Lal* v. *Kundan Lal* (1906) 33 I A, 55, 28 All, 377; *Madana Mohana* v, *Purushotham* 38 Mad., 1105 (1117). *Mittar Sain* v. *Data Ram* A.I.R. 1926 All., 194, *Bhimrao* v *Mt Gangabai* A.I.R. 1931 Nag., 74, 78. See *Pratapsing* v. *Agarsingji* (1919) 46 I A, 97, 107, 43 Bom, 778, "There is no power under the Hindu law to compel a widow to adopt." *Rawat Sheo Bahadur* v *Beni Bahadur* (1927) 1 Luck., 403, 31 C.W.N, 438, 443, P C., *Varadanarayana* v *Vengu Ammal* (1938) 47 M.L.W., 217.

(*b*) *Mt Pearee* v *Mt Hurbunsee* 19 W.R, 127. *Sreemutty Rajcoomaree* v. *Nobocoomar* 1 Boul., 137. A suit by a reversioner lies for a declaration that an authority to adopt set up by a widow is false; *Babu Padmanabhudu* v. *Buchamma* (1918) 35 M.L J., 144, *Surayya* v. *Annapurnamma* (1919) 42 Mad., 699.

(*c*) *Mutasaddi Lal* v. *Kundan Lal* (1906) 33 I.A., 55, 28 All., 377; in a Bengal case, an adoption made fifteen years after the husband's death was supported; and in some Bombay cases, the periods were twenty, twenty-five, fifty two, and even seventy-one years. *Anon*, 2 M. Dig., 18; *Bhasker* v. *Narro Ragoonath* Bom. Sel. Rep., 24; *Brijbhookunjee* v. *Gokoolootsaojee* 1 Bor., 181, (202), *Nimbalkar* v. *Jayavantrav* (1867) 4 Bom. H.C. (A.C.J.), 191; *Giriowa* v. *Bhimaji Raghunath* (1885) 9 Bom., 58. In *Brahmasastri* v. *Sumitramma* (1934) 57 Mad., 411, the adoption was made 24 years after the husband's death.

(*e*) *Bamunadoss* v. *Mt. Tarinee* (1858) 7 M.I.A., 169.

(*f*) *Mt. Subudra* v. *Goluknath* 7 S.D., 143 (166).

a particular boy. she is under no obligation to submit to any condition which the latter may attempt to impose (*g*).

Agreement not to adopt.

§ 147. A widow cannot bind herself by an agreement with the reversioners or others not to adopt a son to her husband. Such an agreement is void as contrary to public policy, since the authority is given to her not for herself but for her husband's benefit (*h*).

Where two undivided brothers contracted with each other that, in the event of an indefinite failure of male issue in the line of either of them. there should be no adoption in one line to prevent the other from inheriting, it was held (*i*) that the agreement could not bind the son of either, who was then in existence, not to adopt or affect the rights of an adopted son, on the ground that the agreement would alter the law of descent and would be contrary to the principle in the *Tagore* case (*j*). It was not decided whether such an agreement would bind the parties themselves. It is doubtful whether a contract not to adopt can be valid any more than a contract not to marry (*k*). But an adoption in breach of it must be considered to be valid on the principle of factum valet. whether or not the promisee will be entitled to damages The Bombay High Court has held that a senior widow can relinquish her right to adopt in favour of a junior widow and bind herself not to adopt (*k*[1]) A custom prohibiting adoption will be valid, but it is very difficult to establish such a negative usage (*l*). Where, however a family admittedly not Hindu by descent and origin is governed by customs at variance with Hindu law and it is not shown to be sufficiently Hinduised. a custom of adoption has to be affirmatively made out (*m*). Where a custom is

Custom prohibiting adoption.

(*g*) *Shamavahoo* v *Dwarkadas* (1888) 12 Bom, 202.

(*h*) Per Sir John Wallis, C J., and Seshagiri Aiyar, J, in *Ananga Bhima Deo* v *Kunja Bihari Deo* (1919) 25 M L T, 204, 211, 216 Compare *Assur Purushotam* v *Ratanbai* (1889) 13 Bom, 56, where the Court refused to restrain the adoption but did not decide the point.

(*i*) *Suriya Rau* v *Raja of Pittapur* (1886) 13 I A, 97, 9 Mad, 499. See also *Sri Raja Rau Venkata Kumara Mahipati* v *Sri Raja Rau Chellayammi Garu* (1894) 17 Mad., 150, 155, *Sadashiv Waman* v. *Reshma* [1938] Bom, 84

(*j*) (1872) I A Sup Vol, 47

(*k*) Secs 23 and 26 of the Indian Contract Act See 7 Hals., para 224,

(*k*[1]) *Sadashiv Waman* v *Reshma* [1938] Bom, 84

(*l*) *Patel Vandravan* v *Patel Manilal* (1892) 16 Bom, 470; *Fanindra Deb* v. *Rajeswari* (1885) 12 I A, 72, 11 Cal., 463.

(*m*) 12 I A., 72 *supra*

alleged confining the line to natural-born issue alone, it must be proved affirmatively and conclusively and not derived from implications (*n*).

Nature of authority.

§ 148. No particular form of authority is required. It may be a written or oral authority (*o*). The former must be registered if it is not contained in a will (*p*). A will giving authority to adopt now requires to be in writing and executed and attested as required by the Indian Succession Act (*q*). A will by a minor, who is incompetent to make a testamentary disposition, containing an authority to adopt, though invalid as a will can be valid as an authority to adopt if it is registered (*r*). An authority to adopt given in a will disposing of property is not revoked by a subsequent will containing a disposition of property inconsistent with the disposition in the prior will, when the prior will is not expressly revoked (*s*).

Implied authority.

The Madras High Court has in one case decided that a husband's authority need not be express, but can be implied from his conduct and circumstances (*t*). The case itself was one where the gift and acceptance of the boy had taken place before the man's death, but the widow performed the *datta homam* afterwards. On that ground alone the adoption would be valid (*u*). In such a case, the authority to be

(*n*) *Verabhai* v. *Bai Hiraba* (1903) 30 I.A., 234, 237, 27 Bom., 492. The question whether such a custom would be valid was left open. See also *Pratapsingh* v. *Agarsing* (1919) 46 I.A., 97, 106, 43 Bom., 778, 791-792.

(*o*) *Mutsaddi Lal* v. *Kundan Lal* (1906) 33 I.A., 55, 57, 28 All., 377, 380.

(*p*) Sec. 17 (3) of the Registration Act XVI of 1908 lays down: "Authorities to adopt a son, executed after the first day of January 1872 and not conferred by a will shall also be registered." Where a document called a will was construed to be not a will, but merely an authority to adopt, it was required to be registered. *Jagannatha* v. *Kunja Behari* (1921) 48 I.A., 482, 44 Mad., 733. See as to authorities to adopt by domiciled subjects of Indian States, *Venkatappayya* v. *Venkata Ranga Row* (1920) 43 Mad., 288, 302.

(*q*) Secs. 57 and 63.

(*r*) *Vijayaratnam* v. *Sudarsana* (1925) 52 I.A., 305, 48 Mad., 614.

(*s*) *Venkatanarayana* v. *Subbammal* (1916) 43 I.A., 20, 39 Mad., 107.

(*t*) *Seetharamamma* v. *Suryanarayan* (1926) 49 Mad., 969. See Kumaraswami Sastri, J., in *Maharaja of Kolhapur* v. *Sundaram Ayyar* (1925) 48 Mad., 1, 202. *Contra* Spencer, J., at p. 71.

(*u*) The Court followed the earlier decisions on this point, *viz*, *Venkata* v. *Subadra* (1884) 7 Mad., 548; *Subbarayar* v. *Subbammal* (1898) 21 Mad., 497.

implied would be more an authority to perform *datta homam*, than one to make an independent adoption. For, it could hardly be said that if the boy adopted died, the widow could make another adoption (*v*). In the most recent case, the Privy Council while not laying down that the authority must necessarily be express, observed that in order to constitute an implied authority, there must be circumstantial evidence of a cogent character. It was held that the association of the wife in the act of adoption by the husband is not an implied authority to her to make a second adoption (*v*[1]).

Conditional authority.

§ 149. An authority to adopt may be conditional In other words it can be an authority to adopt upon the happening of a particular event, provided an adoption made when the event happened would be legal. For instance, an authority to a widow to adopt, in the event of a disagreement between herself and a surviving son, would be invalid, because the father himself could not adopt so long as the son lived (*w*) But an authority to adopt in the event of the death of a son then living would be good, and so it would be if the authority were to adopt several sons in succession, provided one was not to be adopted till the other was dead (*x*).

Must be strictly followed.

§ 150. The authority given must be strictly pursued, and can neither be varied nor extended (*y*). For, the duty of a Hindu widow is to obey such directions as her husband may have given as to the way in which she should exercise a power of adoption to him (*z*), even though the act directed will be illegal when done, as for instance, that two widows

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(*v*) See this case distinguished in *Navaneethakrishna Marudappa Thevar* v. *Collector of Tinnevelly* (1935) 69 M.L J, 632, (1935) M W N, 1001.

(*v*[1]) *Balasubrahmanya* v *Subbayya* (1938) 65 I A, 93 99, 42 C W N, 449

(*w*) *Mt Soluhna* v *Ramdolal* (1811) 1 S D, 324 (434), *Gopee Lall* v *Mt Chundraolee* 19 W R, 12 (P.C.)

(*x*) *Bhoobun Moyee* v *Ram Kishore* (1865) 10 M I A, 279, *Jumoona* v *Bamasoonderai* (1875) 3 I A, 72, 1 Cal, 289, *Raja Vellanki* v *Venkata Rama* (Guntur case) (1876) 4 I A, 1, 1 Mad, 174

(*y*) *Chowdhry Pudum* v *Koer Odey* (1869) 12 M I A, 350, 356, *Surendra Keshav* v *Durgasundari* (1892) 19 I A, 108, 122, 19 Cal, 513, 525, *Rajendra Prasad* v. *Gopala Prasad* (1930) 57 I A, 296, 303, 10 Pat, 187, 195, reversing (1928) 7 Pat, 245, *Kalawati Devi* v *Dharam Prakash* (1933) 60 I A., 90, 55 All, 78, reversing (1928) 50 All., 885, *Jagannath Rao* v. *Rambharosa* (1933) 60 I A, 49, 71 M.L J, 309.

(*z*) *Sitabai* v *Bapu* (1920) 47 I A, 202, 205, 47 Cal, 1012, 1018, *Yadao* v *Namdeo* (1921) 48 I.A, 513, 522, 49 Cal, 1, 12, *Suryanarayana* v. *Venkataramana* (1906) 33 I.A., 145, 153, 29 Mad, 382, 388.

should simultaneously adopt two boys (*a*). The rules of construction of authorities to adopt have been laid down by the Judicial Committee in *Venkatanarasimha Appa Rao* v. *Parthasarathy Appa Rao* (*b*) and in *Rajendra Prasad* v. *Gopala Prasad* (*c*). Apparently the construction will be more liberal where the paramount intention to be gathered from the language of the will or the authority is religious than when it is secular (*d*). But both the objects *viz.* to secure spiritual benefit to a man and to continue his line are meritorious in the view of the Hindu law and both are in consonance with the feelings known to prevail throughout the Hindu community (*e*). Where an authority to adopt is given by a husband, the presumption is strong that he desires to be represented by an adopted son. The Courts would not be astute to defeat an adoption not clearly in excess of the power given by placing a narrow construction on the words of the authority (*f*). An authority to adopt a son, in the absence of any specific limitation, will, when the general intention of the husband to be represented by an adopted son is clear, empower the widow to make a second or subsequent adoption on the death of the prior adopted son (*g*). It is common for a husband authorising an adoption to specify the child he wishes to be taken. The authority will warrant the adoption of another child, unless he said, "such a child and no other". The presumption is that he desired an adoption and by specifying the object merely indicated a preference (*h*). Of course where the authority given by a husband is exhausted by one adoption,

Construction of authority.

(*a*) *Surendra Keshib* v. *Doorgasoondery* (1892) 19 I.A., 108, 122, 19 Cal., 513, 525.

(*b*) (1914) 41 I.A., 51, 71, 37 Mad., 199, 222.

(*c*) (1930) 57 I.A., 296 *supra*.

(*d*) (1914) 41 I.A., 51, 72 *supra*, (1930) 57 I.A., 296 302 *supra*

(*e*) (1906) 33 I.A., 145, 154-155 *supra*.

(*f*) *Bhagwat Koer* v. *Dhanukhdhari* (1919) 46 I.A., 259, 267, 47 Cal., 466, 479; *Mutsaddi Lal* v. *Kundan Lal* (1906) 33 I.A., 55, 59, 28 All., 377.

(*g*) (1906) 33 I.A., 145, 29 Mad., 382 *supra*, affirming (1903) 26 Mad., 681 and approving *Surendra Nandan* v. *Saulaja Kant* (1891) 18 Cal., 385, and the observations of Mitter, J., in *Ram Soondur* v. *Surbanee Dossee* (1874) 22 W.R., 121, see also *Dharum Kunwar* v. *Bulwant Singh* (1912) 39 I.A., 142, 34 All., 398; *Bhagwat* v. *Murari Lall* 15 C.W.N., 524.

(*h*) *Lakshmibai* v. *Bajaji* (1898) 22 Bom., 996; followed in (1903) 26 Mad., 681, 684 *supra*, *Veeraperumall* v. *Narain Pillai* 1 Strange's notes of cases, 78, see Sankaran Nair, J., in *Chenga Reddy* v. *Vasudeva Reddy* (1915) 29 M.L.J., 144. In *Sindigi Lingappa* v. *Sindigi Sidda Basappa* (1917) 32 M.L.J., 47, 52, the point was raised but not decided.

there is nothing to prevent the widow from making another adoption with the consent of the sapindas unless a second adoption is forbidden by her husband (*i*). Where a Hindu authorised his widow to adopt a son if "no male or female child should be born to him" but had a posthumous daughter, an adoption made after the death of the latter was held to be invalid (*j*). Where the authority was to adopt one of the sons of a man and the boy adopted was not then in existence but was born after the authority, the power was construed to authorise the adoption (*k*). But where a husband directed that his wife should so far as possible adopt the second son of his elder brother but that if he could not be obtained, any other boy should be adopted with the advice of trustees, and in consequence of ill-feeling between the widow and the family of the boy to be adopted, she adopted with the consent of the trustees her sister's son, the adoption was held to be invalid (*l*). A direction to a widow to adopt a boy along with a living son, which was illegal and could not be carried out, did not authorise her to adopt after the death of that son (*m*). But if the direction is to adopt either during the lifetime or after the death of a son living, the authority to adopt after the son's death is severable and can be validly exercised (*n*). An authority to adopt generally authorises the adoption of any person whose affiliation would be legal (*o*). A direction by a testator that his widow should adopt a son "with the good advice and opinion of the manager," whom he had appointed as a sort of agent, was held only as a direction, and an adoption made without consulting him was held to be valid (*p*). On the other hand, an authority to adopt given by a husband to his wife to adopt a son with his father's permission was held to have come to an end on the latter's death and an adoption made by the widow after that event, when she could not obtain his consent, was held

(*i*) *Parasara Bhattar* v. *Rangaraja* (1878) 2 Mad, 202.

(*j*) (1919) 46 I.A., 259; 47 Cal, 466 *supra*

(*k*) (1906) 33 I A, 55; 28 All., 377 *supra*

(*l*) (1920) 47 I.A., 202; 47 Cal., 1012 *supra*

(*m*) *Joychandrao* v. *Bhyrub* S.D. of 1849, 41

(*n*) *Kumud Bandhu* v *Ramesh Chandra* (1919) 46 Cal, 749. The decision on this point is independent of the other questions discussed relating to the termination of the power and the divesting of vested estate

(*o*) 1 Mad. Dec, 105

(*p*) *Surendra Nandan* v. *Sailaja Kant* (1891) 18 Cal., 385.

to be bad (*q*). The Judicial Committee observed, "The rules as to construction of powers prevailing in England apply to the construction of authorities to adopt" (*r*). Where a man by his will appointed five persons as trustees and authorised his widow to adopt with their consent, an adoption by her with the consent of four who proved the will, the fifth having declined to do so, was held to be valid (*s*). Where a husband authorised his widow to adopt a boy chosen by his four executors and one of them who managed the estate selected the boy after consulting his co-executors who raised no objection to the adoption, the adoption was held to be valid (*t*).

Several widows.

§ 151. Where there are several widows, if a special authority has been given to one of them to adopt, she, of course, can act upon it without the assent of the others, and she alone could act upon it (*u*). If the authority has been given to the widows severally, the junior may adopt without the consent of the senior, if the latter refuses to adopt (*v*). In such a case, on the death of one of them, the surviving widow can adopt (*w*). In Bombay, where there are several widows, the elder has the right to adopt even without the consent of the junior widow, but the junior widow cannot adopt without the consent of the elder, unless the latter is leading an irregular life, which would wholly incapacitate her (*x*), or the junior widow has received a preferential right to adopt from her husband (*y*). This view has been

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(*q*) *Rajendra Prasad* v. *Gopala Prasad* (1930) 57 I.A., 296, 10 Pat., 187; *Radha Madhab Jiu* v. *Rajendra Prasad* (1932) 12 Pat., 727; see also *Janakiramayya* v. *Venkatalakshmamma* (1931) M.W.N, 473

(*r*) (1930) 57 I.A., 296, 303 *supra*.

(*s*) *Bal Gangadhar Tilak* v. *Shrinivas Pandit* (1915) 42 I.A, 135. 39 Bom., 441.

(*t*) *Rattan Lal* v. *Baij Nath* [1938] Lah., 1 (P C.) reversing (1933) 14 Lah, 345.

(*u*) 2 Stra. H.L., 91.

(*v*) *Mondakini* v. *Adinath* (1891) 18 Cal., 69.

(*w*) *Sarada Prosad* v. *Rama Pati* (1912) 17 C.W.N, 319, 16 C.L.J., 304.

(*x*) Steele, 48, 187, W. & B., 874, 893; *Rakhmabai* v. *Radhabai* (1868) 5 Bom. H.C. (A.C.J.), 181, *Padajirav* v. *Ramrav* (1889) 13 Bom., 160; *Amava* v. *Mahadgauda* (1898) 22 Bom., 416; for a case of the senior widow relinquishing her right to adopt in favour of the junior widow, see *Sadashiv Waman* v. *Reshma* [1938] Bom., 84.

(*y*) *Basappa* v. *Sidramappa* (1919) 43 Bom., 481; In *Dnyanu* v. *Tanu* (1920) 44 Bom., 508, it was held that where the husband died in union with his father, an adoption made by a junior widow with the consent of her father-in-law but without the consent of the senior widow was valid. This decision can no longer be regarded as good law, now that it is settled that a widow in Bombay can adopt although

followed by the High Courts of Calcutta and Madras (*z*). Where the junior widow adopts during the life time and without the consent of the senior widow, the adoption is not rendered valid in Southern India by the consent of the sapindas (*a*) Where an express power of adoption was given by will to two widows jointly, the Privy Council held without determining whether the joint power was valid that it could not be validly exercised by one widow after the death of the other (*b*) Where it is possible to construe a joint power of adoption as a power to do that which the law allows and not to do something which was either illegal or very unusual, that is the only construction proper to be adopted (*c*) In Madras it has been held that where a Hindu died leaving two widows to whom he gave a joint authority to adopt, an adoption made by them both would be valid though the adopted son would in law be the son only of the senior widow who had the preferential right to adopt (*d*). Any difficulty in determining which of the two adopting widows is to be treated as the mother and which the step-mother cannot on principle affect the validity of the joint power or of an adoption of a son to their husband (*e*)

Sapindas' consent in Southern India

§ 152. In Southern India, a widow not having her husband's authority to adopt, may adopt a son with the assent of his sapindas, as was finally settled by the judgment of the Privy Council in the *Ramnad* case (*f*). That decision was the starting-point of the whole law on the question as to who are the kinsmen whose assent will supply the want of

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he died undivided and she has not obtained the consent of her husband's father or other coparceners, *Bhimabai* v *Gurunatha Gouda* (1933) 60 I A, 25, 57 Bom, 157.

(*z*) *Ranjit Lal* v *Bijoy Krishna* (1912) 39 Cal., 582, affirming *Bijoy* v. *Ranjit* (1911) 38 Cal, 694, *Narayanaswami* v. *Mangammal* (1905) 28 Mad, 315

(*a*) *Raja Venkatappa Nayanim Bahadur* v *Ranga Rao* (1916) 39 Mad, 772, approving *Kakerla Chukkamma* v *Kakerla Punnamma* (1915) 28 M L J, 72, *Muthusami* v *Pulavaratal* (1922) 45 Mad, 266, *Solaimalai Kone* v *Sakkammal* (1934) 67 M L J, 618.

(*b*) *Venkata Narasimha Appa Row* v *Parthasarathy Appa Rou* (1914) 41 I A, 51, 37 Mad, 199, *Lachhmi Prasad* v *Musammat Parbati* (1920) 42 All, 266

(*c*) *Akhoy Chunder* v. *Kalapahar* (1886) 12 I A, 198, 12 Cal, 406, *Ranjit Lal* v *Bijoy Krishna* (1912) 39 Cal, 582, 586

(*d*) *Tiruvengalam* v *Butchayya* (1929) 52 Mad, 373, *Yamuna* v *Jamuna* A I R. 1929 Nag, 211

(*e*) See also *Lachhmi Prasad* v *Musammut Parbati* (1920) 42 All, 266, where the validity of the joint power was assumed

(*f*) *Collector of Madura* v *Mootoo Ramalinga* (1868) 12 M I A 397, affirming 2 M H C, 206.

husband's authority. It is now settled that the requisite authority in the case of an undivided family is to be sought by the widow within that family. It is in the members of that family that she must find her counsellors for the purpose. She cannot at her will travel out of the undivided family and seek the consent of the separated and remote kinsmen of her husband (*g*). The consent of her father-in-law as the head of the family will be necessary and sufficient. If he is dead, it was at first suggested that the consent of all her husband's brothers or other coparceners would probably be required (*h*). But the assent even of the managing member of the undivided family who is senior in age will be sufficient and be equivalent to the assent of the family (*i*). The question may however arise where the managing member does not give his consent. Subramania Ayyar. J., expressed the view that as there was no decided opinion in the *Ramnad* case, the consent of a substantial majority would be sufficient (*j*). This is in accordance with the later doctrine on the subject of consent of kinsmen when the husband dies separate. There is however the distinction that in the case of a joint family, adoption would mean the introduction of a new co-parcener into the joint family (*j*[1]). On principle it would seem she can adopt with the assent of a substantial majority of the co-parceners in the family. But it is fairly clear that even where the co-parceners improperly refuse their assent, she will not be entitled to adopt with the assent of her husband's divided kinsmen, as it would be introducing into the joint family a co-parcener against their will (*k*).

Joint Family.

§ 153. Where the husband dies a separated member, the widow can adopt a son to him with the assent of his sapindas. In the *Ramnad* case, the Judicial Committee observed: "The assent of kinsmen seems to be required by reason of the presumed incapacity of women for independence, rather than

Where husband, a separated member.

(*g*) (1868) 12 M.I.A., 397, 441-442 *supra*, *Ramaswami Iyen* v. *Bhagati Ammal* 8 Mad Jur., 58 (The *Travancore* case); *Raghunadha* v. *Brozo Kishore* (1876) 3 I A., 154, 1 Mad, 69 (The *Berhampore* case); *Veera Basavaraju* v. *Balasurya Prasada Rao* (1918) 45 I.A. 265, 41 Mad. 998, 1009.

(*h*) (1868) 12 M I A., 397, 441-442 *supra*

(*i*) *Subrahmanyam* v. *Venkamma* (1903) 26 Mad., 627. See also *Ganesh* v. *Gopala* (1880) 7 I A., 173, 2 Mad., 270, where the assent of the managing member was assumed to be sufficient.

(*j*) *Venkatakrishnamma* v *Annapuranamma* (1900) 23 Mad, 486, 487-8.

(*j*[1]) After the Hindu Women's Rights to Property Act, 1937, as on her husband's death the widow herself will take his interest, the distinction perhaps loses something of its former importance.

(*k*) (1868) 12 M.I.A., 397, 441-442 *supra*.

the necessity of procuring the consent of all those whose possible and reversionary interest in the estate would be defeated by the adoption . . . . There should be such evidence of the assent of kinsmen as suffices to show that the act is done by the widow in the proper and *bona fide* performance of a religious duty, and neither capriciously, nor from a corrupt motive." (*l*). Explaining this passage in *Vellanki* v. *Venkatarama*, their Lordships observed: "There should be such proof of assent on the part of the sapindas as should be sufficient to support the inference that the adoption was made by the widow, not from capricious or corrupt motives, or in order to defeat the interest of this or that sapinda, but upon a fair consideration, by what may be called a family council, of the expediency of substituting an heir by adoption to the deceased husband" (*m*).

Family Council

§ 154. Where the husband dies a separated member leaving his father, the latter will be the 'widow's natural guardian and 'venerable protector'. His authorisation would be necessary and sufficient In his absence, it is not necessary to obtain the consent of every sapinda, however remote (*m*[1]). "The consent required is that of a substantial majority of those agnates nearest in relationship who are capable of forming an intelligent and honest judgment on the matter" (*n*). The consent of the nearest sapindas must be asked, and if it is not asked, it is no excuse to say that they would certainly have refused (*o*). For, ordinarily, the absence of consent on the part of the nearest sapindas cannot be made good by the authorization of distant relatives, whose interest in the well-being of the widow or the spiritual welfare of the deceased, or in the protection of the estate, is of a minute character, and whose assent is more likely to be influenced by improper motives (*p*).

Nearest sapinda's consent.

(*l*) (1868) 12 M I A., 397, 442-443 *supra*

(*m*) (1877) 4 I.A., 1, 14, 1 Mad, 174, 190-191

(*m*[1]) (1868) 12 M.I.A., 397.

(*n*) *Adusumilli Kristnayya* v *Adusumilli Lakshmipathi* (1920) 47 I.A., 99, 104, 43 Mad., 650, 654.

(*o*) *Venkamma* v *Subramaniam* (1907) 34 I A. 22, 30 Mad, 50, affg (1903) 26 Mad, 627, (1920) 47 I A., 99, 102, 43 Mad, 650, 654 *supra*

(*p*) *Veerabasavaraju* v *Balasurya Prasada Rao* (1918) 45 I A, 265, 41 Mad.,"998, (1920) 47 I A., 99, 43 Mad, 650, 654 *supra*

The consent of a near sapinda who is incapable of forming a judgment on the matter, such as a minor or a lunatic, is neither sufficient nor necessary. So too, where the nearest sapinda happens to be in a distant country, and it is impossible without great difficulty to obtain his consent, or where he is a convict or suffering a term of imprisonment (*q*).

Improper refusal.

§ 155. Where a near sapinda is clearly proved to be actuated by corrupt or malicious motives, his dissent may be disregarded (*r*). Adoption being a proper act, any refusal on the part of a near sapinda from interested, improper, or personal motives will justify a widow in adopting with the assent of remoter sapindas (*s*). Where one of two near sapindas of equal degree improperly refuses, the assent of the other alone is sufficient, even where he is the natural father of the boy to be adopted (*t*). For, as was laid down by the Privy Council in the most recent case, "the sapindas are to be regarded as a family council (*u*), the natural guardians of the widow, and the protectors of her interest (*v*). In giving or withholding their consent it is their duty, in this capacity, to form an honest and intelligent judgment on the advisability or otherwise of the proposed adoption in, and with reference to, the widow's branch of the family" (*w*). Therefore, when the majority of sapindas are shown to have improperly refused, even the assent of sapindas who are in a minority will suffice. In *Parasara* v. *Rangaraja* (*x*) where a sapinda, without withholding his consent, coupled it with a condition that the widow should adopt his son who, as he had himself falsely

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(*q*) *Kristnayya* v. *Lakshmipathi* (1920) 47 I A, 99, 43 Mad., 650, 654.

(*r*) *Adismilli Kristnayya* v. *Lakshmipathi* (1920) 47 I A., 99, 43 Mad., 650, 654, *Solaimalai* v. *Sokkammal* (1934) 67 M.L.J., 618, 629.

(*s*) *Venkatakrishnamma* v *Annapurnamma* (1900) 23 Mad., 486, *Subrahmanyam* v *Venkamma* (1903) 26 Mad., 627, 635; *Venkataramaraju* v. *Pappamma* (1916) 39 Mad., 77, 27 M.L.J., 638.

(*t*) (1880) 2 Mad, 202 *supra; Sri Krishnayya Rao* v. *Surya Rao* (1935) 69 M.L.J., 388, P.C.

(*u*) *Raja Vellanki* v. *Venkatarama* (1876) 4 I A, 1, 1 Mad, 174 (*Guntur* case).

(*v*) 47 I A, 99, 43 Mad., 650 *supra*

(*w*) (1935) 69 M L J, 388, 396 *supra* following *Parasara* v. *Ranga raja* (1880) 2 Mad., 202, and the remarks of Viscount Cave in the *Adusumilli* case, 47 I A., 99, 102. See also *Muraharı Brahma Sastri* v. *Sumitramma* (1934) 57 Mad., 411 (No meeting of the family council is necessary) and *Hari Ramayya* v. *Venkatachalapati* (1936) 70 M.L.J., 619.

(*x*) (1880) 2 Mad, 202.

stated, had been given away in adoption, his conduct was regarded as an improper refusal Explaining that case, the Court said in *Subrahmanyam* v. *Venkamma*, that there is nothing improper in a sapinda proposing to give his assent to the widow adopting his son, if such son be the nearest sapinda, and refusing to give his assent to her adopting a stranger or a distant sapinda, if there be no reasonable objection to the adoption of his own son (*y*). It cannot be said that this view is finally accepted (*z*). It is however quite in accordance with the recommendation in all the texts that a near sapinda, if available, should be chosen for adoption.

Grounds of refusal.

§ 156. On the authorities it is difficult to say on what grounds a sapinda can validly refuse his assent. It is well settled that a refusal cannot be justified on grounds of personal loss or injury to the reversionary interest which may be caused by the adoption (*a*) It would also seem that he cannot justify his refusal on the ground that the widow has no religious motive in making the adoption (*b*). Nor can he justify his refusal on the ground that the proposed adoption is too late or that it is not necessary or that the widow is likely to enter into an ante-adoption agreement (*c*) Probably, however, a refusal will be justified on the ground that the widow is misconducting herself. He can certainly object to her choice of the boy to be adopted on any proper grounds. But the widow is not compelled in seeking the assent of the sapinda to specify the boy, as ordinarily all the sapindas are not likely to agree amongst themselves as to the particular boy to be adopted The practical result of the authorities therefore appears to be that a sapinda's refusal to an adoption can seldom be justified It is clear that any evasion or undue delay in replying to her request on his part will be tantamount to an improper refusal (*d*). Where all the sapindas improperly refuse their assent, or where there are no sapindas at all, she cannot adopt as she must have some

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(*y*) (1904) 26 Mad, 627, 637, affirmed in (1908) 34 I A, 22, 30 Mad, 50

(*z*) See *Venkatapathi* v *Punnamma* (1915) M W.N, 236

(*a*) *Venkataramaraju* v *Papamma* (1917) 39 Mad, 77, *Kodukulla Kamayya Bhakta* v *Kodukulla China Sooranna* (1934) 66 M L J, 37.

(*b*) *Hariramayya* v. *Venkatachalapathi* (1936) 70 M L J, 619

(*c*) *Krishnayya Rao* v *Surya Rao* (1935) 69 M.L J, 388 (P C.)

(*d*) *Murahari Brahma Sastri* v *Sumitramma* (1934) 57 Mad, 411; (1936) 70 M LJ., 619 *supra*

authority. In one case (*e*) it has been held that when there are no sapindas, the widow has an unrestricted power to adopt. But the basis of the rule requiring the consent of the sapindas is not that their existence is an impediment, but that the want of the husband's authority can only be supplied by such consent. It follows therefore that if there are no sapindas, she cannot make an adoption any more than she can have absolute powers of alienation when there are no reversioners at all (*f*).

Consent of females.

§ 157. The presumed incapacity of a woman to adopt without the authority of her husband or the consent of his sapindas does not necessarily involve her incapacity to authorise another widow to adopt. In the *Ramnad* case, it was held that the assent of the mother-in-law along with that of a *samanodaka* was sufficient to support an adoption (*g*)

Of cognates.

Where there are agnates as well as cognates, it would seem both on principle and authority that the consent of the agnates is necessary and sufficient (*h*). In the absence of near agnates, the assent of cognates will of course be sufficient (*i*). As observed by the Judicial Committee in *Veerabasavaraju* v *Balasuryaprasada Row* (*j*), "In the absence of authority from her deceased husband a widow may adopt a son with the assent of his *male agnates*". Again in *Krishnayya* v. *Lakshmipati* (*k*) their Lordships held, "The consent required is that of a substantial majority of those *agnates* nearest in relationship, who are capable of forming an intelligent and honest judgment in the matter". Ramesam, J., expresses the

(*e*) *Patnaloo Appalswamy* v. *E Moosalaya* (1934) 12 Rang., 22

(*f*) *Balasubrahmanya* v. *Subbayya* (1938) 65 I.A., 93, 99, 42 C.W.N., 449, (1934) 12 Rang, 22 *supra* is not good law. Compare *Collector of Masulipatam* v *Cavaly Venkata* (1859-61) 8 M.I.A., 519. and *Vasudevan* v. *Secy of State* (1885) 11 Mad., 157, 170.

(*g*) (1868) 12 M.I.A, 397, 444-445. There were however circumstances in that case which placed the mother-in-law in a position of special importance. In *Raja Venkatappa* v. *Renga Rao* (1916) 39 Mad., 772, 778, it was held that the senior widow is one of the kindred who should be consulted See also *Maharajah of Kolhapur* v *Sundaram* (1925) 48 Mad., 1, 68, 204-205.

(*h*) *Viswasundara* v. *Somasundara Row* (1920) 43 Mad. 876 (consent of daughter's son unnecessary), *Brahma Sastri* v. *Sumitramma* (1934) 57 Mad, 411 (consent of step-daughter unnecessary), explaining *Kesarsingh* v. *Secy. of State* (1926) 49 Mad., 652, and differing from the observations of one of the judges in *Brahmayya* v. *Rattayya* (1924) 20 M.L.W., 503.

(*i*) *Kesarsingh* v *Secy. of State* (1926) 49 Mad, 652, see also (1934) 57 Mad., 411 at p. 417 *supra*.

(*j*) (1918) 45 I.A, 265, 267, 41 Mad., 998, 1004.

(*k*) (1920) 47 I.A., 99, 102, 43 Mad., 650, 654.

view in *Brahmayya* v. *Rattayya* dissenting from the decision in *Viswasundara Row* v. *Somasundara Rao* (*l*) that the consent of the daughter's son who is the nearest reversioner is necessary and sufficient to validate an adoption even though there are near agnates like the nephew and grandnephew (*m*). This dictum is opposed to the observations of the Judicial Committee above cited which recognise the assent of agnates as the primary requirement. In adoption the substitution of a son for spiritual reasons is the essence of the thing and the consequent devolution of property a mere accessory to it (*n*) Adoption introduces a member primarily into an agnatic family with reciprocal rights. The agnatic kindred would appear to be the persons most concerned and the reversionary interest of any cognate is neither the determining nor the dominant factor (*o*). When a divided Hindu dies leaving his brothers senior in age, his paternal uncles and granduncles, his nephews and first cousins, and a daughter's son who is the nearest reversioner, to say that the daughter's son is the person whose consent is required appears to be opposed to all notions of the religious and social importance of the agnatic bond (*p*). The guardians of a widow are, in the absence of her husband and her sons, primarily their *jnatis*. The text of Yajnavalkya which is cited in the Vyavahara Mayukha on this point says. "The father should protect (a woman while) a maiden daughter, the husband when (she is) married, the sons in (her) old age, in their absence their *jnatis* A woman has no independence at any time" (*q*). Mr. Gharpure in his translation of the Vyavahara Mayukha explains the term '*jnatis*' as meaning *sagotra-sapindas* or agnates, relying upon two texts of Manu which use the term '*jnati*' in contrast with *bandhavas* or cognates (*r*) The correctness of the view that '*jnatis*' in Yajnavalkya, I, 85, means agnates is established

(*l*) (1920) 43 Mad. 876

(*m*) (1924) 20 M L W, 503, A I R 1925 Mad, 67, *contra* Jackson, J,

(*n*) *Sri Raghunada* v. *Brozo Kishore* (1876) 3 I.A, 154, 1 Mad, 69, followed in *Amarendra* v. *Sanatan* (1933) 60 I.A., 242, 12 Pat. 642

(*o*) The *Ramnad* case, 12 M.I.A., 397, 444.

(*p*) A *family council* should presumably consist primarily of the agnatic kindred The Hindu Law of Inheritance (Amendment) Act, 1929 which declares that a son's daughter, daughter's daughter, sister and sister's son, are entitled in the order of succession before near agnates cannot make any difference on the question of whose assent is necessary

(*q*) I, 85

(*r*) Gharpure, p 79, Manu III, 264, IX, 239, Vedic Index, I, 291, Yajn, II, 149, Mit on Yajn, III, 3, Naraharayya's trans. p 7, Smritichandrika, p 196

by verse I, 82, where in an allied context *jnatis* and *bandhus* are contrasted (*s*). The observation of the Privy Council in *Balasubrahmanya* v. *Subbayya* that agnates are not the only kinsmen whose assent need be sought, was made with reference to the argument that in the absence of agnates, no consent is required to validate an adoption (*s*[1]), and cannot support the view that as between agnates and cognates, the consent of the latter is either necessary or alone sufficient

Effect of death of assenting sapinda

The assent of a son to an adoption by his mother in the event of his own death is sufficient to validate an adoption by her after his death (*t*). The assent of a sapinda to adopt 'any boy at any time' was held to be too general (*u*) especially when it was not acted upon for nine years during which circumstances had materially changed by the death of some of the assenting and dissenting sapindas (*v*). The death of a sapinda who gave his assent does not put an end to it and an adoption made afterwards will be valid. A Full Bench of the Madras High Court observed, "The reservation that the consent should be acted upon with reasonable promptitude and that circumstances should not have undergone a material alteration would seem to meet the end in view, irrespective of the question whether the assenting sapinda was dead at the time of the adoption or whether those living then approved it"(*w*).

(*s*) The *Pakshadvayam* mentioned in the Mitakshara on Yajn. I, 85, refers not to her husband's agnates and cognates, but to her husband's agnates and to her own father's agnates This is the opinion of Nilakantha also. Narada, XIII, 28-29, is to the same effect

(*s*[1]) (1938) 65 I A, 93, 99, 42 C W N, 449

(*t*) *Annapurnamma* v. *Appayya* (1929) 52 Mad, 620, F B., overruling *Mami* v. *Subbarayar* (1913) 36 Mad., 145.

(*u*) *Suryanarayana* v *Venkataramana* (1903) 26 Mad, 681, affirmed in (1906) 29 Mad, 382, 33 I.A., 145, *Brahmayya* v. *Rattayya* (1924) 20 M L W. 503. But an assent given by a sapinda to a Hindu widow to adopt "any boy whom she may like either from among agnates or from sagotrajas" is not too general and is valid, particularly when there is no delay in making the adoption after obtaining such consent. *Murahari Brahma Sastri* v. *Sumitramma* (1934) 57 Mad, 411

(*v*) (1903) 26 Mad, 681, 685 *supra*, (1924) 20 M L W, 503 *supra*

(*w*) *Annapurnamma* v. *Appayya* (1929) 52 Mad., 620, F B., *Suryanarayana* v. *Ramadoss* (1918) 41 Mad, 604, *Ammanna* v *Satyanarayana* (1926) 49 Mad, 636; *Brahmayya* v. *Rattayya* (1924) 20 M L W., 503. In *Krishnayya* v *Lakshmipathi* (1920) 47 I.A, 99, 43 Mad, 650, their Lordships refrained from expressing any opinion on the question.

Revocation of sapinda's consent.

§ 158. When a sapinda gives his considered assent, he cannot arbitrarily and capriciously withdraw it (*x*). But it would seem on principle that he should have the right to withdraw his consent on proper and clear grounds as where a material change in the circumstances of the family has taken place or when it is satisfactorily proved that the consent was given on a material misrepresentation (*y*).

Conscious exercise of discretion.

§ 159. The assent of a sapinda to an adoption should be one given by him in the exercise of his independent discretion as to whether the adoption should or should not be made by a widow not having her husband's authority and therefore any consent obtained by a widow upon a representation that she had the authority of her husband to adopt, when no such authority was in fact given, would be ineffective (*z*). It would be otherwise if the sapinda gave his assent with the knowledge that the authority was false as there would be no ground in such a case for inferring that he was influenced by the representation (*a*).

Corrupt consent invalid.

§ 160. Where the consent of a sapinda is purchased (*b*) or is given from corrupt or interested motives (*c*) or if his decision can be shown to have been procured by fraud, such consent will not validate an adoption. In *Srinivasa* v. *Rangasami* (*d*), the court held that where an adoption was made by the widow of one of three undivided brothers, the latter's assent procured by an arrangement with them that the adopted son should not be entitled to his adoptive father's share in the joint family property but only to the adoptive mother's property, was a valid assent sufficient to support the adoption. The reason assigned that the sapindas protected themselves from loss and

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(*x*) *Sivasuryanarayana Chetty* v. *Audinarayana Chetty* [1937] Mad, 347, F.B., approving *Suryanarayana* v *Ramadoss* (1918) 41 Mad., 604.

(*y*) (1918) 41 Mad, 604 *supra*

(*z*) *Ganesa Ratnamier* v. *Gopala Ratnamayar* (1880) 7 I A., 173, 2 Mad, 270, *Venkatalakshmamma* v *Narasayya* (1885) 8 Mad., 545, *Venkamma* v. *Subramaniam* (1907) 34 I.A., 22, 30 Mad, 50, affirming (1903) 26 Mad, 627, (1876) 3 I A, 154, 1 Mad., 69 *supra.*

(*a*) (1903) 26 Mad, 627, 635 *supra; Hari Ramayya* v *Venkatachalapati* (1936) 70 M L J, 619, 623.

(*b*) (1868) 12 M I A, 397, 443 *supra*, (1877) 4 I.A, 1, 12, 1 Mad., 174 *supra, Rami Reddi* v. *Rangamma* (1901) 11 M.L J, 20, *Danakoti Ammal* v. *Balasundara Mudaliar* (1913) 36 Mad., 19, *Murugappa* v. *Nagappa* (1906) 29 Mad., 161, 164, *Brahmayya* v. *Rattayya* (1924) 20 M L.W., 503, 516.

(*c*) (1880) 7 I.A., 173, 2 Mad., 270, *supra.*

(*d*) (1907) 30 Mad., 450.

so gained nothing by the adoption does not seem to be correct; for, the adopted son would be entitled to his father's share in the family property. It can only be a case of a purchased consent where the sapinda agrees to give his assent to an adoption in consideration of the son to be adopted foregoing his share in the family property. Apparently the Court thought that the arrangement would bind the adopted son. But as was pointed out by the Judicial Committee in the *Ramnad* case, "The rights of an adopted son are not prejudiced by any unauthorized alienation by the widow which precedes the adoption which she makes (*d*[1])".

Western India.

§ 161. In Western India the widow's power of adoption is even greater than in Southern India. Nilakantha, commenting on the text of Vasishtha and explaining it in the light of the texts of Yajnavalkya and Katyayana, arrives at the conclusion that a widow has authority to adopt even without the permission of her husband (*e*). It has always been held in Bombay that where her husband died a separated member, a widow may adopt a son to him without his authority and without the consent of his kinsmen (*f*). But where the husband died a member of an undivided family, the Bombay High Court held that she could not adopt without his authority or the consent of her father-in-law or the consent of her husband's coparceners (*g*). But this distinction has been swept away by three decisions of the Privy Council and it is now settled that a widow governed by the Maharashtra School of law does not in any case require either her husband's permission or the

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(*d*[1]) (1868) 12 M.I.A., 397, 443.

(*e*) V. May., IV, 5, 17, 18.

(*f*) *Rakhmabai* v. *Radhabai* (1868) 5 Bom. H.C. (A.C.J.), 181 Nilakantha allows the widow to adopt with the assent of her father-in-law, or in his absence, with the assent of the *jnatis* and recognises that she is dependent on sons, etc. In the case of the widow, Nilakantha substitutes for the command of the husband the consent of kinsmen [*Narayan Babaji* v. *Nana Manohar* (1870) 7 Bom. H.C. (A.C.J.), 153, 173]. The rule that a widow does not require even the sapindas' assent is not to be found in the Mayukha. The Court in *Rakhmabai's* case followed Borrodaile's translation "the command of any other person, not herein mentioned, is nowhere declared requisite" (IV, V, 18) which is incorrect, and it is not in the original or in Mr. Mandlik's or Mr. Gharpure's translation. The correct translation is, "it is not a new rule laid down (without prior authority)," (Mandlik, p. 57). The Court in 5 Bom. H.C. apparently based its decision upon prior decisions based on the opinions of pandits some of whom appear to have thought that *jnatis* meant 'caste' which would be too general.

(*g*) *Ramji* v. *Ghamau* (1882) 6 Bom., 498, (F.B.); *Dinkar Sitarama* v. *Ganesh Shivram*, ib., 505 (F.B.); *Ishwar Dadu* v. *Gajabai* (1925) 50 Bom., 468 (F.B.).

assent of her father-in-law or other kindred, whether her husband died a member of an undivided family or a separated member or whether his estate was vested in her or not (*h*).

Where a widow is entitled to make an adoption by the law of the Dravida School or by that of the Mayukha School, her power to adopt is co-extensive with that of her husband (*i*)

Express or implied prohibition

§ 162 A widow however cannot adopt under the law either of the Dravida School or of the Maharashtra School when her husband has expressly (*j*) or by necessary implication (*k*) prohibited an adoption by her. For, the widow's power to adopt proceeds upon the assumption that his assent to this meritorious act is to be implied wherever he has not forbidden it The prohibition can be implied from his disposition of property or from other circumstances such as would lead necessarily to the conclusion that he intended to prohibit it (*l*)

Whether invalid adoption bars second adoption

§ 163 In Bombay it was held in one case that a widow cannot adopt a son during the lifetime of a son adopted by her husband, though that adoption may be invalid (*m*) Following this decision it was held in another case that she cannot dispute the validity of the

(*h*) *Yadao* v *Namdeo* (1921) 48 I A, 513, 49 Cal, 1, *Bhimabai* v *Gurunathagouda* (1933) 60 I A, 25, 57 Bom, 157, overruling the decisions cited in note (*g*) above, *Vijaysingji* v *Shivsingji* (1935) 62 I A, 161, 59 Bom, 360

(*i*) *Balusu Gurulingaswami* v *Balusu Ramalakshmamma* (1899) 26 I A, 113 128, 22 Mad, 398, 408, *Vyas Chimanlal* v *Vyas Ramchandra* (1900) 24 Bom, 367 (F B), dissenting from *Lakshmappa* v *Ramappa* (1875) 12 Bom H C, 364

(*j*) *Bayabai* v *Bala Venkatesh* (1870) 7 Bom H C Appx, I

(*k*) *Collector of Madura* v *Mootoo Ramalinga* (1868) 12 M I A, 397, 443, *Yadao* v *Namdeo* (1921) 48 I A, 513, 523, 49 Cal, 1, 11, *Gopal* v *Vishnu* (1899) 23 Bom 250, 256, *Lakshmibai* v *Sarasvatibai* (1899) 23 Bom, 789, 796, *Malgauda Paragauda* v *Babaji Dattu* (1913) 37 Bom, 107, *Sitabai* v *Govindrao* (1927) 51 Bom, 217 (Refusal by husband to adopt does not impliedly prohibit an adoption by widow), *Vithagouda* v *Secy of State* A I R 1932 Bom, 442, 34 Bom L R, 818, where the language of express prohibition was disregarded as not covering watan property, a very doubtful case *Muthuswami* v *Pulavaratal* (1922) 45 Mad, 266, (No inference of implied prohibition from the fact that husband and wife lived separate during coverture), see also *Krishnamma* v *Lakshminarayana* A I R 1928 Mad, 271, *Solaimalai Kone* v *Sokkammal* (1934) 67 M L J 618, 630 (the mere existence of daughter's son is no implied prohibition).

(*l*) (1868) 12 M I A, 397, 443 *supra*

(*m*) *Bhau* v *Narasagouda* (1922) 46 Bom, 400 affirming *Bhujangouda* v *Babu* (1920) 44 Bom, 627

adoption made by her husband (*n*). There is nothing peculiar in the law of the Bombay School in support of either view The ground of decision was that as the husband made an adoption, it was a prohibition of an adoption, by the widow, of another son during the life of the son adopted by him. A valid adoption by the husband does not operate as a prohibition of any second adoption by the widow; but she cannot adopt a son because there is already a son in existence Where the adoption by the husband is invalid, he dies sonless and the widow is therefore entitled to adopt a son to him A man intends or must be presumed to intend a valid adoption and in neither of the Bombay cases was it suggested that the husband made the adoption with the knowledge that it was invalid The view of the Bombay High Court proceeds on the assumption that a son whose adoption is invalid has in some degree the status or rights of an adopted son. The son invalidly adopted by the husband does not claim through the widow and if he is in possession for twelve years, his title is perfected and the property would go to his heirs in his natural family on his death To turn an adoption, which *ex-hypothesi* is invalid, into either a prohibition to adopt or into a partially valid adoption which cannot be set aside in a suit by the widow or by a son validly adopted by her, is clearly opposed to principle.

Widow's motives

§ 164. It cannot be said to be finally settled by the highest tribunal, that the motives of a widow who adopts a son to her husband are immaterial The Privy Council observed in an early case that "it would be very dangerous to introduce into the consideration of these cases of adoption nice questions as, to the particular motives operating on the mind of the widow" (*o*) In the most recent case it was said. "Their Lordships doubt if where the consent of a sapinda has been obtained the motive of the adopting widow is relevant" (*p*). *In Vijaysingji Chatrasinji* v. *Shivsangji,* their Lordships say, "There is no evidence to prove any improper motive, and if the adoption causes harm to the plaintiff, it nevertheless confers spiritual benefit upon the husband" (*p*[1]).

(*n*) *Chimabai* v *Mallappa* (1922) 46 Bom., 946 See *Radha Hambirrao* v. *Dinkarrao* A.I.R 1937 Bom, 208, 39 Bom L R, 147. where it was held that she could make a second adoption only when the first was declared by a court as invalid.

(*o*) *Vellanki* v. *Venkata Rama* (1876) 4 I.A, 1, 14, 1 Mad., 174. 187.

(*p*) *Sri Krishnayya Row* v. *Surya Rao* (1935) 69 M.L.J., 388, P.C., 40 C.W.N., 1, A.I.R. 1935 P.C. 190.

(*p*[1]) (1935) 62 I.A., 161, 165, 59 Bom., 360, 365

In Bombay it was settled by a Full Bench that, inasmuch as the adoption procured for her husband all the religious benefits which he could have desired, any discussion of her motives is irrelevant (*q*). In Madras the expressions of judicial opinion before *Krishnayya Row* v. *Surya Rao* (*p*) were in conflict (*r*). But it is fairly clear that after the doubt expressed by the Privy Council in the recent case (*p*), a widow's motives as in Bombay will as a rule be irrelevant (*s*). As an adoption is a proper act, it should ordinarily be presumed that it is made *bona fide* and that the widow acts from proper motives (*t*). When sapindas have given valid assent to an adoption, Courts are bound to presume that the act is done by a widow in "the proper and *bona fide* performance of a religious duty and neither capriciously nor from a corrupt motive" (*u*). There does not therefore appear to be any difficulty in reconciling the observations in the *Ramnad* (*u*) and *Berhampore* cases (*v*), reiterated in *Veerabasavaraju* v. *Balasurya Prasada Row* (*w*) and in *Kristnayya* v. *Lakshmipati* (*x*) with the observations in the *Guntur* case (*t*), as to the danger of introducing into cases of adoption by the widow, the consideration of questions of motives. But there may well be exceptional cases where an adoption is made on foot of arrangements entered into so clearly for her personal gain that it will be the duty of the Courts to set it aside as a fraud upon the power which the law gives her for the fulfilment of

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(*q*) *Ramachandra Bhagavan* v *Mulgi Nanabhai* (1898) 22 Bom., 558, F B, *Mahableshwar* v *Durgabai* (1898) 22 Bom, 199, *Sitabai* v. *Govindrao* (1927) 51 Bom, 217, 200, *Banarsi Das* v *Sumat Prasad* A I R 1936 All, 641 650, see also *Raja Makund* v. *Sri Jagannath* (1923) 2 Pat., 469, 485 6

(*r*) In *Annapurnamma* v *Appayya Sastri* (1929) 52 Mad., 620, 637, F B, a Full Bench of the Madras High Court expressed the view that "if the evidence bearing on consent lea 's to the conclusion that the motive which actuated the widow in making the adoption was to defeat the reversionary interest of the sapindas then the adoption would necessarily be invalid" *Mangamma* v *Ramanamma* (1935) 69 M L.J. 602, *Kandaswamy Gounder* v *Chinnammal* A I R 1933 Mad, 540, 37 M L W. 729 But see Kumaraswami Sastri, J, in 51 Mad, 893, F B, 914 915 and Jackson, J, in *Murahari Brahma Sastri* v. *Sumitramma* (1934) 57 Mad, 411, 426.

(*s*) See *Hari Ramayya* v. *Venkatachalapati* (1936) 70 M.L.J., 619, 623.

(*t*) The *Guntur* case (1876) 4 I.A., 1, 1 Mad., 174.

(*u*) (1868) 12 M.I A, 397, 444 *supra*.

(*v*) 3 I.A., 154, 1 Mad., 69.

(*w*) (1918) 45 I.A., 265, 41 Mad, 998.

(*x*) (1920) 47 I.A., 99, 43 Mad., 650.

a religious duty (*y*). This question is expressly reserved by the judgment of the Judicial Committee in the recent case (*y*[1]). But in whatever measure it may be open to the Courts to canvass in exceptional cases the motives of a widow in making an adoption, it would seem on principle that a sapinda whose consent is sought is entitled and bound to scrutinise her motives or the objects of the adoption. This is the very foundation of the rule which requires the consent of the sapindas. "The assent is required for the purpose of supporting the inference that the adoption was made by the widow, not from capricious or corrupt motives" (*z*), as was reiterated by the Privy Council in two recent cases (*a*), endorsing the observation in the *Berhampore* case which stressed the great social objections to make the succession of property dependent upon the caprice of a widow and to the duty of the Courts to keep the power strictly within the limits which the law has assigned to it (*b*).

Successive adoptions.

§ 165. A widow's power of adoption extends to making successive adoptions (*c*). Where, as in Bombay, she does not require the authority of her husband or the consent of his sapindas, she can adopt a son on the death of a son previously adopted. Where she can adopt only with the authority of her husband, she has the same power to make successive adoptions, if the husband's authority is on its construction unrestricted. Where, as in Madras, she can adopt with the consent of sapindas in the absence of her husband's authority, or where his authority was not general, her power of adoption is the same when duly authorised.

(*y*) See *Shri Sitaram* v. *Harihar* (1911) 35 Bom, 169, where the Court observed, "that object is likely to be frustrated, if she is induced to adopt a boy out of greed for money and pecuniary benefit to herself. If she is so induced, the money paid to her is a bribe, which is condemned by all Smriti writers as an illegal payment."

(*y*[1]) Referring to the dictum of Kumaraswami Sastri, J., that even if it was shown that a widow wanted to get a personal benefit for herself, the adoption could not be set aside on that ground, it was said: "Their Lordships do not find it necessary to decide this important question in the present case, but they think that this dictum of the learned Judge may require serious consideration on some future occasion": (1935) 69 Mad L J, 388, 399-400 (P C.) *supra*

(*z*) The *Guntur* case (1876) 4 I.A., 1, 1 Mad, 174.

(*a*) (1918) 45 I.A., 265, 41 Mad., 998; (1920) 47 I.A., 99, 43 Mad., 650.

(*b*) (1876) 1 Mad., 69, 3 I.A., 154.

(*c*) *Ram Soonder* v. *Surbanee Dassee* 22 W.R., 121, approved in *Suryanarayana* v. *Venkataramana* (1906) 33 I.A., 145, 29 Mad., 382.

When widow's power becomes incapable of being exercised

§ 166. A question of great importance is: can a widow exercise a power of adoption at any time during her life irrespective of any devolution of property or changes in the family, or other circumstances? The Hindu law itself sets no limit to the exercise of her power. It has however long been recognised by the Courts that "there must be some limit to its exercise, or at all events some conditions in which it would be either contrary to the spirit of the Hindu doctrine to admit its continuance, or inequitable in the face of other rights to allow it to take effect" (*d*) Upon the difficult question of "where the line should be drawn, and upon what principle", there have been considerable fluctuations of opinion in the judgments of the Courts in India as well as in those of the Judicial Committee

Bhoobun Moyee's case

The starting point of this limitation upon the power of the widow was Lord Kingsdown's judgment in *Bhoobun Moyee* v *Ram Kishore* (*e*) There, one Gour Kishore died leaving a son Bhowanee and a widow, Chundrabullee, to whom he gave authority to adopt in the event of his son's death Bhowanee married and died at the age of twenty-four without issue, but leaving a widow Bhoobun Moyee Chundrabullee then adopted Ram Kishore, who sued Bhowani's widow for the recovery of the estate The parties being governed by the Dayabhaga law, Bhoobun Moyee succeeded to Bhowanee's estate in preference to Ram Kishore. The Privy Council held that the claim of Ram Kishore failed on the ground that even if he had been in existence at the death of Bhowanee, he could not displace the widow of the latter. Their Lordships however expressed their opinion, "that at the time when Chundrabullee professed to exercise it (her power of adoption), the power was incapable of execution" on the ground that Bhowanee had married and left a widow as his heir After the deaths of Bhoobun Moyee and Chundrabullee, Ram Kishore got possession of the property, and if his adoption was good he was undoubtedly the next heir A distant collateral however claimed the estate on the ground that his adoption was invalid. The Privy Council held that "upon the vesting of the estate in the widow of Bhowanee, the power of adoption was at an end and incapable of execution" and that Ram Kishore had therefore no title (*f*) This view was followed in *Thayammal*

(*d*) *Amarendra Mansingh* v *Sanatan Singh* (1933) 60 I.A, 242, 249, 12 Pat, 642, 650 651

(*e*) (1876) 10 M I A, 279

(*f*) *Pudma Coomari* v *Court of Wards* (1881) 8 I A, 229, 8 Cal., 302, revg (1878) 5 Cal, 615

v. *Venkatarama* (*g*). There, on the death of the last male holder leaving his widow, his mother with the permission of sapindas adopted a son to her husband. It was held that the adoption was invalid. So also in *Tarachurn* v. *Suresh Chunder* (*h*), where a testator left a son and widow, and authorised the latter to adopt on the death of the former, an adoption made by the widow on the death of the son leaving his widow, was held to be invalid.

§ 167. It is well-settled that in a joint family, the widow of a coparcener can adopt a son to her husband notwithstanding the vesting of his interest in another coparcener, even where the latter is the last surviving coparcener or one posthumously born (*i*). It is also settled law that where an aurasa or adopted son dies unmarried leaving his mother as his heir, her power of adoption is still exercisable (*j*). Where however a grandmother succeeded to her grandson who died unmarried, it was held by a Full Bench of the Bombay High Court that her power to make an adoption was at an end. Chandavarkar, J summed up the limiting principle in these words: "Where a Hindu dies leaving a widow and a son, and that son dies leaving a natural born or adopted son, or leaving no son but his own widow to continue the line by means of adoption, the power of the former widow is extinguished and can never afterwards be revived" (*k*). This principle was approved and applied by the Judicial Committee in *Madana Mohan Deo* v. *Purushottama Deo* (*l*). There it was held that an adoption by the mother-in-law when her adopted son died leaving a widow was invalid even though it was a case of adoption to a coparcener in an undivided family and the estate had gone to another coparcener by survivorship.

Limiting principle.

(*g*) (1887) 14 I A., 67, 10 Mad, 205

(*h*) (1889) 16 I A, 166, 17 Cal, 122 Even the fact that the widow left by the son re-marries does not give the mother a right to adopt *Ramachandra* v *Murlidhar* (1937) 39 Bom L.R, 599

(*i*) *Raghunada* v *Brozo Kishore* (1875) 3 I.A, 154, 1 Mad, 69, *Bachoo Hurkissondas* v *Mankorebai* (1907) 34 I A, 107, 31 Bom, 373, *Yadao* v. *Namdeo* (1921) 48 I.A., 513, 49 Cal, 1; *Bhimabai* v. *Gurunathgouda* (1933) 60 I.A., 25, 57 Bom., 157.

(*j*) *Vellanki Venkata* v. *Venkatarama* (1876) 4 I.A, 1, 1 Mad 174, *Verabhai* v. *Bhai Hiraba* (1903) 30 I A, 234, 27 Bom. 492, *Mallappa* v. *Hanmappa* (1889) 44 Bom., 297.

(*k*) *Ramkrishna* v. *Shamrao* (1902) 26 Bom., 526, 532, F.B; This view was followed by the Calcutta High Court in *Manickyamala* v. *Nandakumara* (1906) 33 Cal., 1306.

(*l*) (1918) 45 I.A., 156, 41 Mad., 855.

Pratapsing's case.

In *Pratapsing* v. *Agarsingji* (*m*) a village was held as a maintenance grant by a junior branch of the family whose head was the holder of an impartible estate. The last male-holder of the village, Kaliansing, died childless leaving a widow. By the custom of the family such grants reverted to the estate upon failure of male descendants of the grantee. Accordingly the village became vested in the owner of the estate by reverter. Thereupon some five months after Kaliansing's death, his widow adopted a son to him. It was held that the adoption was good and that the adopted son was entitled to succeed to the village though it had on the death of Kaliansing vested by reverter in the owner of the estate. The Judicial Committee observed: "The Hindu lawyers do not regard the male line to be extinct or a Hindu to have died without male issue until the death of the widow renders the continuation of the line by adoption impossible" and accordingly their Lordships laid down in clear terms, that "the right of the widow to make an adoption is not dependent on her inheriting as a Hindu female owner her husband's estate. She can exercise the power so long as it is not exhausted or extinguished, even though the property was not vested in her".

§ 168. One question however remained on which there was no definite pronouncement by the Privy Council. Where the last surviving member of a coparcenary died leaving an heir in whom the property vested, it was held by the courts in India that a widow of a pre-deceased coparcener could not validly make an adoption to her deceased husband which would have the effect of divesting an inheritance already vested (*n*). Likewise it was held that where the separate estate of the last male holder became vested by inheritance, not in the adopting widow, but in a collateral, her power of adoption was at an end (*o*). In other

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(*m*) (1918) 46 I A, 97, 43 Bom, 778, see also *Dundoobai* v. *Vithalrao* (1936) 60 Bom., 498.

(*n*) *Chandra* v *Gojarabai* (1890) 14 Bom., 463; *Shri Dharnidhar* v. *Chinto* (1896) 20 Bom, 250, *Vasudeo Vishnu* v. *Ramchandra* (1898) 22 Bom, 551 (F B); *Shivbasappa* v *Nilava* (1923) 47 Bom, 110, *Shivappa* v. *Rudrava* (1933) 57 Bom, 1; *Adivi Suryaprakasa Rao* v. *Nidamarty Gangaraju* (1910) 33 Mad, 228 Even before the recent Privy Council decisions this view was doubted by Seshagiri Ayyar, J, in *Madanamohun* v. *Purushottam* (1915) 38 Mad, 1105, 1118, and was not followed by Venkatasubba Rao, J., in *Panyam* v. *Ramalakshmamma* (1932) 55 Mad., 581, 590, where the coparcenary had come to an end by partition and there was vesting in another.

(*o*) *Annamah* v. *Mabbu Bali Reddy* (1874) 8 Mad. H.C., 108; *Doobomoyee* v. *Shama Churn* (1886) 12 Cal, 246, *Bhimabai* v. *Tayappa* (1913) 37 Bom., 598; *Kesarbhai* v. *Shivsangji* (1932) 56 Bom., 619.

words a distinction was made between cases of vesting by inheritance and vesting by survivorship. While in the latter case adoption could validly be made till the coparcenary came to an end, in the former case an adoption could not be made once the inheritance vested in a collateral. In *Panyam* v. *Ramalakshmamma* (*p*), however, it was held that the widow of a pre-deceased coparcener was entitled to adopt a son to her husband even if the coparcenary became extinct by partition between the surviving members of the joint family. A recent decision of the Privy Council in *Amarendra* v. *Sanatan* (*q*), following the implications of the decision in *Pratapsing's* case (*r*), has swept away the distinction between cases of vesting by inheritance and vesting by survivorship and approving of the rule laid down in *Ramakrishna* v. *Shamrao* (*s*), has laid down a simple and intelligible rule of limitation applicable to all cases alike. In that case, a Hindu governed by the Benares school of law was survived by an infant son and a widow, to whom he had given authority to adopt in the event of the son dying. The son succeeded to his father's impartible zamindari and died unmarried at the age of twenty years and six months. By a custom of the family which excluded females from inheritance, the estate did not go to his mother but became vested in a distant collateral. A week after the son's death, she made an adoption to his father. It was held that the adoption was valid and that it divested the estate vested by inheritance in the collateral. Nothing turned upon the question that it was an impartible zamindari nor was it treated as a case of coparcenary or survivorship (*t*). On the contrary, the judgment proceeded upon the basis that on the death of Bibhudendra, the son, the collateral in whom the estate vested was a separated sapinda claiming "strictly by inheritance" (*u*). Their Lordships relied upon the principle stated in *Raghunada* v. *Brozo Kishore* "that the validity of an

Amarendra's case.

(*p*) (1932) 55 Mad., 581.

(*q*) (1933) 60 I.A., 242, 12 Pat. 642, reversing 10 Pat., 1 and overruling *Bhimabai* v. *Tayappa* (1912) 37 Bom., 598 As a result of the P.C decision, *Annamah* v *Mabbu Rali Reddy* (1874) 8 Mad. H.C., 108· *Adivi* v. *Nidamarty* (1910) 33 Mad., 228, and *Chandra* v. *Gojarabai* (1890) 14 Bom., 463 and cases following them are no longer good law.

(*r*) (1918) 46 I.A., 97, 43 Bom., 778.

(*s*) (1902) 26 Bom., 526 (F.B.).

(*t*) As is wrongly supposed by a recent Full Bench of the Bombay High Court in *Balu Sakharam* v. *Lahoo Sabhaji* [1937] Bom., 508, 539.

(*u*) When the case was before the Patna High Court the question had been discussed both on the footing of inheritance and survivorship. But before the Privy Council, the Zamindari was claimed on the basis that it was separate property and that the adoption could not divest

adoption is to be determined by spiritual rather than temporal considerations, that the substitution of a son of the deceased for spiritual reasons is the essence of the thing, and the consequent devolution of property a mere accessory to it" (*v*). After a full review of the authorities and after balancing the opposed views, their Lordships came to the conclusion that "the vesting of the property on the death of the last holder in some one other than the adopting widow, be it either another coparcener of the joint family, or an outsider claiming by reverter, or their Lordships would add, by inheritance, cannot be in itself the test of the continuance or extinction of the power of adoption If in *Pratapsing's* case the actual reverter of the property to the head of the family did not bring the power to an end, it would be impossible to hold in the present case that the passing by inheritance to a distant relation could have that effect any more than the passing by survivorship would in a joint family" The Privy Council held accordingly (1) that the interposition of a grandson, or the son's widow, brings the mother's power of adoption to an end, (2) that the power to adopt does not depend upon any question of vesting or divesting of property, and (3) that a mother's authority to adopt was not extinguished by the mere fact that her son had attained ceremonial competence (*w*)

Vijaysingji's case

This decision was followed in *Vijaysingji* v *Shivsangji* (*x*), a case from Bombay In that case the holder of an impartible estate left a widow and a son Chhatrasingji The latter inherited the estate but was afterwards adopted into another family Two years later, when the property was vested in a collateral, the mother of the last male-holder made an adoption to her deceased husband Reversing the judgment of the High Court,

the estate which had vested eight days previously in Banamali as the collateral heir of the last male holder, *Amarendra* v *Sanatan* (1933) 60 I A, 212, 216 7, 12 Pat, 642

(*v*) (1876) 3 I A, 154, 192 1 Mad 69

(*w*) The judgment expressed complete agreement with the opinion of Wallace, J, in *Tripuramba* v *Venkataratnam* (1922) 46 Mad, 423, 433-4, that 'the purpose of adoption is to perpetuate the line, and if the only son dies without leaving anyone to perpetuate the line, there seems no good reason for restricting the power of the mother to perpetuate it in the only way she can by adopting a son to her own husband' For a report of the arguments before the Judicial Committee in *Amarendra's* case, see 37 C W N, 997 *Bhimabai* v *Gurunathgouda* (1933) 60 I A, 25, 57 Bom. 157 was cited to their Lordships and also other important decisions of the High Courts Evidently the Judicial Committee had all the relevant Indian decisions in their mind See (1933) 60 I A, 242, 251, 253

(*x*) (1935) 62 I A 161, 59 Bom, 360, reversing (1932) 56 Bom, 619

the Privy Council reaffirmed their view in *Amarendra's* case. Their Lordships observed that a widow's power to adopt does not depend upon any question of vesting or divesting of the estate. In this case also, it is clear from the judgment of the High Court, that "the estate was the separate property of the defendant Chhatrasingji, and could be alienated by him as the sole surviving member of the joint family" and the claimant was not a member of a joint family claiming by survivorship, but was a separated sapinda claiming by inheritance (*y*). It will be obvious that the adoption was made not to the last male holder but to the previous holder and the High Court followed *Chandra* v. *Gojrabai* (*z*) and *Sri Dharnidhar* v. *Chinto* (*a*).

§ 169 The two recent decisions of the Privy Council were discussed by a Full Bench of the Bombay High Court in *Balu Sakharam* v. *Lahoo Sambhaji* (*b*). There, an adoption was made by the widow of a pre-deceased coparcener after the joint family property had vested in the widow of the last surviving coparcener. The decision of the majority was that the adoption was valid but that it did not divest the estate which had vested by inheritance in the widow of the surviving coparcener. The learned judges erroneously assumed that in *Amarendra's* case (*c*) and in *Vijaysingji's* case (*d*), a coparcenary was in existence at the date of the adoption (*e*). The very opposite of it is clearly stated by Sir George Lowndes in *Amarendra's* case and is to be found in the decision of the High Court in *Vijaysingji's* case. Beaumont, C.J., observed "In view of *Amarendra's* case, I think that the adoption in *Chandra's* case (*f*) must be treated as valid and if the decision was otherwise, it must be treated to that extent as overruled". The decision in *Chandra's* case was clearly understood by Sir Dinshaw Mulla in *Bhimabhai* v. *Gurunathgouda* (*g*) as holding that the adoption made by a widow after the extinction of a coparcenary was invalid. But in *Bhimabai's* case, as the

Bombay decision

(*y*) (1932) 56 Bom., 619, 627, 628.

(*z*) (1890) 14 Bom., 463.

(*a*) (1896) 20 Bom., 250, see 56 Bom., 619, 653, 654.

(*b*) [1937] Bom., 508, F.B., approving *Shankar* v. *Ramrao* (1935) 60 Bom., 89 and *Dhondi Dnyanoo* v. *Rama Bala* (1935) 60 Bom., 83 overruling *Umabai Bhagwant* v. *Nani Mahadev* (1935) 60 Bom., 102, and *Vishnu* v. *Lakshmi* (1933) 37 Bom.L.R., 193.

(*c*) (1933) 60 I.A., 242, 12 Pat., 642.

(*d*) (1935) 62 I.A., 161, 59 Bom., 360.

(*e*) [1937] Bom., 508, 539.

(*f*) (1890) 14 Bom., 463.

(*g*) (1933) 60 I.A., 25, 57 Bom., 157.

coparcenary was in existence at the time of the adoption, the Judicial Committee distinguished it without expressing any opinion as to the correctness of the decision in *Chandra's* case. Obviously *Chandra* v. *Gojarabai* (*f*) cannot be treated as good law after the two recent Privy Council decisions on the question of validity of an adoption in circumstances similar to those that existed in that case. In another case in Bombay (*h*) where an adopted son who was the last male holder of watan property and was entitled to it as his separate property, died leaving two daughters but no widow, it was held that his mother could make another adoption after the property had vested in the daughters by inheritance. It is therefore now plain that the mere marriage of the son does not put an end to his mother's power of adoption, for unless he leaves a widow to continue the line, the mother's power to do so is not at an end (*i*). In *Subramaniam* v. *Somasundaram,* the Madras High Court held that an exception to the rule that the mother's power of adoption is at an end when the son has left a widow may by custom exist. It was a case of Nattukottai chettis in the Ramnad district. A custom that both the mother-in-law and the daughter-in-law can make adoptions, though not proved as a custom of the community was held to be sufficiently proved as between the parties (*j*).

Whether son's widow should have power to adopt.

§ 170. One question is however left open by the Privy Council in *Amarendra's* case (*k*): whether, in order to bring the mother's power of adoption to an end, it is necessary that the son's widow should herself be clothed with a power to adopt. This question does not appear to raise any serious difficulty; for in Bombay she can always adopt. In Madras she can obtain the authorisation from her husband's sapindas. In other provinces where without her husband's authority she cannot adopt, the question may however require an answer. But if the son left a widow whom he could have authorised that would appear to be sufficient. For his failure to authorise his wife to adopt cannot have greater consequences than the failure or refusal of a widow so authorised to adopt.

(*h*) *Chanbasappa* v. *Madiwalappa* [1937] Bom., 642, following *Amarendra's* case. See also *Ramachandra* v. *Mt. Yamuni Bai* A.I.R. 1936 Nag., 65 F.B.

(*i*) *Amarendra* v. *Sanatan* (1933) 60 I.A., 242, 260, 12 Pat., 642; approving *Venkappa* v. *Jeevaji* (1901) 25 Bom., 306.

(*j*) (1936) 59 Mad., 1064. The instances apparently were few and recent. It may be doubted whether a custom would be reasonable and valid by which the mother-in-law claims to make an adoption after an adoption by the daughter-in-law.

(*k*) (1933) 60 I.A., 242, 12 Pat., 642.

§ 171. The decision in *Amarendra's* case (*k*) is rested upon the duty of providing for the continuance of the line for spiritual purposes and upon the religious efficacy of sonship. Probably an attempt will be made to distinguish it from cases of adoption in communities such as Jains amongst whom it is held to be a purely secular act (*l*). It is not clear that it was intended to make a distinction between cases where the religious motive may be presumed and cases where an adoption is purely a secular institution. If the religious efficacy of sonship is more than a historical or theoretical basis for deducing a general principle, then the rule laid down in *Amarendra's* case may not apply to communities such as Jains. But adoption itself is in all cases for the continuance of the line and for the perpetuation of the family name, whether the motives are secular or religious, and the reasons for or against setting limits to a widow's power in the one case as in the other are substantially the same. Jains.

The Hindu Women's Rights to Property Act, 1937, if anything, makes the position of the adopting widow stronger. For, in every case to which the Act applies, the effect of an adoption by her will only be to divest a moiety of her own interest (*l*[1]).

§ 172. SECOND, WHO MAY GIVE IN ADOPTION.—As the act of adoption has the effect of removing the adopted son from his natural into the adoptive family, and thereby most materially and irrevocably affects his prospects in life, and as the ceremony almost invariably takes place when the adoptee is of tender years and unable to exercise any discretion of his own in the matter, it follows that only those who have dominion over the child have the power of giving him in adoption. According to Vasishtha (*m*), both parents have power to give a son, but a woman cannot give one without the assent of her lord. Manu says (*n*): "He whom his father or mother (with her husband's assent) gives to another, etc., is considered as a son given." The Mitakshara says: "He who is given by his mother with her husband's consent, while Only parents can give.

(*l*) See *Dhanraj* v. *Sonibai* (1925) 52 I.A., 231, 52 Cal., 482.

(*l*[1]) See *post* Ch. XIV.

(*m*) Vas., XV, §§ 2, 5; Dig., II, 387.

(*n*) Manu, IX, 168; Medatithi's gloss on this verse is: "It would be more reasonable to read '*cha*' 'and' instead of '*va*' 'or'—'the father and the mother'; the child belongs to both the parents and cannot be given away, if either of them is unwilling." Jha, Medatithi Bhashya, Vol. V, 154.

her husband is absent, or after her husband's decease, or who is given by his father or by both, being of the same class with the person to whom he is given, becomes his given son" (*o*)

Assent of wife.

The wife can only exercise this power during her husband's life with his assent It is quite settled that the father alone has absolute authority to dispose of his son in adoption, even without the consent of his wife, though her consent is generally sought and obtained (*p*). The wife cannot give away her son while her husband is alive and capable of consenting, without his consent; but she may do so after his death, or when he is permanently absent, as, for instance, an emigrant, or has entered a religious order, or has lost his reason (*q*), provided the husband was legally competent to give away his son, and has not expressly prohibited his being adopted (*r*). No other relation but the father or mother can give away a boy (*s*) For instance, a step-mother cannot give away her step-son (*t*), a brother cannot give away his brother (*u*) Nor can the paternal grandfather, or any other person (*v*) Nor can the parents delegate their authority to another person, for instance a son, so as to enable him, after their death, to give away his brother in adoption, for the act when done must have parental sanction (*w*) And, therefore, even an adult orphan cannot be adopted, because he can neither give himself

(*o*) Mit, I, xi, 9.

(*p*) Dat. Mima, IV, 13 17, V, 14, n, Dig, II, 387, *Alank Manjari* v *Fakir Chand* 5 S D, 356 (418), *Chitko Raghunath* v. *Janaki* (1874) 11 Bom H C, 199, Mit, I, xi, § 9

(*q*) Dat. Mima, IV, 10-12, Dat Chand, I, 31, 32, Mit, I, xi, § 9, *Arunachellum* v *Iyasamy* 1 Mad, Dec, 154, *Huro Soondree* v *Chundermony* Sevest, 938, *Rangubai* v *Bhagirthibai* (1878) 2 Bom., 377, *Mhalsabai* v *Vithoba* (1870) 7 Bom H C, Appx, 26, *Jogesh Chandra* v *Nrityakali* (1903) 30 Cal, 965, *Raja Makund* v *Sri Jagannath* (1923) 2 Pat, 469.

(*r*) *Narayanaswami* v. *Kuppuswami* (1888) 11 Mad, 43; *Gurulingaswami* v *Ramalakshmamma* (1895) 18 Mad, 53, 58, affd (1899) 26 I A, 113, 22 Mad, 398, *Bireswar* v. *Ardha Chander* (1892) 19 I A, 101, 105 6, 19 Cal, 452, 461 (the person giving in adoption must have attained the age of discretion, and must be of sound mind)

(*s*) This is cited in *Dhanraj* v *Sonibai* (1925) 52 I.A., 231, 236, 52 Cal, 482

(*t*) *Papamma* v *Appa Row* (1893) 16 Mad, 384 An adoption of a son self-given is forbidden by Aditya Purana and Dat Chand *ib*, 393.

(*u*) V. Darp, 825, *Mt Tara Munee* v. *Dev Narayun* 3 S D, 387 (516), *Moottoosamy* v. *Lutchmeedavummah* Mad. Dec., 1852, p. 97

(*v*) *Collector of Surat* v. *Dhirsinghi* (1873) 10 Bom. H.C., 235.

(*w*) *Bashetiappa* v. *Shivlingappa* (1873) 10 Bom. H.C., 268.

away, nor be given by anyone with authority to do so (*x*). But what the law declines to sanction is the delegation by an authorised person to an unauthorised person of the discretion to give in adoption which is vested solely in the former Where the necessary sanction has been given by an authorised person, the physical act of giving away in pursuance of that sanction may be delegated to another (*y*).

A widow, on her remarriage, has no right to give in adoption her son by her first husband (*z*). Where a husband authorised his wife to give his boy in adoption but made it dependent upon the fulfilment of a certain condition such as that the adopting party should first obtain the consent of the Government, it was held that the adoption was invalid for non-fulfilment of that condition (*z*[1])

§ 173. THIRD, WHO MAY BE TAKEN IN ADOPTION.— According to the Dattaka Mimamsa and the Dattaka Chandrika, in the first place, the nearest male sapinda should be selected, if suitable in other respects, and, if possible, a brother's son, as he is already, in contemplation of law, a son to his uncle If no such near sapinda is available, then one who is more remote; or in default of any such, then one who is of a family which follows the same spiritual guide, or, in the case of Sudras, any member of the caste (*a*). The Mitakshara understands the text of Vasishtha to mean that an adoption should be of one whose kinsmen are not remote and it therefore says that the adoption of one very distant by

Nearest sapinda

(*x*) *Subbaluvammal* v. *Ammakutti* (1864) 2 M.H.C, 129, *Balvantrav* v *Bayabai* (1869) 6 Bom H C (O C J), 83, (1873) 10 Bom H.C., 268 *supra*. *Vaithilingam* v. *Natesan* (1914) 37 Mad, 529; *Kuppusawmy Reddy* v. *Venkatalakshmi Ammal* (1915) 18 M L.T., 434, *Maravya* v. *Ramalakshmi* (1921) 44 Mad., 260.

(*y*) *Vijiarangam* v. *Lakshuman* (1871) 8 Bom. H.C. (O C J), 244, *Venkata* v *Subadra* (1884) 7 Mad, 548, *Subbarayar* v. *Subbammal* (1898) 21 Mad, 497 *Shamsing* v *Santabai* (1901) 25 Bom, 551, p 553 (Hindu convert to Islam giving his son in adoption through delegation), *Kusum Kumari* v. *Satya Ranjan* (1903) 30 Cal, 999, *Mt Chunnibai* v *Girdharilal* A I R 1934 Nag, 1; in *Neelava* v. *Gurshiddappa* A I.R 1937 Bom, 169, where an excommunicated person gave his son in adoption and the excommunication was not of the highest grade, the adoption was held valid as no religious ceremony was required

(*z*) *Panchappa* v *Sanganbasawa* (1900) 24 Bom, 89, *Fakirappa* v. *Savitrewa* A I R. 1921 Bom., 1, F.B, 23 Bom. L.R., 482, overruling *Putlabai* v. *Mahadu* (1909) 33 Bom, 107, *Mt Sheokabai* v *Ganpat* A I R. 1925 Nag, 1, F.B.

(*z*[1]) *Rangubai* v. *Bhagirathibai* (1878) 2 Bom., 377

(a) Dat. Mima, II, §§ 2, 28, 29, 67, 74, 76, 80, Dat. Ch, I, §§ 10, 20, II, § 11; Mit., I, 11, §§ 13, 14, 36. V. May, IV, 5, §§ 9, 16, 19.

country and language is forbidden (*b*) It is now settled that these precepts are merely recommendatory and that the adoption of a stranger is valid, even though near relatives otherwise suitable, are in existence (*c*)

Identity of caste

In the second place, the adopted son must be of the same caste as his adopting father, that is, a Brahman may not adopt a Kshatriya, or *vice versa* The rule in the Saunaka Smriti which is next to Vasishtha the chief authority on the matter, expressly prohibits an adoption outside the caste, for it says that adoption in all classes must be made in their own classes only *and not otherwise* (*d*) The Mitakshara is conclusive on the matter Commenting on the text of Manu, it says that the dattaka son must be a *savarna* or of the same class (*e*) The adoption of a person belonging to a different primary caste is therefore invalid (*e*[1]) But an adoption of a person from a sub-caste of the same primary caste is valid (*f*) So also a member of one religious sect may adopt a son from another religious sect (*g*)

Orphan

§ 174 An orphan cannot be validly adopted (*h*) in the absence of a custom to the contrary (*i*)

(*b*) I, XI, 14, and Colebrooke's notes to I XI, 13 Vivada Ratnakara, ch XXIV, p 70

(*c*) 1 W. MacN, 68, 2 Stra H L, 98 102, *Gocoolanund* v *Wooma Daee* (1875) 15 Beng L R, 405, 23 W R, 342, affirmed *subnominee Umadevi* v *Gokoolanund* (1878) 5 I A, 40, 3 Cal, 587, *Babaji* v *Bhagirathibai* (1869) 6 Bom H C (A C J), 70, *Dharma Dagu* v *Ramkrishna* (1886) 10 Bom 80

(*d*) Dat Mima II 74 V Mayukha, IV, 5, 9, the Dattaka Chandrika also clearly states that this restriction forbids the adoption of a boy of a different caste, I 16

(*e*) Mit (Setlur's edn, 693) I, XI, 9, Medhatithi's comment is alike' in Manu's text does not mean 'alike by caste', but Kulluka differs and interprets it 'alike by caste' The Vyavahara Mayukha (IV, 5, 4) accepts Kulluka's comment quoting Yajnavalkya, Saunaka and Vijnanesvara

(*e*[1]) Dat Mima, III, 1 3

(*f*) *Shib Deo Misra* v *Ram Prasad* (1924) 46 All, 637, 646 approving *Narain Singh* v *Mt Shiam Kali Kunwar* (1914) 17 Oudh Cases, 186

(*g*) *Kusum Kumari* v *Satya Ranjan* (1903) 30 Cal 999

(*h*) *Bashettiappa* v *Shivlingappa* (1873) 10 Bom H C 268, *Vaithilingam* v *Natesa* (1914) 37 Mad, 529, *Mareyya* v *Ramalakshmi* (1921) 44 Mad, 260, *Sukhbir* v *Mangeisar* (1927) 49 All 302, *Dhanraj* v *Sonibai* (1925) 52 I A, 231 237, 58 Cal, 482

(*i*) *Ramkishore* v *Jainarayan* (1921) 48 I A, 405, 49 Cal, 120 (Dhusars of the Punjab), *Parshottam* v *Vemchand* (1921) 45 Bom, 754 (Jains in Idar State), *Subramanian Chettiar* v *Somasundaram* (1936) 59 Mad, 1064 (Nattukottai Chetties of Madras), *Kunwar Basant* v *Kunwar Brij Raj* (1935) 62 I A, 180; 57 All, 194 (Jats)

Only son

The Smritis undoubtedly prohibit the adoption of an only son. Vasishtha and Baudhayana say, "Let no man give or receive in adoption an only son, for he must remain for the obsequies of his ancestor" (*j*). Saunaka says, "By no man having an only son is the gift of a son to be ever made". The Dattaka Mimamsa explains that a prohibition of acceptance of an only son is also established by Saunaka's text (*k*). The Mitakshara, while quoting the above text of Vasishtha expresses its opinion that an only son must not be *given*, but it does not say 'nor accepted' (*l*). This prohibition is by some authorities extended to the adoption of an eldest son, since he chiefly fulfils the office of a son (*m*). This is clearly a moral precept and it has been held that the adoption of an eldest son is valid (*n*). Saunaka says that by a man having several sons, a gift should be made (*o*). The argument that as Vasishtha assigns a reason for his injunction not to give or accept an only son, it is not an imperative rule *(vidhi)* is, as already explained, wholly incorrect (*p*) But the reason itself may well be regarded as part of the rule *(vidhi)* if the authority of the Mitakshara and the Parasara Madhaviya that the assignment of the reason or *arthavada* may, when necessary, be treated as a *vidhi* is to be followed (*q*). As the reason concerns the giver, the injunction affects him only and not the taker. Whatever the correct explanation may be, it is now settled by the decision of the highest tribunal, on an elaborate examination of the authorities, that the rules regard-

Eldest son

(*j*) Vas., XV, 3, 4 Baudhayana Parisishtha, S B E Vol XIV VII. 4-5 (p. 334). In Rome, the only male of his *gens* could not be adopted for the *sacra* would in such case be lost

(*k*) Dat Mima., IV, 1-3

(*l*) Mit., I, XI, 11, not accepted is Balambhatta's gloss

(*m*) Mit, I, XI, 12, citing Manu, IX, 106, Vramit, II, 2, 8, Saraswati Vilasa, §§ 368, 369, 2 Stra. H.L., 105, 2 W. MacN., 182. V. Mayukha. IV, 5, 4; *Permaul Naicken* v *Potee Ammal* Mad Dec of 1851, 234

(*n*) *Janokee* v. *Gopaul* (1876) 2 Cal., 365, affirmed on facts (1883) 10 I.A., 32, 9 Cal, 766, *Kashibai* v. *Tatia* (1883) 7 Bom, 221 *Jamnabhai* v. *Raichand* (1883) 7 Bom, 225

(*o*) Dat. Mima., IV, 5, 9

(*p*) *ante* § 20 The Dattaka Mimamsa does not extend the prohibition to an adoption of an only son of a brother by another brother as it restricts the injunction by the reason given II, 37, 38, VI, 34-36 17, 48.

(*q*) Mit. on Yajn., I, 56, Vidyarnava's trans., 120, Vijnanesvara says "Here by assigning the reason 'that out of her he is born himself', the author prohibits a marriage with a Sudra woman for one who is desirous of begetting a *nityaka* (necessary) son Parasara Madhaviyam, Setlur's trans., 552.

ing the adoption of an only son are merely moral precepts but do not affect its validity (*r*).

Two persons cannot adopt the same boy.

Two persons cannot adopt the same boy, even if the persons adopting are brothers Such an adoption is illegal under the Hindu law (*s*).

Adoption of an adopted son

A man who gives his only son in adoption to another can himself adopt a son, as he becomes sonless (*t*) But a man who adopts a son cannot give that son in adoption to another even if the latter be the son's natural father For, the gift in adoption can only be made by one's own natural father or mother (*u*)

Personal disqualification

As one reason for adoption is the performance of funeral ceremonies, it follows that one who from any personal disqualification would be incapable of performing them, would be an unfit person to be adopted (*v*).

One whose mother could have been married

§ 175. There is another rule that no one can be adopted whose mother in her maiden state the adopter could not have legally married (*w*) There has been considerable controversy about this rule Its origin and binding character have been criticised with great learning and force by Mr. V. N. Mandlik (*x*) He admits that "the Dattaka Chan-

(*r*) *Sri Balusu Gurulingaswami* v *Balusu Ramalakshmamma* (1899) 26 I A, 113, 22 Mad, 398, affirming (1895) 18 Mad, 53, *Beni Pershad* v *Mt Hardai Bibi* (1892) 14 All, 67, P B, affirmed *Radha Mohan* v *Hardai Bibi* (1899) 26 I A, 113, 21 All, 460, *Vyas Chimanlal* v *Vyas Ramachandra* (1900) 24 Bom., 367 *Krishna* v *Paramshri* (1901) 25 Bom, 537

(*s*) *Dhanraj Joharmal* v *Sonibai* (1925) 52 I A, 231, 242, 52 Cal 182, *Raj Coomar* v *Bissessur* (1884) 10 Cal., 688, 696-697

(*t*) *Balusu Gurulingaswami* v *Balusu Ramalakshmamma* (1899) 26 I.A, 113 (dictum at p 142), 22 Mad, 398, *Vijaysangji* v *Shri sangji* (1935) 62 I A, 161, 59 Bom, 360 (where such an adoption was treated as valid) on appeal from 56 Bom, 619

(*u*) Sarkar, Adoption, 2nd edn, 281-282

(*v*) Suth Syn, 665, Vyav Darp, 828, 830 compare Dat Mima II, 62.

(*w*) Dat Mima, V, 16-20, Dat Chand. II 7-8

(*x*) Pages 478 495, 514 Dr Jolly also says that 'a close examination of the original authorities shows that there is very little if anything, in the Sanskrit treatises to warrant the formation of such a rule as this" T L L, 163 The express prohibition of daughter's son, sister's son and mother's sister's son for adoption was evidently not due to the inferior religious merit of such adoptions, for the daughter's son was from the most ancient times a specially adopted son as a *putrika putra*. The prohibition to adopt near *bandhus* was probably to ensure that the near agnates like the brother's son were adopted as, without the prohibition, a daughter's son, or a sister's son or a mother's sister's son would ordinarily be preferred to an agnate But the rules regarding the adoption of near agnates are regarded as mere moral precepts while the prohibition which secured that object is treated as a legal rule

drika, the Dattaka Mimamsa, the Samskara Kaustubha, the Dharma Sindhu and the Dattaka Nirnaya contain this prohibition." These authorities base their opinion, *first*, on the text of Saunaka that the adopted boy must bear the reflection of a son, to which they append the gloss "that is the capability to have been begotten by the adopter through *niyoga*, and so forth" (*y*). *Secondly*, they rely upon a text which is attributed variously to Saunaka, Vriddha Gautama, and Narada, which states that a sister's son and a daughter's son may be adopted by Sudras, but not by members of the three higher classes, and upon a text of Sakala which explicitly forbids the adoption by one of the regenerate classes of "a daughter's son, a sister's son, and the son of the mother's sister" (*z*). As to the former text, Mr. Mandlik argues that the correct translation is "Sudras should adopt a daughter's son, or a sister's son. A sister's son is in some places not adopted as a son among the three classes beginning with a Brahmana." He points out that the Mayukha, as properly rendered, interprets the text as meaning that Sudras should adopt only, or primarily, a daughter's or a sister's son, but not as forbidding such adoptions by Brahmans. This view is also supported by the Dvaita Nirnaya, and the Nirnaya Sindhu (*a*). The fact still remains, however, that the five digests above referred to lay down the rule in distinct and positive terms The rule so laid down was stated by Mr Sutherland, both the Mac Naghtens, and both the Stranges (*b*), and, as limited to the three regenerate classes, it has been affirmed by a singularly strong series of authorities in all parts of India as forbidding the adoption of the son of a daughter, or of a sister, or of an aunt (*c*). The rule itself was re- Madras.

Rule confined to three higher castes.

(*y*) Dat. Mima., V, 15-17, Dat. Chand., II, 7, 8. The words and so forth' cannot refer to marriage but probably refer only to unauthorised carnal connection For, if marriage had been meant, it would have been mentioned first in order But a man cannot be authorised to approach a woman to beget a *kshetraja* son, if she is a *sagotra* woman or within prohibited degrees or if there would be *vruddha sambandha* The deduction therefore was right, but the real objection is to make the obsolete and prohibited practice of *niyoga* the legal basis for a working rule of Hindu law Compare *Raghunada* v *Brozo* (1878) 3 I.A., 154, 190-1, 1 Mad, 69

(*z*) Dat Mima, II, §§ 32, 74, 107, Dat. Chand, I, § 17.

(*a*) V. May., IV, 5, §§ 9, 10; V. N. Mandlik, pp. 53-56.

(*b*) Suth. Syn., 664; F. MacN, 150; 1 W. MacN, 67, 1 Stra H L, 83; S.M., § 84

(*c*) *Baee Gunga* v. *Baee* Sheokoovar Bom. Sel Rep, 73, *Narusammal* v. *Balarama Charlu* (1863) 1 M.H.C., 420, *Jivani* v *Jivu* (1864) 2 M.H.C., 462, *Gopalayyan* v. *Raghupatiayyan* (1873) 7 M.H.C, 250; *Ramalinga* v *Sadasiva* (1864) 9 M I.A, 506, where the

affirmed by the High Court of Madras after a full examination of Mr Mandlik's argument (*d*) In *Raghavendra Rao* v *Jayarama Rao* (*e*), the Court treated it as the settled law, except where there is usage to the contrary, that the natural mother of the boy to be adopted, should be a person who, in her maiden state, might lawfully have been married to the man for whom the adoption is made. A judgment of the Judicial Committee reversing a Full Bench of the Allahabad High Court has finally established the invalidity of adoptions of that class in all cases to which the general Hindu law applies, in the absence of a custom to the contrary (*f*) On the same ground, it is unlawful to adopt a brother, a step-brother or an uncle, whether paternal or maternal (*g*)

Bombay

The Bombay High Court has confined the restrictive rule to the three specific instances of daughter's son, sister's son and mother's sister's son (*h*) It has accordingly treated the adoption of a mother's brother's son (*i*), a father's sister's son (*j*), a half-brother (*k*), a father's brother's son (*l*), a daughter's husband (*m*) or of the husband's brother (*n*) as good in law

§ 176. It makes no difference that the adopter has himself been removed from his natural family by adoption, for adoption does not remove the bar of consanguinity which would operate to prevent inter-marriage within the

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side-note calls the parties Vaisyas though they were really Sudras See *supra* 2 M H C, 467 *Kora Shunko* v *Bebee Munnee* 2 M Dig, 32, *Gopal Vathai* v *Hanmant* (1879) 3 Bom, 273, where all the authorities are examined, *Bhagirthibai* v *Radhabai* (1879) 3 Bom, 298, *Parbati* v *Sundar* (1886) 8 All, 1, affd 16 I A, 186, 12 All., 51

(*d*) *Minakshi* v *Ramanadha* (1888) 11 Mad 49, F B

(*e*) (1897) 20 Mad, 283

(*f*) *Bhagwan Singh* v *Bhagwan Singh* (1899) 26 I A, 153, 21 All 112, reversing 17 All, 294, *Lali* v *Murlidhar* (1906) 33 I A., 97, 28 All, 488, *Ishwari Prasad* v *Rai Hari Prashad* (1927) 6 Pat, 506 See also *Pattu Lal* v *Parbati* (1915) 42 I A, 155, 37 All, 359, *Jai Singh* v *Bijai Pal* (1905) 27 All 417

(*g*) Dat Mima, V, 17, *Sriramulu* v *Ramayya* (1880) 3 Mad., 15, *Minakshi* v *Ramanada* (1888) 11 Mad, 49, F B

(*h*) *Ramachandra* v *Gopal* (1908) 32 Bom., 619, *Walbai* v *Heerbai* (1911) 34 Bom, 491, *Yamnava* v *Laxman* (1912) 36 Bom 533, *Subrao* v *Radha* (1928) 52 Bom. 497

(*i*) (1912) 36 Bom, 533 *supra*

(*j*) *Ramkrishna* v. *Chimnaji* (1915) 15 Bom. L R., 824

(*k*) *Gajanan Balkrishna* v *Kashinath Narayan* (1915) 39 Bom 410

(*l*) *Mallappa Parappa* v *Gangava* (1919) 43 Bom, 209

(*m*) *Sitabai* v *Parvatibai* (1923) 47 Bom., 35

(*n*) *Shripad* v. *Vithal* (1925) 49 Bom, 615.

prohibited degrees (*o*) This rule must, of course, be understood as excluding only the sons of a woman whose original relationship to the adopter was such as to render her unfit to be his wife. A man could not lawfully marry his brother's or nephew's wife, but a brother's son is the most proper person to be adopted, and so is a grand-nephew (*p*) A wife's brother, or his son, may be adopted (*q*), and so may the son of a wife's sister (*r*), or of a maternal aunt's daughter (*s*)

§ 177. Quite recently, the Calcutta High Court has, after a full examination of all the authorities, dissenting from the Bombay High Court and agreeing with the Madras High Court, affirmed the rule that a Hindu of the regenerate classes cannot adopt a person whose mother the adopter could not have legally married and held that the adoption of a brother's daughter's son is invalid under the Bengal school also (*t*) Calcutta.

§ 178. The restrictive rule applies to the three higher castes but not to the Sudras (*u*). The latter may adopt a daughter's or sister's son According to the Mayukha they are the most proper to be adopted (*v*) A mother's sister's son may also be adopted among Sudras (*w*) In the Punjab such adoptions are common among the Jats, and this laxity has spread even to Brahmans, and to the orthodox Hindu inhabitants of towns, such as Delhi (*x*) and to the Borah Brahmins in the United Provinces (*y*). They are also per- Rules not universal Sudras. Custom

(*o*) *Moothia* v. *Uppen* (1858) Mad S.D., 117. *Lal Harihar* v. *Thakur Bajrang* A.I.R. 1937 P.C., 242

(*p*) *Moran Moee* v. *Bojoo* W.R. Sp., No 122

(*q*) *Kristnengar* v. *Vanamamalay* Mad. Dec. of 1856, 213, *Runganaigum* v. *Nameseroya* Mad., Dec. of 1857 94, *Rutee Bhudr* v. *Roashunker* 2 Bor., 56 (713), *Sitamulu* v. *Ramayya* (1880) 3 Mad 15 *Bai Nani* v. *Chunilal* (1898) 22 Bom., 973

(*r*) *Baee Gunga* v. *Baee Sheokootar* Bom. Sel. Rep., 73 76

(*s*) *Venkata* v. *Subhadra* (1884) 7 Mad 548

(*t*) *Haridas Chatterjee* v. *Manmathanath Mukherji* [1937] 2 Cal 265, dissenting from *Haran Chunder* v. *Hurroo Mohan Chuckerbutty* (1881) 6 Cal., 41

(*u*) *Raj Koomar* v. *Bissessur* (1884) 10 Cal., 688, *Subrao* v. *Radha* (1928) 52 Bom., 197 *Kalappa* v. *Shivappa* A.I.R. 1938 Bom., 132, 39 Bom.L.R., 1282 (sister's son), *Bhagwan Singh* v. *Bhagwan Singh* (1899) 26 I.A., 153, 160, 22 All., 412, 418; *Maharajah of Kolhapur* v. *Sundaram* (1925) 48 Mad., 1, *Ishwari Prasad* v. *Rai Hari Prasad* (1927) 6 Pat., 506

(*v*) V. Mayukha. IV. 5 § 10, 11.

(*w*) *Chinna Nagayya* v. *Pedda Nagayya* (1878) 1 Mad, 62.

(*x*) Punjab Cust., 79-83, Punjab Customary Law, II, III, 154, 205, 210; *Rup Narain* v. *Gopal* (1909) 36 I.A., 103, 36 Cal., 780

(*y*) *Chain Sukh Rum* v. *Parbati* (1892) 14 All., 53.

mitted among the Jains (*z*) In Southern India, even among the Brahmans, including Nambudri Brahmans of Malabar, such adoptions are undoubtedly common and are valid by custom (*a*). In the United Provinces, the adoption of a step-brother is allowed among the unregenerate classes and among the Borah Brahmans even a sister's son may be adopted (*b*) So also it would seem in the Deccan a younger brother may be adopted, and, though the adoption of uncles is forbidden, a different reason is alleged for the prohibition (*c*). Amongst Purbia Kurmis who have adopted the ceremony of the investiture with the sacred thread, an adoption within the prohibited degrees of relationship is valid (*d*) There is also a custom recognising the validity of the adoption of a daughter's son among the Khatris of the town of Amritsar (*e*) and among the Deshastha Smarta Brahmins in Dharwar district of the Bombay province (*f*)

Extension by Nanda Pandita rejected.

§ 179 A singular extension was given to this rule by Nanda Pandita According to him, a widow could adopt only the son of a person whom she could have legally married and therefore she could not adopt her brother's son (*g*) This view has now been finally pronounced against by the Privy Council as an unwarranted extension not based on the authority of any of the Smritis (*h*) For the adoption by the widow is not an adoption to herself but is an adoption to her deceased husband The test of eligibility for adoption in such a case is the test which would have applied, had the adoption been made by the husband himself in his lifetime

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(*z*) *Sheo Singh* v *Ut Dakho* (1878) 5 I A, 87 1 All, 688 affirming 6 N W P 382 *Hassan Ali* v *Nagammal* (1878) 1 All, 288, *Lakhmi Chand* v *Datto Bai* (1886) 8 All, 319

(*a*) *Vayidinada* v *Appu* (1886) 9 Mad, 44, *Vishnu* v *Krishnan* (1884) 7 Mad, 3 (F B), *per curiam* (1888) 11 Mad, 55, *Appayya* v *Vengu* (1905) 15 M L J, 211, (adoption of brother's daughter's son) *Sooratha Singa* v *Kanaka Singa* (1920) 43 Mad, 867 (the adoption of brother's daughter's son among the Rajputs of South Canara is allowed by custom) *Viswasundara Row* v *Somasundara Row* (1920) 43 Mad, 876 (daughter's son's adoption valid among Telugu Brahmins in Madras)

(*b*) *Phundo* v *Jangi Nath* (1893) 15 All, 327 *Chain Sukh Ram* v *Parbati* (1892) 14 All, 53

(*c*) Steele, 41 *Hurbut Rao* v *Govindrao* 2 Bor, 85, *Mallappa Parappa* v *Gangava* (1919) 13 Bom 209, V N Mandlik, 474, 495, W & B, 912, 913

(*d*) *Jivan Lal* v *Kallumal* (1906) 28 All, 170

(*e*) *Parmanund* v *Shiv Charan* (1921) 2 Lah, 69

(*f*) *Sundrabai* v *Hanmant* (1932) 56 Bom, 298

(*g*) Dat Mima, II, §§ 33, 34

(*h*) *Puttu Lal* v *Parbati Kunwar* (1915) 42 I A, 155 162, 37 All 359 app *Jai Singh* v *Bijai Pal* (1905) 27 All, 417,

As there can be a valid marriage in cases where the relationship arises from mere affinity as distinguished from consanguinity, though it be *viruddhasambandha* or contrary relationship, so too a man can validly adopt the son or the daughter's son of his wife's sister (*i*).

§ 180. A further limitation upon the selection of a son for adoption arises from age, and from the ceremonies previously undergone by him in the natural family (*j*). Limitation from age

According to the Dattaka Chandrika, the age of the boy to be adopted is only material as determining the time at which *upanayana* may be performed. So long as this rite in the case of the three higher classes, and marriage in the case of Sudras, can be performed in the family of the adopter, there is no limit of any particular time (*k*). Dattaka Chandrika

It is now settled in all the provinces except Bombay that in the case of the three regenerate classes, the adoption of a person is valid, if made before upanayanam, and if he belongs to the Sudra caste before marriage (*l*). In Madras, custom has engrafted upon the rule an exception according to which the adoption of a boy of the same gotra even after his upanayanam ceremony has been performed in the family of his birth is valid but not after his marriage (*m*). By the general Hindu

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(*i*) *Raghavendra Row* v *Jayarama Rao* (1897) 20 Mad, 283, see also *Ramakrishna Row* v *Subbamma Row* (1920) 43 Mad, 830

(*j*) As to the eight ceremonies for a male, see Colebrooke, note to Dat Mima, IV, § 23, Dig, II, 301 Of these tonsure is the fifth, and *upanayana* or investiture with the sacred thread, is the eighth The former is performed in the second or third year after birth, the latter, in the case of Brahmans, in the eighth year from conception But it may be performed so early as the fifth, or delayed till the sixteenth year The primary periods for *upanayana* in the case of a Kshatriya are eleven, and of a Vaisya twelve years, but it may be delayed till the ages of twenty-two and twenty-four respectively For Sudras there is no ceremony but marriage See Appx I

(*k*) Dt Chand, II, §§ 20-33, 1 W. MacN 72; the Dattaka Mimamsa however states that one who has had his tonsure performed in the family of his birth ought not to be adopted nor one who is more than five years old, but that the rule as to the tonsure may be got over by the performance of rites and that the performance of *upanayanam* in the natural family is an absolute bar IV, 30-56

(*l*) *Ganga Sahai* v. *Lekhraj* (1887) 9 All, 253, 328, *Jhunka Prasad* v. *Nathu* (1913) 35 All. 263; *Raja Makund Deb* v *Sri Jagannath* (1923) 2 Pat., 469, *Chandreshwar* v. *Bishweswar* (1926) 5 Pat., 777, *Gopinath* v. *Mt Kishni* A I R 1927 All, 634

(*m*) *Ramaswami Iyen* v *Bhagavati Ammal* 8 Mad Jur, 58, *Viraraghava* v. *Ramalinga* (1886) 9 Mad., 148, F.B, overruling *Venkatasaiya* v *Venkatacharlu* (1867) 3 Mad. H.C, 28, *Pichuvayyan* v *Subbayyan* (1890) 13 Mad, 128, *Kamayya Bhukta* v *China Sooranna* A.I R. 1934 Mad. 48, 1933 M W N., 149 So also among Kashmiri Brahmins in the Punjab by family custom. *Durga Devi* v. *Shambu Nath* (1927) 51 I.A, 182, 5 Lah., 200.

law applicable to the twice-born classes, a boy cannot be adopted after his marriage, except by custom (*n*) Even among Sudras, adoption of one after his marriage is altogether invalid (*o*). In a case in Madras, the Court held that an adoption of an unmarried man of the Sudra caste aged forty was valid (*p*)

Western India.

§ 181. In Western India, a man may be adopted at any age, though he may be married and have children, whether he belongs to the same or another *gotra* This rule applies to all the four castes (*q*) Nilakantha says "And my father has said that a married man, who has even had a son born, may become an adopted son" (*r*) Mr Steele states "the Poona Shastries do not recognize the necessity that adoption should precede *moonj* and marriage", and that "there is no limit as to age The adoptee should not be older than the adopter" (*s*) On an adoption of a married man with children, he alone loses his *gotra*, his son does not cease to be a member of the natural family, or lose his interest therein His wife however follows the husband into the family of his adoption (*t*) A son conceived before but born after the adoption passes into his adoptive family (*u*)

It has been held by the Bombay High Court that a man can adopt a son older than himself on the ground that the rule as

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(*n*) *Lal Rup Chand* v *Jambu Prasad* (1910) 37 I A, 93 103 32 All, 247, 252

(*o*) *Vathulinga* v *Vijayathammal* (1883) 6 Mad 13 (1890) 13 Mad, 128, 129 *supra* *Lingayya* v *Chengalammal* (1925) 48 Mad 107, *Janakiram Pillay* v *Venkiah Chetty* (1911) 10 M L T, 21 (1887) 9 All, 253 *supra*, *Jhunka* v *Nathu* (1913) 35 All 263, *Raja Soma sekhara* v *Raja Sugattur Mahadeva* (1936) 70 M L J 159 P C A I R 1936 P C, 18

(*p*) *Papamma* v *Appa Rou* (1893) 16 Mad 384 396

(*q*) *Vijaysingji* v *Shivsingji* (1935) 62 I A, 161, 163, 59 Bom, 160, *Rajo Nimbalkar* v *Javavantrav* (1867) 4 Bom. H.C. (A C J), 191 *Nathaji* v *Hari* (1871) 8 Bom H C (A C.J), 67, *Sadashiv* v *Hari Moreshvar* (1874) 11 Bom H C, 190, *Dharma* v *Ramakrishna* (1886) 10 Bom, 80, *Gopal* v *Vishnu* (1899) 23 Bom, 250 Among the Nambudri Brahmins the power to adopt a married man appears only to exist when the adoption is of the Krittima form *Vasudevan* v *The Secretary of State for India* (1888) 11 Mad, 157, 178

(*r*) V May, IV 5, § 19 His father was Shankara Bhatta author of the Dvaita Nirnaya, a work of special authority in the Deccan *Nathaji* v *Hari* (1876) 8 Bom H C (A C J), 67

(*s*) Steele, 44, 182, V N Mandlik, 471, 1 W MacN, 75

(*t*) *Kalgavada Tavanappa* v *Somappa Tamangavada* (1909) 33 Bom, 669

(*u*) *Advi bin Fakirappa* v. *Fakirappa Adiveppa* (1918) 42 Bom. 547.

to age is only recommendatory But the learned Judges themselves admit that "it is contrary to the recognised notions of Hindus as to adoptions and to the fundamental idea of an adopted son" (*v*) and this view would seem to be opposed to the opinion of Ranade, J. (*w*) as well as to the views of Mr. Steele and Mr Mandlik.

In the Punjab, there is no restriction of age (*x*). For under the Punjab customary law, there is no religious significance attached to the appointment of an heir (*y*). Amongst the Agarwalla Jains, the limit of age extends to the thirty-second year (*z*) And amongst the Jains generally, a married man can be adopted (*a*) Punjab.

§ 182. FOURTH. THE CEREMONIES NECESSARY TO AN ADOPTION:—

The texts of Vasishtha, Baudhayana and Saunaka already referred to outline the ritual in connection with adoption. The Dattaka Mimamsa and the Dattaka Chandrika give an enlarged account of it (*b*). In all these, stress is laid upon the gift and acceptance of the boy taken in adoption. Baudhayana says. "One should go to the giver of the child, and ask him, saying, 'Give me thy son'. The other answers 'I give him'. He receives him with these words, 'I take thee for the fulfilment of my religious duties I take thee to continue the line of my ancestors'" (*c*) Ritual

The giving and receiving are absolutely necessary to the validity of an adoption. They are the operative part of the ceremony, being that part of it which transfers the boy from Giving and receiving

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(*v*) *Balabai* v *Mahadu* (1924) 48 Bom., 387, 389.

(*w*) While admitting the rule that the adopted son should be younger than the adopting father, Ranade, J, thought that the rule should not be extended to his widow who makes the adoption on his behalf *Gopal* v. *Vishnu* (1899) 23 Bom. 250. 256.

(*x*) Punjab Custom, 82.

(*y*) *Ramkishore* v *Jamnarayana* (1921) 48 I.A., 405, 413, 49 Cal, 120, 130.

(*z*) *Dhanraj* v *Sonibai* (1925) 52 I.A., 231, 242, 52 Cal, 482

(*a*) *Pritchcurn* v. *Soojun* 9 Mad Jur, 21, cited in *Sheo Singh* v *Mt. Dakho* (1878) 5 I.A, 87, 1 All, 688; *Lala Rupchand* v. *Jambu Prasad* (1910) 37 I.A, 93, 32 Cal, 247; *Sheo Kurbai* v. *Jeoraj* (1920) 25 C.W.N., 273 (P.C.), *Manohar Lal* v *Banarsi* (1907) 29 All., 495.

(*b*) Vas, XV, 6; Baudh, VII, 5, Dat Mima., V, 2, 42, Dat Chand., II. See also Mit., I, 11, 13.

(*c*) Baudh., II, 7-9.

one family into another (*d*) Where this part was performed by the widow, a girl of fifteen who had just lost her husband, it was held to be no objection to the adoption that she remained in an inner room, and deputed a relation to perform the homam and other parts of the religious ceremony (*e*), and even the physical act of giving away may be similarly delegated by a person who would be entitled to perform the act himself (*f*) Even in cases where giving and receiving is sufficient there must be an *actual* gift and acceptance of the boy in adoption (*g*) A mere execution of a will or deed of adoption or oral declarations of intention will not be sufficient to constitute a valid adoption (*h*)

Datta homam

According to the Dattaka Mimamsa and the Dattaka Chandrika, the *datta homam* or oblation to fire is the most important rite in the case of the three higher classes and is necessary to the establishment of filial relation "It is therefore, established that the filial relation of adopted sons is occasioned only by the (proper) ceremonies Of gift, acceptance, a burnt sacrament, and so forth should either be wanting, the filial relation even fails" (*i*)

No religious ceremonies for Sudras

§ 183 It is now settled that amongst Sudras no ceremonies such as *datta homam* are necessary in addition to the giving and the taking of the child in adoption (*j*). So also in the Punjab and among the Jains, no ceremonial whatever

(*d*) *Mahashaya Shosinath* v *Srimathi Krishna* (1881) 7 I A, 250, 6 Cal, 381, *Ranganayakamma* v *Alwar Setti* (1890) 13 Mad, 214, *Bireshwar* v *Aridha* (1892) 19 I A, 101, 19 Cal, 452, *Balak Ram* v *Nanun Mal* (1930) 11 Lah 503

(*e*) *Lakshmibai* v *Ramchandra* (1898) 22 Bom, 590, *Santappayya Rangappayya* (1895) 18 Mad, 397

(*f*) *Shamsingh* v *Santabai* (1901) 25 Bom, 551

(*g*) (1881) 7 I A 250, 6 Cal, 381 *supra*, (1890) 13 Mad 214 *supra*, (1892) 19 I A 101, 19 Cal, 452 *supra*

(*h*) *Sreenarain Mitter* v *Sreemutty Kishen* (1869) 2 B L R (A C J), 279, 11 W R, 196, on appeal *Sreenarain* v *Sreemutty* (1873) I A Sup Vol 179 (1881) 7 I A, 250 6 Cal, 381 *supra*, *Viswanatha Ramji* v *Rahibai* (1931) 55 Bom 103 108, 109, *Parasram* v *Paniaboo* (1938) 40 Punj L R, 49

(*i*) Dat Mima., V, 50, 56, see also Dat Chand, II, 16 17, VI, 3

(*j*) *Indramoni* v *Behari Lall* (1879) 7 I A, 24, 5 Cal, 770, *Shoshinath* v *Krishnasunderi* (1881) 7 I A, 250, 255, 6 Cal, 381, *Veeraperumal Pillai* v *Narain Pillai* Stra Notes of Cases, 117 *Thangamanni* v *Ramu Mudali* (1882) 5 Mad, 358, *Govindavyar* v *Doraiswami* (1888) 11 Mad, 5, F B, *Asita Mohun* v *Nirode Mohun* (1916) 20 C.W N, 901 (Kayasthas of Bengal),

is required, the transaction being regarded as a matter of civil contract (*k*).

§ 184. Amongst the twice-born classes, the performance of *datta homam* ceremony is not essential to the validity of an adoption where the adopted son belongs to the same *gotra* as the adoptive father (*l*). Whether amongst the twice-born classes in other cases *datta homam* is or is not absolutely essential to the validity of an adoption is not finally settled. In Bengal, it has been held that *datta homam* is indispensable to a valid adoption among the three superior classes (*l*[1]). In *Singamma* v. *Venkatacharlu*, it was held that the ceremony of *datta homam* is not essential to an adoption among Brahmans in Southern India (*m*) In *Chandra Mala* v *Muktamala*, the same rule was applied to Kshatriyas Muthuswami Ayyar, J., in the latter case said that if he were not bound by the decision in *Singamma's* case, he would feel considerable doubt in holding that the ceremony of *datta homam* is not essential to a valid adoption among the three higher classes (*n*) In *Govindayyar* v *Doraisami*, the judges inclined to the view that *datta homam* may be an essential part of a valid adoption as a general rule (*o*) In *Sankaran* Twice-born classes.

(*k*) Punjab Customs, 82, Punjab Customary Law, III, 82 *Lakshmichand* v. *Gatto Bai* (1886) 8 All., 319 Among the Moodeliars of Northern Ceylon, the only ceremonial appears to be the drinking of saffron water by the adopting person Thesawaleme, II.

(*l*) *Bal Gangadhar Tilak* v *Srinivas Pandit* (1915) 42 I A, 135, 39 Bom, 141, *Rethi* v *Lakpati Piryari* (1915) 20 C W.N., 19 (20), *Govindayyar* v. *Doraiswami* (1888) 11 Mad., 5, F.B., *Valubai* v. *Govind* (1900) 24 Bom, 218, *Vedavalli* v *Mangamma* (1904) 27 Mad, 538 539 (last para), *Srimati Lakshmipati* v. *Udit Pratapsingh* (1918) 3 Pat L J, 499, *Ayma Ram* v. *Madho Rao* (1884) 6 All, 276, F.B. (In Allahabad, among Dakhani Brahmans a gift and acceptance is sufficient when the boy was the son of a daughter or of a brother) The case of the daughter's son stands by itself and must rest on the authority of decisions, following Yama's text, the suggestion in (1915) 42 I A, 135, 39 Bom, 441 *supra*, that it is merely an instance of the general rule as to members of the same *gotra*, being founded on a misconception A daughter's son obviously cannot be a member of the same *gotra* as the father.

(*l*[1]) *Alank Manjari* v *Fakir Chand* 5 S.D. 356 (418); *Bullubakant* v. *Kishenprea* 6 S.D., 219 (270), *Luchmun* v. *Mohun* 16 W.R., 179, *Mahashaya Shosinath* v *Srimathi Krishna* (1881) 7 I A, 250, 256, 6 Cal. 381; see, too, *Thakoor Oomrao* v. *Thakooranee* N.W P.H.C. (1868), 103.

(*m*) (1868) 4 Mad.H.C., 165.

(*n*) (1883) 6 Mad, 20, 24.

(*o*) (1888) 11 Mad., 5, F.B., 10. The Privy Council in (1915) 42 I.A., 135, 150 *supra* understood this decision as affirming that the ceremony of *datta homam* is not essential to a valid adoption among Brahmins in Southern India.

v. *Kesavan* (*p*), it was apparently considered that *datta homam* was not essential among Nambudris, but that was a case of *dwyamushyayana* form and cannot be treated as an authority on the general question In *Venkata* v. *Subadra* (*q*), Turner, C J and Muttuswami Iyer, J expressed the opinion that *datta homam* is essential among the Brahmans agreeing with the Calcutta High Court In *Ranganayakamma* v *Alwai Chetti* (*r*), the Court decided that *datta homam* was necessary in the absence of usage among the three twice-born classes Finally in *Subbarayar* v *Subbammal* (*s*), the Court treated *datta homam* as essential to a valid adoption amongst Brahmans In Bombay, *datta homam* is necessary amongst Brahmans (*t*)

Pondicherry

The Pondicherry Court has repeatedly laid down that the performance of the *datta homam*, and the accompanying religious ceremonies, is essential to the validity of an adoption (*u*)

The result of the authorities seems to be that amongst the twice-born classes and especially amongst the Brahmans, the *datta homam* is necessary, unless the adopted son is of the same *gotra* as his adopter, or unless a usage to the contrary is established

Datta homam may be postponed

§ 185 The ceremony of *datta homam* may be performed either at the time of the gift and acceptance or afterwards It can be performed after the death either of the natural father (*v*) or of the adoptive father (*w*)

Doctrine of *factum valet*

§ 186 The limits within which the rule of *Quod fieri non debet factum valet* can be applied are now finally settled "Its proper application must be limited to cases in which there is neither want of authority to give nor to accept, nor imperative interdiction of adoption In cases in which the Shastra is merely directory and not mandatory, or only indicates particular persons as more eligible for adoption than others the maxim may be usefully and properly applied, if

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(*p*) (1892) 15 Mad, 7

(*q*) (1884) 7 Mad., 548

(*r*) (1890) 13 Mad., 214

(*s*) (1898) 21 Mad, 497

(*t*) *Govind Prasad* v *Rindabai* (1925) 49 Bom., 515

(*u*) Sorg. H.L, 133, Co-Con, 110, 170, 374

(*v*) *Venkata* v. *Subhadra* (1884) 7 Mad, 548

(*w*) *Subbarayar* v. *Subbammal* (1898) 21 Mad, 497, *Seetharamamma* v *Suryanarayana* (1926) 49 Mad, 969.

the moral precept or recommended preference be disregarded" (*x*).

In an Allahabad case (*y*), where all the previous decisions were reviewed by *Mahmood*, J., he said: "Adoption under the Hindu law being in the nature of gift, three main matters constitute its elements apart from questions of form *The capacity to give, the capacity to take, and the capacity to be the subject of adoption, seem to me to be matters essential to the validity of the transaction, and, as such, beyond the province of the doctrine of factum valet.*" And similarly, in a case where the Judicial Committee had to consider the application of this maxim to the adoption of an only son, they said: "If a transaction is declared to be null and void in law, whether on a religious ground or another, it is so, and if its nullity is a necessary implication from a condemnation of it the law must be so declared. But the mere fact that a transaction is condemned in books like the Smritis does not necessarily prove it to be void. It raises the question, what kind of condemnation is meant" (*z*)

Application of these rules.

In accordance with these rules, the principle of *factum valet* has been held to be ineffectual where the son was given or received by a mother who was destitute of the necessary authority (*a*), or where the boy taken in adoption was one whose mother in her maiden state could not have been married by the adopting father (*b*) And similarly, it has been held that the adoption of an orphan given away by his elder brother is invalid and the doctrine of *factum valet* cannot be invoked in its support (*c*) The rule has been applied where a preferential relation has been passed over in favour of the son of a stranger (*d*), or where the limit of age fixed by the

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(*x*) *Lakshmappa* v *Ramava* (1875) 12 Bom. H.C., 364, 398, approved and followed, *per curiam*, *Gopal* v *Hanmant* (1879) 3 Bom., 273, 293, *Dharma* v. *Ramkrishna* (1886) 10 Bom., p. 86, and by the Judicial Committee in *Sri Balusu's* case (1899) 26 I.A., 113, 144, 22 Mad., 398, where they say "The truth is that the two halves of the maxim apply to two different departments of life." *Kunwar Basant* v *Kunwar Brij Raj* (1935) 62 I.A., 180, 57 All., 194

(*y*) *Ganga Sahai* v *Lekhraj Singh* (1887) 9 All., 253, 297

(*z*) *Sri Balusu's* case (1899) 26 I.A., 113 139, 22 Mad., 398, 419 See *ante* § 21.

(*a*) *Rangubai* v *Bhagirthibai* (1878) 2 Bom., 377, *Narayan Babaji* v. *Nana Manohar* (1870) 7 Bom H.C. (A.C.J.), 153

(*b*) *Gopal Nathar* v *Hanmant Ganesh* (1879) 3 Bom., 273, *Hari Das Chatterji* v. *Manmatha Nath Mallick* [1937] 2 Cal., 265.

(*c*) *Bashettiappa* v *Shivlingappa* (1873) 10 Bom H.C., 268, *Mareyya* v. *Ramalakshmi* (1921) 44 Mad., 260.

(*d*) *Uma Devi* v. *Gokoolanund* (1878) 5 I.A., 40, 3 Cal., 587.

Dattaka Mimamsa has been exceeded (*e*) Where the performance of *datta homam* is essential, its omission cannot be cured by the application of *factum valet*

§ 187 FIFTH, RESULTS OF ADOPTION.—

Texts on the subject

The texts on the subject are fairly comprehensive and clear The Mitakshara follows Manu, who makes the adopted son the heir not only to the adoptive father but to his kinsmen as well (*f*) The Dayabhaga citing Devala might on a *prima facie* view be taken to have named the adopted son in the second six of the twelve secondary sons But it would seem that 'the first six' who are mentioned as heirs to kinsmen in the Dayabhaga (X, 8) refers to the 'first six' according to the classification immediately preceding and not to 'the first six' according to the order of enumeration On that view the adopted son comes within the first six of the twelve secondary sons and is an heir to the adoptive father's collaterals as well (*g*) Manu makes the transfer of the adopted son from the natural family to the adoptive family complete, by declaring that "an adopted son shall never take the family name and the estate of his natural father . the funeral offerings of him who gives his son in adoption cease as far as that son is concerned" (*h*). The Dattaka Mimamsa and the Dattaka Chandrika expressly lay down that the adopted son is a substitute for a real legitimate son both for purposes of inheritance and for purposes of funeral oblations, and that he is a sapinda to the members of the adoptive family and that the forefathers of his adoptive mother are his 'maternal grandsires' (*i*) It is now settled that "an adopted son occupies the same position, and has the same rights and privileges in the family of the adopter as the legitimate son, except in a few specified instances . The theory of adoption depends upon the principle of a complete severance of the child adopted from the family in which he is born, both in respect to the paternal and the maternal line, and his complete substitution into the adopter's family, as if

Complete substitute for aurasa son.

(*e*) *Ganga Sahai* v *Lekhraj Singh* (1887) 9 All, 253

(*f*) Manu, IX, 141, 159, Mit, I, XI, 31

(*g*) D Bh X, 7, 8, see the note giving Sri Krishna's comment on X, 7 and *Puddo Kumaree* v *Juggut Kishore* (1880) 5 Cal, 615, 630

(*h*) IX, 142.

(*i*) Dat. Mima., VI, 50 53, Dat Ch. III, 17, 20. V. 24

he were born in it" (*j*). It follows that an adopted son is "the continuator of his adoptive father's line exactly as an *aurasa* son, and that an adoption, so far as the continuity of the line is concerned, has a retrospective effect" (*k*). The excepted instances relate to marriage and to the competition between the adopted son and an *aurasa* son subsequently born to the same father (*k*). While adoption completely transfers the adopted son to the adoptive family as regards legal relationship and he loses all rights in the family of his birth, it does not sever the tie of physical blood relationship (*l*).

Lineal succession.

§ 188. An adopted son is entitled to inherit not only to his adoptive father, but to the lineal ancestors of the latter, just as if he were his natural born son (*m*) So also he is entitled to inherit to the adoptive father's collaterals, whether the latter are related to the former through males only, or through females (*n*). Conversely, the adoptive father and his relations are entitled to inherit to the adopted son as if he were born in the family.

Collateral succession.

Succession *ex parte materna*

It is equally well-settled that an adopted son has all the rights of a natural-born son in the maternal line as in the paternal line and is therefore entitled to inherit to his adoptive mother and her father and their relations (*o*). The adopted son of a daughter has accordingly been held to share equally with the legitimate son of another daughter the inherit-

(*j*) Per Mitter, J., in *Uma Sunker* v. *Kali Komul* (1881) 6 Cal., 256, F B., 259 260, cited with approval by the Privy Council in *Nagindas Bhuguandas* v *Bachoo Hurkissondas* (1916) 43 I.A., 56. 68, 40 Bom., 270, 288, and in *Raghuraj Chandra* v. *Subhadra* (1928) 55 I.A., 139, 148, 3 Luck, 76.

(*k*) *Pratap Singh* v *Agai singji* (1919) 46 I A., 97, 107, 43 Bom., 778, 792, see also *Banarsi Das* v. *Sumat Prasad* A.I R. 1936 All, 641.

(*l*) *Lal Harihai* v. *Thakur Bajrang* A.I.R. 1937 P.C., 242, (1937) II M L J, 711, 714

(*m*) Dat Mima, VI, 3, 8, Dat. Chand., V, 26, III, 20, *Gourbullub* v. *Jaggenoth* F. MacN, 159, *Mokundo* v. *Bykunt* (1881) 6 Cal., 289. Sir F. MacNaghten was of opinion that an adopted son in Bengal was even in a better position than a natural-born son, as having an indefeasible right to his father's estate, which a natural-born son would not have. F. MacN., 157, 228. This opinion was rejected by the Privy Council in *Venkatasurya* v *Court of Wards* (1899) 26 I.A., 83, 22 Mad., 383.

(*n*) *Pudma Coomari* v. *Court of Wards* (1882) 8 I.A., 229, 8 Cal., 302, *Chandreshwar* v. *Bisheshwar* (1926) 5 Pat., 777.

(*o*) *Kali Komul* v *Uma Sunker* (1884) 10 I.A., 138, 10 Cal., 232, *Sham Kuar* v *Gaya* (1876) 1 All, 256, F B.; *Dattatraya* v *Gangabai* (1922) 46 Bom., 541, *Sundaramma* v. *Venkatasubba Iyer* (1926) 49 Mad, 941, *Sowntharapandian* v *Periaveru Thevan* (1933) 56 Mad., 759, F B.

ance left by his maternal grandfather (*p*) Conversely, the adoptive mother and her relations are entitled to inherit to the adopted son (*q*). Where a man died leaving an adopted son and an after-born aurasa son by different wives, both were held entitled to the *stridhanam* properties of their step-mother, as their father's sapindas, in default of her issue (*r*).

Adoption by a widower

§ 189 Where a man adopts a son after his wife's death, the son adopted would seem on principle not to be her adopted son Evidently, the Hindu Law of Inheritance (Amendment) Act, 1929, proceeds on that view when it declares that 'a sister's son' shall not include a son adopted by the sister's husband after her death (*s*) The Act was after the decision of the Madras High Court in *Sundaramma* v *Venkatasubba Ayyar* (*t*) which took the other view This decision has since been approved by a Full Bench in a recent case (*u*). According to these decisions, the adopted son of a man who is a widower, becomes the son of his deceased wife so as to inherit to her relations in her father's family The Full Bench decision proceeded upon the ground, as to which there can be no doubt, that the term '*pratigrihitrimāta*' in the Dattaka Mimamsa, VI. 50, and the Dattaka Chandrika III, 17, means only an adoptive mother and not the mother who actually receives the boy in adoption The decision, so far as it laid down that an adoption by the husband, whether the wife consents or not, makes her legally the mother of the adopted son, is unexceptionable As was said by Shephard, J. "It is only consistent with this theory (of adoption) that the wife of the adoptive father, *if there happens to be one*, should also be deemed the mother of the boy" (*u*[1]) The real difficulty however lies elsewhere where a person has no wife in existence at the date of adoption, can his deceased wife be said to be the adoptive mother? This question requires much more consideration than it has received. Where an adoption is made by a widow, it relates back to her husband's death, but where the adoption is made by a widower, there is no reason

(*p*) *Surjokant Nundi* v *Mohesh Chunder* (1883) 9 Cal, 70.

(*q*) *Annapurni Nachiar* v *Forbes* (1899) 26 I A, 246, 23 Mad, 1, affg (1895) 18 Mad, 277, *Basappa* v *Gurlingawa* (1933) 57 Bom, 74

(*r*) *Gangadhar* v *Hira Lal* (1916) 43 Cal, 944

(*s*) Sec 2 proviso

(*t*) (1926) 49 Mad 941

(*u*) *Sountharapandian* v *Periaveru Thevan* (1933) 56 Mad 759, F B

(*u*[1]) (1895) 18 Mad., 277, 287, *supra*

or principle why it should date back to an earlier date such as the death of his wife. The Dattaka Mimamsa contemplates a living wife and not one who is dead. It is imposing a fiction upon a fiction to say, either that the wife must be deemed to be alive at the date of the adoption, or that the adoption should relate back to the moment of her death (*u*[2]). For the legal fiction of maternity, there must be a wife in existence at the time of the adoption to whom the law can point as the mother. For the adoption is to the husband, and not to her. But "in consequence of the superiority of the husband, by his mere act of adoption, the filiation of the adopted as son of the wife, is complete in the same manner as her property, in any other thing accepted by the husband" (*v*). This passage is conclusive to show that the acquirer of the property in the son must be a living person. So too, if a bachelor makes an adoption as he is entitled to do, the fiction of maternity has no scope and it is impossible to constitute the wife he may marry thereafter, as the legal mother of the adopted boy. She might not have even been in existence at the date of adoption. The simpler and more logical conclusion appears to be that a person can be the mother of the adopted boy when she is in existence as a wife at the date of the adoption, whether or not she consents to it.

Which wife is adoptive mother.

§ 190 Where a man has two wives and associates one of them in the adoption of a son, that wife is the adoptive mother, the other being only the step-mother. In *Kashishuree Debia* v. *Greesh Chunder*, where the wife so selected was the second wife of the adopter, and the adoptive mother died before the adopted son. It was held that on his death the eldest widow was not his heir as mother, being only a step-mother, and that the succession went to a nephew of the husband (*u*). This decision was approved by the Judicial Committee on an appeal from Madras. There, the holder of an impartible estate made an adoption in conjunction with his second wife, the first wife having ceased to live with him. After his death the adopted son succeeded, and it was held that on his death the wife who was associated in the adoption was his adoptive mother and heir, and not the senior widow. The Judicial Committee observed that a man may authorise a single one of several wives to adopt

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(*u*[2]) Ramesam, J.'s dictum in (1933) 56 Mad, 759, F.B., 763, "Nor is there any need to rely on any theory of the adoption relating back to Kothai Ammal's lifetime" proceeds upon a misconception

(*v*) Dat Mima, I, 22.

(*w*) F. MacN., 171, 1 W. MacN., 11, *Kashishuree Debia* v *Greesh Chunder* W.R Jan.-July, 1864, 71.

after his death so that she would on adoption stand in the place of the natural mother 'If he can do that, it would be very capricious to deny him the power of selecting a single wife to join with him in his lifetime in adopting a boy, with the same effect on her relations with that boy' (*x*) It has been recently held that where a man gives a joint power to his widows to adopt and they adopt a boy, the senior widow would be his mother (*y*) Where a man makes an adoption independently of both his wives, though the Madras High Court refused to consider the question as not likely to happen (*z*), there can be little doubt that the senior wife would be the person whom the law would name as the adoptive mother whether the succession is to ordinary property or an impartible estate Where a man adopts a son in conjunction with both his wives, the senior wife would in law be the adoptive mother

Rights in the adoptive family

§ 191. Where a member of a Mitakshara joint family adopts a son, the latter becomes from the moment of his adoption a coparcener with his adoptive father as well as with the other members of the coparcenary In consequence of his adoption, he acquires a right as though by birth in ancestral or joint family property, can interdict alienations, demand partition and is also entitled to the benefit of survivorship Where therefore the adopted son and an after-born *aurasa* son survive the father, and then the latter dies without male issue or widow (*z*[1]) the former takes the whole property by survivorship (*a*) The adopted son's rights in the new family are precisely the same as a natural born son's, except in a competition between him and an after-born *aurasa* son (*b*)

After-born aurasa son

§ 192. Where after an adoption a legitimate son is born to the adopter, the adopted son does not, amongst the twice-born classes, share equally with the *aurasa* son but is entitled to a lesser share on a partition of joint family property as well during his father's lifetime as after his death According to Vasishtha, if after an adoption has been made.

(*x*) *Annapurni Nachiar* v *Forbes* (1900) 26 I A, 246, 253, 23 Mad, 1, 9, affg (1895) 18 Mad, 277

(*y*) *Tiruvengalam* v *Butchayya* (1929) 52 Mad., 373 Of course where one of two widows only makes an adoption, she alone is the adoptive mother

(*z*) *Annapurni Nachiar* v *Forbes* (1895) 18 Mad, 277, 287

(*z*[1]) 'Or widow', after the Hindu Women's Rights to Property Act, 1937.

(*a*) 1 Mad H C, 49 note, see also *Venkatanarayana Pillai* v *Subbammal* (1916) 43 I.A 20, 23, 39 Mad, 107.

(*b*) *Krishnamurthi Ayyar* v *Krishnamurthi Ayyar* (1927) 54 I.A, 248, 262, 50 Mad. 508, 525

a legitimate son is born, the adopted son is entitled to a fourth part (*c*). Baudhayana, as explained by the commentator, gives the adopted son one-fourth of the legitimate son's share (*d*). The Mitakshara, quoting Vasishtha, mentions only a fourth share, and the Dayabhaga a third share (*e*). According to the Dattaka Mimamsa, the given son shares a fourth part. The Dattaka Chandrika however lays down that the adopted son is to get a fourth of the aurasa son's share (*f*). While the Dattaka Mimamsa makes no distinction between the twice-born classes and Sudras on this matter, the Dattaka Chandrika says, quoting a text of Vriddha Gautama that the rule as to one-fourth share does not apply to Sudras and that amongst them, the adopted son and the after-born aurasa son are partakers of equal shares (*g*). It is now settled that among the twice-born classes, the adopted son in competition with the after-born aurasa son gets an one-third share of the inheritance under the Dayabhaga School (*h*). In Southern India, Bombay and Bengal, in cases governed by the Mitakshara law, he is entitled to a fourth of the legitimate son's share or one-fifth of the whole estate (*i*). In other parts of India which follow the Dattaka Mimamsa, the adopted son gets one-fourth of the whole estate in competition with an after-born aurasa son (*j*). Among Sudras in Madras, Bengal, and other provinces except in Bombay, it is settled that the adopted

Share of adopted son.

Dayabhaga.

Mitakshara

Sudras

(*c*) Vas., XV, 9

(*d*) Baudh. Parisishta, VII, V, 16, S B E., XIV p 336

(*e*) Mit., I, XI, 24, D. Bh., X, 9

(*f*) Dat. Mima., X, 1, Dat Chand., V., 16, 19, 29, Katyayana as cited in the Dat Chand allots a third part to the adopted son though in some copies the reading is a fourth part.

(*g*) Dat Chand., V, 29, 32. The Sarasvati Vilasa, Foulkes, pp 76, 77, para 379 gives the dattaka a fourth of the share taken by the legitimate son.

(*h*) *Birbhadra* v. *Kalpataru* (1905) 1 C.L.J., 388, 404 (The Bengal Law is stated in a Mitakshara case)

(*i*) *Venkammamidi Balakrishnayya* v. *Triambakam* (1920) 43 Mad., 398, where it was held that in a partition between the father, an adopted son and an after-born aurasa son, the adopted son is entitled to a ninth share, the father and the aurasa son being each entitled to a four-ninth share; *Giriappa* v. *Ningappa* (1893) 17 Bom., 100. *Tukaram* v. *Ramachandra* (1925) 49 Bom., 672

(*j*) 1 W. MacN., 70; 2 W. MacN, 184; F. MacN, 137, and so amongst the Jains. *Rukhab* v *Chunilal* (1892) 16 Bom., 347: *Parmanand* v. *Shibcharan Das* (1921) 2 Lah., 69.

son shares equally with the after-born aurasa son (*k*) The Bombay High Court however refuses to follow the Dattaka Chandrika and the decision of the Privy Council based on it, and holds that among Sudras, as among other classes, the adopted son gets only one fifth of the whole estate (*l*) Where however it is a question of succession to an impartible estate, the after-born son is preferred to the adopted son, the reason being that the adopted son is a substitute for the aurasa son, and that, when the latter comes into existence, he excludes the substitute (*m*)

Impartible estate

Rights of adopted son on partition with collaterals

§ 193 The rule that an adopted son, on partition, takes only a reduced share in the family property applies only to cases in which the competition is between an adopted son and an after-born aurasa son of the same father Accordingly an adopted son takes an equal share with the natural born sons of his adoptive father's coparceners (*n*) So also in cases of reversionary or collateral succession, the adopted and the aurasa sons even of the same father take equal shares, for unless curtailed by express texts, the rights of an adopted son are in every respect similar to those of a natural-born son (*o*)

Removal from natural family

§ 194. By adoption the boy is completely removed from his natural family as regards all civil rights and obligations He is so completely removed that he has not even to observe pollution on the birth or death of any member in the family of his birth (*p*) He also ceases to perform funeral ceremonies for those of his family for whom he would otherwise have offered oblations, and he loses all rights of inheritance as completely as if he had never

(*k*) 1 Stra H L, 99, *Raja* v *Subbaraya* (1884) 7 Mad, 253, approved in *Perrazu* v *Subbarayadu* (1921) 48 I A, 280, 294, 295, 44 Mad, 656, 672 3, overruling *Gopalan* v *Venkataraghavalu* (1917) 40 Mad, 632, *Asita Mohun* v *Nirode Mohun* (1916) 20 C W N, 901 *Baramanund* v *Chowdhry* (1889) 14 C L J, 183, 187, *Ayyavu* v *Niladatchi* (1862) 1 Mad H C, 45 (case of Sudras, is overruled by the Privy Council on this point).

(*l*) *Tukaram* v *Ramachandra* (1925) 49 Bom, 672

(*m*) *Ramasami* v *Sundaralingasami* (1894) 17 Mad., 422, affd (1899) 26 I A, 55, 22 Mad, 515

(*n*) *Nagindas Bhagwandas* v *Bachoo Hurkissondas* (1915) 43 I A, 56, 40 Bom, 270, overruling *Raghubanand Doss* v *Sadhu Churn Doss* (1878) 4 Cal, 425, reversing *Bachoo* v *Nagindas* (1914) 16 Bom L R 263, and approving *Tara Mohun Bhuttacharjee* v *Kripa Moyee Debia* 9 W R, 423, *Dinanath* v. *Gopal Churn* (1881) 8 C L R, 57 and *Raja* v *Subbaraya* (1884) 7 Mad, 253

(*o*) *Gangadhar* v *Hiralal* (1916) 43 Cal, 944 (equal shares in the *stridhanam* property of their step-mother as her husband's sapindas).

(*p*) Sarkar, 'Adoption', 2nd edn, 388, Dat. Mima., VIII, 2-4,

been born (*q*). The adopted son loses his rights in the coparcenary property (*r*) and his natural family cannot inherit from him (*s*), nor is he liable for their debts (*t*). Of course, however, if the adopter was already a relation of the adoptee, the latter by adoption would simply alter his degree of relationship, and, as the son of his adopting father, would become the relative of his natural parents, and in this way mutual rights of inheritance might still exist. The rule is merely that he loses the rights which he possessed *qua* natural son. And the tie of blood, with its attendant disabilities, is never destroyed. Therefore, he cannot after adoption marry anyone whom he could not have married before adoption (*u*). Nor can he adopt out of his own natural family a person whom, by reason of relationship, he could not have adopted, had he remained in it (*v*). He is equally debarred from marrying in his adoptive family within the forbidden degrees (*w*).

§ 194-A. Whether he is divested of the ancestral property which vested solely and absolutely in him prior to his adoption as the only surviving member of the joint family to which it previously belonged, is a question on which there is a difference of opinion. The Madras High Court, following a Calcutta decision (*x*) has held that he is not so divested

Is adoptee divested of his property?

(*q*) Manu, IX, 142; Dat. Mima., VI, s. 6-84, Dat. Chand., II, s. 18-20, Mit., I, 11, s. 32, V. May., IV. 5, s. 21. *Chandra Kunwar* v. *Chaudri Narpat Singh* (1907) 34 I.A., 27, 29 All., 184, 190, see *contra*, 1 Mad., 95, as to Pondicherry. In parts of the Punjab the rights of the adopted son in his natural family take effect if his natural father dies without leaving legitimate sons. Punjab Customary Law, III, 83. A son in law, affiliated by the custom of Illatom which prevails among some classes of Sudras in Madras, does not lose his rights in his natural family. *Balarami* v. *Pera* (1883) 6 Mad., 267, *Hanumantamma* v. *Rami Reddi* (1882) 4 Mad., 272. An adoption made under the very lax customs of the set of Gyawals in Gya does not deprive the person adopted of his rights, in his natural family. *Luchmun Lal* v. *Kanhya Lal* (1895) 22 I.A., 51, 22 Cal., 609.

(*r*) *Kunwar Lallajee* v. *Ram Dayal* A.I.R. 1936 All., 77.

(*s*) 1 W. MacN., 69, *Srinivasa* v. *Kuppanayyangar* (1863) 1 Mad. H.C., 180; *Muthayya* v. *Minakshi* (1902) 25 Mad., 394, *Raghuraj* v. *Subadra Kunwar* (1928) 55 I.A., 139, 3 Luck., 76 (natural brother cannot succeed to adopted son's estate in the adoptive family).

(*t*) *Pranvullubh* v. *Deocristin* Bom. Sel. Rep., 4, *Kasheepershad* v. *Bunseedhur* 4 N.-W.P. (S.D.), 343.

(*u*) Dat. Mima., VI, s. 10, Dat. Chand., IV. s. 8, V. May., IV. 5 s. 30.

(*v*) *Mootia Moodelly* v. *Uppon* Mad. Dec. of 1858, p. 117.

(*w*) Dat. Mima., VI, s. 25, 38.

(*x*) *Venkatanarasimha Appa Rao* v. *Rangayya Appa Rao* (1906) 29 Mad., 437, 447 following *Behari Lal* v. *Kailas Chunder* (1896) 1 C.W.N., 121, (the former case was reversed by the P.C. on another point).

The Bombay High Court has declined to accept this view as correct, holding that, on adoption, the adopted boy loses all rights to property he may have acquired in his natural family, including the right to property which had become exclusively vested in him before his adoption (*y*). It so reads the text of Manu (*z*), as to give full effect to the fundamental idea underlying an adoption, viz., that the boy given in adoption gives up the natural family and everything connected with it, and takes his place in the adoptive family as if he had been born in it (*a*). The result would be that on adoption the property vested in him would be divested and devolve upon the next heir in the family of his birth Distinguishing *Dattatraya's* case (*y*), it was held in a later case by the Bombay High Court that a person does not on adoption lose the share, which he has already obtained on partition from his natural father and brothers in the family of his birth (*b*) on the ground that the share so obtained cannot be said to be the estate of his natural father within the meaning of the text of Manu The Calcutta High Court has held, distinguishing in effect the Bombay cases, that under the Dayabhaga law, a person who is given away in adoption is not divested of the inheritance which is already vested in him (*c*) The question is left open by the Judicial Committee in a recent case (*d*) On the one hand it must be conceded that if a man at the time of adoption were possessed of property, either self-acquired or inherited from collaterals, his right to it would be unaffected by his adoption On the other hand when the boy adopted is a coparcener in the joint family, he is divested of his right in the coparcenary property (*e*) It may be that a man's adoption does not divest him of the share which he has obtained on a partition with his father and brothers (*f*)

(*y*) *Dattatraya Sakharam* v *Govind Sambhaji* (1916) 40 Bom 429, followed in *Bai Kesharba* v. *Shivsangji* (1932) 56 Bom, 619, 638, 655 (revd by the Privy Council on another point) See also *Manikbai* v *Gokuldas* (1925) 49 Bom 520

(*z*) IX, 142.

(*a*) (1916) 40 Bom, 429 434-435, cited with approval in *Raghuraj* v *Subhadra Kunwar* (1928) 55 I A, 139, 148, 3 Luck, 76

(*b*) *Mahableshwar Narayan* v *Subramanya* (1923) 47 Bom 542

(*c*) *Shyamcharan* v *Sricharan* (1929) 56 Cal, 1135

(*d*) *Vijaysingji* v *Shivsangji* (1935) 62 I A, 161, 165 166, 59 Bom., 360, 365

(*e*) *Venkata Narasimha* v *Rangayya* (1906) 29 Mad, 437, 447, (1929) 56 Cal, 1135 *supra*, *Kunwar Lallajee* v *Ram Dayal* A I R 1936 All, 77.

(*f*) *Mahabaleshwar* v *Subramanya* (1923) 47 Bom, 542

There is certainly greater difficulty in saying that when the mother gives her son in adoption, the adopted son takes away the property, held by him as surviving coparcener or inherited from his father, with him into the adoptive family. The mother's rights and the rights of others to maintenance would be affected The problem has assumed a slightly different aspect after the Hindu Women's Rights to Property Act, 1937 Under that Act, the widow succeeds along with the only son, whether it is the property of a Mitakshara joint family or not The solution does not depend upon whether what is vested can be divested—for an adoption divests his vested right by birth in the natural family as well as estates vested in others —nor even on the more difficult question whether the adopted son is to be regarded as civilly dead in respect of some properties and not in respect of others. The text of Manu can only mean that he is not to take his father's property into the adoptive family, whether it is already vested in him or not. Adoption is tantamount to a renunciation or surrender of paternal heritage. The words 'heritage and *gotra*' in Manu's text are sufficiently comprehensive and in the Mitakshara School where the son's inheritance is always unobstructed, there is even less scope for the distinction between inheritance already vested in him and property which he may inherit, if there be no adoption. On the whole, the view of the Bombay High Court appears to be the better solution

Adoption by widow

§ 195. The case of an adoption made by a widow to her deceased husband raises special considerations, owing to the double fact that the person adopted has, apart from the recent Act, a better title than the person in possession, while, on the other hand, the title of the person so in possession has been a perfectly valid title up to the date of adoption. Questions of this sort arise in two ways: *first*, with regard to title to an estate; *secondly*, with regard to the validity of acts done between the date of the husband's death and the date of adoption

Its effect.

§ 196. As soon as the widow's power is exercised, the adopted son stands exactly in the same position as if he had been born to his adoptive father, and his title relates back to the death of his father to this extent, that he will divest the estate of any person in possession of the property to which he would have had a preferable title, if he had been in existence at his

Divests estate of widow

adoptive father's death (*g*). One of the most common cases is an adoption by a widow, who is herself heir to her husband Prior to the Hindu Women's Rights to Property Act, 1937, the result of such an adoption was that her limited estate as widow at once ceased. The adopted son became full heir to the property, the widow's rights being reduced to a claim for maintenance Now under the Act, where the widow takes along with the male issue of her husband, an adoption will only divest a moiety of the estate held by her, the other moiety being retained by her for her life, and if, as would generally happen, the adopted son is a minor, she will continue to hold it as his guardian in trust for him (*h*). Where there are several widows, holding jointly, one who has authority from her husband to adopt would, of course, by exercising it, divest subject to the modifications introduced by the Hindu Women's Rights to Property Act, 1937, both her own estate and that of her co-widows, and no co-widow can, by refusing her consent, prevent the adoption, or destroy its effect upon her estate And in the Mahratta country, where no authority is required the elder widow may of her own accord adopt, and thereby destroy, subject to the modifications aforesaid, the estate of the younger widow without obtaining her consent (*i*) Before the Act of 1937, an adoption made after A's death by the widow of his predeceased son divested the estate of A's widow (*i*[1]), but such divesting is now subject to the modifications introduced by the Act

Of mother

§ 197 Where on the death of an aurasa or adopted son the estate which has descended to him from his father vests in his mother and heir, and she makes an adoption to her deceased husband, it is well-settled that the estate so vested in her will be divested. In *Vellanki* v *Venkata Rama* (*j*) a zamindar died, leaving a widow, an infant son, and daughters On the death of the son, the widow adopted a son with the consent of her husband's sapindas It was held that he was validly adopted and that he was entitled to the estate Distinguishing

(*g*) *Babu Anoji* v *Ratnoji* (1897) 21 Bom 319.

(*h*) *Dhurm Das Pandey* v *Mt Shama Soondri* (1843) 3 M I A 229. Of course, the adopted son does not take any of the property which is held by the widow as her stridhana, W & B 4th edn, 1033

(*i*) *Mondakini Dasi* v *Adinath* (1891) 18 Cal, 69, *Rakhmabai* v *Radhabai* (1868) 5 Bom H C (A C J), 181, *Bhimava* v *Sangawa* (1898) 22 Bom, 206, *Amava* v *Mahadgauda* (1898) 22 Bom, 416, *Narayanasami* v *Mangammal* (1905) 28 Mad, 315

(*i*[1]) *Ramkishen* v *Mt Sri Mutee* 3 S.D, 367, 489, V. Darp., II. Bk III, 619

(*j*) (1876) 4 I.A, 1, 1 Mad, 174.

Bhoobun Moyee's case (*k*), their Lordships observed: "That authority does not govern the present case, in which the adoption is made in derogation of the adoptive mother's estate; and indeed expressly recognises the distinction". Though the main question in that case was as to the validity of the adoption, the case has always been recognised as an authority for the proposition that an adoption divests the mother's estate also. It will be observed that if the effect of the adoption is to introduce only a brother to the last male-holder, the estate of the mother, who is a preferable heir would not be divested The title of the adopted son however relates back to the death of the adoptive father and the adoption substitutes another son in place of the deceased son He can be regarded as a coparcener with his brother only under the Mitakshara law, but not under the Dayabhaga law, where also the mother's estate is divested by the adoption. The ground of the divesting must therefore be, either that the mother elects to hold the property as her husband's property when she exercises her power of adoption, or that the title of the adopted son relating back to his father's death is the necessary legal result of the power to substitute another son for one deceased (*l*) The Madras High Court has in one case held that a widow who had succeeded as heir, to an adopted son, and made a subsequent adoption after his death, was divested of the self-acquired property of the son first adopted by her (*m*). This decision does not appear to be sound in principle: the adopted son can only succeed to what is or could have been the property of the adoptive father, and the mother's interest in her husband's estate only could be divested.

Of inferior heir

§ 198 An adoption made to a coparcener in an undivided family places the adopted son in the same position as an aurasa son so that he divests the estate of any one who in his absence takes his father's interest. For instance, where in

(*k*) (1865) 10 M I.A, 279.

(*l*) See *Vellanki* v. *Venkata Rama* (1876) 4 I A., 1, 1 Mad., 174, *Jamnabai* v. *Raychand* (1883) 7 Bom, 225, *Ravji Vinayakrav* v *Lakshmibai* (1887) 11 Bom, 381, 397; *Verabhai* v. *Bai Hiraba* (1903) 30 I.A, 234, 27 Bom, 492, *Mallappa* v. *Hanmappa* (1920) 44 Bom, 297, *Jatindra* v *Amrita* (1900) 5 C W N, 20, in *Ramasami* v *Venkataramiyan* (1879) 6 I A, 196, 208, 2 Mad, 91, 101, the Privy Council observed. "The first adopted son became his father's heir, on the death of that son after that of his father, the widow became the heir, not of her late husband but of the adopted son. Whether by the act of adopting another son she in point of law divested herself of that estate in favour of the second son may be a question of some nicety, on which their Lordships give no opinion."

(*m*) *Suryanarayana* v. *Ramadoss* (1918) 41 Mad., 604.

the Madras Province, an undivided brother succeeded to an impartible zemindary in Ganjam, on the decease of his brother, the last holder. It was held that his estate was divested by an adoption made by the widow of the latter after his death and under his authority (*n*). And so it would be in regard to partible property held by two brothers On the death of one brother, his interest would now, under the Hindu Women's Rights to Property Act, 1937, vest in his widow, and an adoption made by her to her husband would divest a moiety of her interest and let him in as a coparcener with others, just as if he were a posthumous son (*o*) So too where an adoption is made not to the last male holder, but to his father by the latter's widow, it will divest the estate which vested on the last male holder's death in a collateral or other heir who would not have taken if the adopted son had then been in existence In *Amarendra* v. *Sanatan* (*p*) and *Vijaysangji* v *Shivsangji* (*q*) the estate descended from the father to the son, who was the last surviving member of the coparcenary The estate vested on the son's death in the one case, and on the son's adoption into a different family in the other, after the extinction of the coparcenary, strictly by inheritance, in a separated collateral If the son adopted had been in existence at the material time, he would have taken by survivorship in preference to the collateral It was held that the adoption divested the estate vested in the latter It is quite immaterial whether the vesting in the collateral was by inheritance or by survivorship or by reverter In all cases a valid adoption divests the estate of any person who would take only after an aurasa or adopted son The clear result of the two recent decisions of the Privy Council is to make the devolution of property 'an accessory' to a valid adoption.

Bombay decision.

§ 199 The Bombay High Court however in a recent Full Bench decision (*r*) would adhere to the older view but in a different way The Court held that an adoption made by a widow of a predeceased coparcener after the termination

(*n*) *Raghunadha* v *Brozo Kishore* (1876) 3 I A, 154, 1 Mad, 69

(*o*) Apart from the Act, on the death of one of two undivided brothers the whole of the property vested by survivorship in the other and an adoption made to the deceased brother by his widow put an end to the survivorship *Surendra* v *Sailaja* (1891) 18 Cal, 385 *Vithoba* v *Bapu* (1890) 15 Bom, 110, *Bachoo* v *Mankorebai* (1906) 34 I A, 107, 31 Bom, 373

(*p*) (1933) 60 I A, 212, 12 Pat, 642

(*q*) (1935) 62 I A 161 59 Bom 360

(*r*) *Balu Sakharam* v *Lahu Sabhaji* [1937] Bom., 508 (F.B.), see *Jagdish* v *Punamchand* (1938) N L J, 176,

of the coparcenary is valid, but it would not divest the joint family property vested by inheritance on the death of the last surviving coparcener in his heir. The Full Bench held that the case of *Chandra* v. *Gojarabai* (*s*) and other cases following it, were overruled by the Judicial Committee on the main question of the validity of the adoption, but that they are still good authorities for the proposition that there would be no divesting. The doctrine that an adoption is valid in such circumstances, but would be ineffectual to divest the estate may be attractive, but does not appear to be correct; for, it is opposed to the actual decisions in *Amarendra's* case and *Vijaysangji's* case where on the death of the last surviving coparcener, the estate vested by inheritance in a collateral and it was held that it was divested by an adoption validly made not to the last holder but to the previous holder of the property. *Chandra's* case (*s*) and the cases following it (*t*) cannot therefore be regarded as good law The principle therefore appears to be that either the heir or coparcener who takes in the absence of the adopted son takes only a defeasible estate, that "the male line is not regarded as extinct until the continuation of the line by adoption is impossible and that the adopted son succeeds as if he were the *aurasa* son" and "ousts every one whose right to enter was only temporary, operating merely to prevent the ownership from being in abeyance pending any such succession as the adoption brings about" (*u*). This vexed question of divesting will not in future be of the same practical importance as it has been till now; for under the Hindu Women's Rights to Property Act, 1937, the widow of a predeceased coparcener would take her husband's interest and the adopted son would be entitled to his rights as coparcener in the family property, notwithstanding the vesting of the last male coparcener's interest in his widow

§ 200 It will be noticed that the common feature that is present in all these cases of divesting is that it is the estate or interest of the father which is vested in an heir inferior to the

(*s*) (1890) 14 Bom., 463. This case was rightly understood by Sir D. F. Mulla in *Bhimabai* v. *Gurunathgauda* (1932) 60 I A., 25, 57 Bom., 157, as holding that the adoption was invalid. If it were otherwise, divesting would have been allowed.

(*t*) *Adivi* v. *Nidarmarty* (1909) 33 Mad., 228, *Sri Dharnidhar* v. *Chinto* (1895) 20 Bom., 250, *Amava* v. *Muhadgauda* (1898) 22 Bom., 416; *Payapa* v. *Appanna* (1898) 23 Bom., 327; *Shivbasappa* v. *Nilava* (1922) 47 Bom., 110; *Hirabharthi* v. *Bai Javor* (1920) 30 Bom. L.R., 1555; *Annamah* v *Mabbu Bali Reddy* (1875) 8 Mad. H.C., 108.

(*u*) *Madana Mohana* v. *Purushothama* (1915) 38 Mad., 1105, 1111, affirmed in (1918) 45 I.A 156, 160, 41 Mad, 855, *Pratapsingh* v. *Agarsingji* (1919) 46 I.A., 97, 43 Bom., 778.

son, subject to the emergence of a son In no other case can the doctrine of the defeasible estate be applied. In *Bhoobun Moyee* v *Ram Kishore* (*v*) Bhowanee's widow. Bhoobun Moyee was Bhowanee's heir in preference to Ram Kishore He could not therefore divest her even if his adoption had been valid But the adoption itself was invalid owing to the existence of Bhowanee's widow If the adoption was not invalid and the case itself had been governed by the Mitakshara law, it would have been different, for, if he had been in existence he would have taken by survivorship, divesting the widow In a Mitakshara case where a coparcener dies, whether he is the last member of the coparcenary or not an adoption made to him introduces a son who will take by survivorship This is implicit in the power of a widow to adopt to her deceased husband in the coparcenary and to say that the existence of a son is a bar to an adoption is no answer For when once the adoption is made, his rights, unless curtailed by express texts, are exactly the same as those of a natural born son He would therefore be entitled to succeed by survivorship on the death of his brother to the father's property even in the presence of his brother's widow (*v*[1]) It would be an error to apply the observation in *Bhoobun Moyee's* case as applicable to a Mitakshara family (*w*) As Sir George Lowndes explains it in *Amarendra's* case (*x*), "The parties being governed by the Dayabhaga Law, Bhoobun Moyee would have succeeded to Bhowanee's property in preference to Ram Kishore even if he had been a natural born son of Gouri Kishore". *Bhoobun Moyee's* case is therefore no authority on the question that an adoption made to a previous holder, if valid in other respects, will not divest the estate of the last holder, if such heir were inferior to the son adopted Where the property of A descends to his son, B, and on his death leaving no widow but a daughter or daughter's son, A's widow adopts C, under the Mitakshara law, C would divest the ancestral

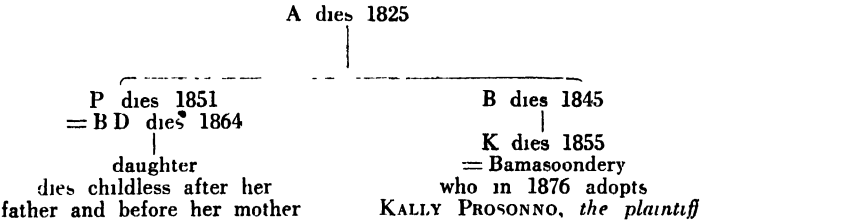
(*v*) (1865) 10 M I A, 279

(*v*[1]) But this is subject to the modifications introduced by the Hindu Women's Rights to Property Act, 1937, for, the brother's widow would take his coparcenary interest

(*w*) But in *Subramanian* v *Somasundaram* (1936) 59 Mad., 1064, however, there is an observation to the effect that even in a case under the Mitakshara law, if an adoption by the mother on the death of a son leaving a widow is valid by custom, it would not divest the estate taken by the son's widow The *dictum* was purely *obiter*, for the decision itself affirmed the decree in favour of the adopted son for his share as against a third party, leaving the question as between him and the widow of his brother open

(*x*) (1933) 60 I A., 242, 10 Pat., 642

estate vested in the daughter or daughter's son for he would have been a coparcener. He would not however divest the separate property of B, for the daughter or daughter's son would be the preferable heir (*y*). Likewise in all cases under the Dayabhaga law whether the property vested in the brother was ancestral or self-acquired. In a Bengal case, the facts were as follows:—P and B, named in the annexed table, were undivided brothers, who held their property in quasi-severalty. P. by his will, bequeathed his share to his widow B D for life, and after her to the sons of his daughter, if any, subject to trusts, legacies and annuities. The daughter died without issue during the widow's life, and at her death the



widow made a will, bequeathing the property to the defendant, as executor, for religious purposes K died in 1855, leaving to his widow authority to adopt. If she had exercised that authority prior to the death of B D, there can be no doubt that the son adopted to K would have been the heir of his grand-uncle P, and would have been entitled to set aside the will of B D, and to claim the property of P, so far as he had not disposed of it by his will. But the power was not exercised till after the death of B D. The Court held that the adopted son could not claim the estate (*z*) In *Bhubaneswari* v. *Nilkomul* (*a*) which was a case under the Dayabhaga law, of three brothers deceased, the one who died first left one son. The second dying left a widow who took her estate for life in her husband's property and the third left a widow to whom he gave by will a power to adopt. On the death of the widow of the second brother, the son of the first inherited his uncle's share in the family property and by fraudulent acts caused delay in the exercise of the power of

(*y*) In *Chanbasappa* v. *Madiwalappa* [1937] Bom., 642, it was held that an adoption made by a widow after the death of her adopted son leaving two daughters as his heirs was valid.

(*z*) *Kally Prosonno* v *Gocool Chunder* (1877) 2 Cal, 295.

(*a*) (1886) 12 I.A, 137, 12 Cal., 18 affg. (1881) 7 Cal., 178. See also *Faizuddin* v. *Tincowri Saha* (1895) 22 Cal., 565, *Anandibai* v. *Kashibai* (1904) 28 Bom., 461.

adoption by the widow of the third. Afterwards the latter adopted a boy who had not been born during the lifetime of the widow of the second brother It was held that the adopted son was not entitled to share along with his nephew the estate which had belonged to the uncle The decision of the Privy Council rested largely upon the fact that the boy adopted not having been born at the time the inheritance opened, never could, in the course of nature, have become the heir of the uncle's estate Nevertheless it is an authority for the proposition that an adoption after the death of a collateral does not entitle the adopted son to come in as an heir to property which was not his father's property

Conclusions

§ 201 Apart from the consequences of the Hindu Women's Rights to Property Act, 1937 (a^1), these and other authorities lead to the following conclusions *first*, where an adoption is made to the last male holder, the adopted son will divest the estate of any person, whose title would have been inferior to his, if he had been adopted prior to the death, *secondly*, where the adoption is not made to the last male holder, but is made by the widow of the father of the last male holder, it will, if in other respects valid, not only divest her estate as mother but the estate of anyone who if the adopted son had been in existence before the death would not have taken the estate of the last male holder, *thirdly*, where an adoption is made by the widow of a deceased coparcener, it will, if in other respects valid, divest the interest or estate of the father which became vested in the surviving coparcener as also the estate held by the last surviving coparcener which vested in his heir; *fourthly*, in no other circumstances will an adoption be made to one person divest the estate of anyone who has taken that estate as heir of another person. The first and the third propositions are, with reference to successions governed by the Hindu Women's Rights to Property Act, 1937, subject to two modifications. (1) An adopted son will divest the estate vested in his adoptive mother only to the extent of a moiety. (2) In the case of ordinary partible property, as the widow of a pre-deceased coparcener will inherit her husband's interest and intercepts its passing by survivorship to the surviving coparceners, the son adopted by her will only divest her interest and that to the extent of a moiety. Where a widow who has succeeded to her son's estate as mother adopts a son, the adopted son will as before divest the estate taken by her as mother.

(a^1) See *post* Ch. XIV.

Widow's power if at an end cannot revive.

§ 202. Where a widow's power of adoption is at an end, she cannot make a valid adoption with the consent of the person in whom her husband's estate is vested. It is now established that the power of adoption is independent of any question of vesting and divesting. The decisions of the Bombay High Court expressing the contrary view cannot be regarded as good law (*b*). Even in the Bombay High Court there has been difference of opinion (*c*). The High Court of Madras has expressly dissented from that view (*d*). It is difficult to conceive how when the law puts an end to the power of adoption, the consent of the person in whom the estate is vested can revive the power. To make an adoption valid *ab initio*, the widow must have had a sufficient authority, which was capable of being acted on at the time it was exercised.

Restrictions on adopted son's estate, how far valid.

§ 203. In Bengal under the Dayabhaga law, where a father has the absolute power of disposing of his property, he may couple with his authority to the widow to adopt, a direction that the estate of the widow shall not be interfered with or divested during her life, or indeed any other condition derogating from the interest which would otherwise be taken by the adopted son (*e*). In provinces governed by the Mitakshara law, where a son obtains by birth a vested interest in his father's ancestral property, a person who has once made a complete and unconditional adoption could not derogate from its operation either by deed during his lifetime or by will, unless the property is impartible (*f*). But where a man made a disposition of part of his

(*b*) *Rupchand* v. *Rakhmabai* (1871) 8 Bom. H.C.A.C., 114, 122; *Babu Anaji* v. *Ratnaji* (1897) 21 Bom., 319, *Gopal* v. *Vishnu* (1899) 23 Bom., 250; *Payapa* v. *Appanna* (1899) 23 Bom., 327, *Bhimappa* v. *Basava* (1905) 29 Bom., 400; *Siddappa* v. *Ningangavda* (1914) 38 Bom., 724.

(*c*) *Dharnidhar* v. *Chinto* (1896) 20 Bom., 250, 258; *Vasudeo Vishnu* v. *Ramachendra Vinayak* (1898) 22 Bom, 551, 555 (F.B.); *Anandibai* v. *Kashibai* (1904) 28 Bom., 461, 465; *Vaman* v. *Venkaji* (1921) 45 Bom., 829, see too *Krishnarav* v. *Shankerrav* (1893) 17 Bom., 164.

(*d*) *Annamah* v. *Mabbu Bali Reddi* (1875) 8 Mad. H.C., 108, *Adivi* v. *Nidamarti* (1910) 33 Mad., 228.

(*e*) *Radhamonee* v. *Jadunarain* S.D. of 1855, 139; *Prosunnomoyee* v. *Ramsoonder* S.D. of 1859, 162. *Bepin Behari* v. *Brojonath Mookhopadya* (1882) 8 Cal., 357, *Bhupendra Krishna Ghose* v. *Amarendra Nath Dey* (1916) 43 I.A., 12, 43 Cal., 432; *Basant Kumar* v. *Ram Shankar* (1932) 59 Cal., 859, 877.

(*f*) *Sartaj Kuari* v. *Deorajkuari* (1888) 15 I.A., 51, 10 All., 272; *Venkata Surya Mahipati* v. *The Court of Wards* (1899) 26 I.A., 83, 22 Mad, 383, *Pratap Chandra* v. *Jagdish Chandra* (1927) 54 I.A., 189, 54 Cal., 955; Impartible estates are inalienable in Madras under the Madras Impartible Estates Act, 1904, beyond the holder's life except for necessary purposes.

property which was valid when made, and as part of the same transaction took a boy in adoption, the father of the adopted boy being aware of the provisions of the will, and assenting to them, and knowing that the testator would not have made the adoption without such assent, it was held that the will was valid against the adopted son (*g*). It has been held in Bombay that if the parent of the boy, when giving him in adoption, expressly agrees with the widow that she shall remain in possession of the property during her lifetime, and she only accepts the boy on those terms, the agreement will bind him, as being made by his natural guardian, and within the powers given to such guardian by law (*i*) But if the stipulations of the contemporaneous agreement are unreasonable, for instance, if they invest the widow with powers to be exercised not for her own benefit but for her daughter or brother, they are invalid (*j*). In one case, Lord Macnaghten said that it was difficult "to understand how an agreement by a natural father could prejudice or affect the rights of his son, which could only arise when his parental control and authority determined and that if conditions were attached to the adoption, the analogy, such as it is, presented by the doctrines of Courts of Equity in this country relating to the execution of powers of appointment would rather suggest that, even in that case, the adoption would have been valid and the conditions void" (*k*). A Full Bench of the Madras High Court held that an ante-adoption agreement

(*g*) *Lakshmi* v. *Subramanya* (1889) 12 Mad, 490, *Narayanasami* v. *Ramasami* (1891) 14 Mad, 172, *Ganapathi Aiyan* v *Savithri* (1898) 21 Mad, 10, *Vinayek Narayan* v *Govindarav Chintaman* (1869) 6 Bom. H C A C., 224, *Basava* v *Lingangauda* (1895) 19 Bom, 428, *Kali Das* v *Bijai Shankar* (1891) 13 All 391, *Baluant Singh* v *Joti Prasad* (1918) 40 All, 692, *Durgi* v *Kanhaiyalal* (1927) 49 All, 579 But see *Balkrishna Motiram* v *Shri Uttar Narayan Dev* (1919) 43 Bom., 542, where it was held that a reservation in favour of a religious charity, though not unreasonable in amount, was not warranted by Hindu law In *Vinayak Narayan* v *Govindrav* (1869) 6 Bom H C (A.C.J.), 224, 230, Couch C J cites *futwah* of the pundits in 6 M I A at p. 320 that a will of the whole property would be revoked by a subsequent adoption This appears to be wrong A bequest will be invalid, if of ancestral property, but valid if of self-acquired property

(*i*) *Chitko Raghunath* v *Janaki* (1874) 11 Bom. H C., 199, followed in *Ravji Vinayakrav* v *Laksmibai* (1887) 11 Bom., 381, p. 400. See as to the effect of such an arrangement, *Antaji* v *Dattaji* (1895) 19 Bom, 36 If the adoption is made during the lifetime of the adoptive father, any instrument purporting to confer a life estate or other interest in the property requires registration, *Pirsab Valad Kasimsab* v. *Gurappa Basappa* (1914) 38 Bom, 227.

(*j*) *Vyasacharya* v *Venkubai* (1913) 37 Bom, 251, F.B., *Pemraj Mulchand* v. *Rajbai* (1937) 39 Bom L R, 1069

(*k*) *Bhasba Rabidat Singh* v *Inder Kunwar* (1889) 16 I.A., 53, p. 59, 16 Cal., 556, 564.

when it formed part of the negotiations preceding the adoption, and was embodied in the deed of adoption, came within the powers of the father acting as guardian of his son in giving him in adoption, and would bind the son if "the agreement in regard to the property was in itself a fair and reasonable one, and one which, taken as part of the contract for the adoption, was for the minor's benefit, as being a condition on which alone the adoption would be made" (*l*).

Krishnamurthi's case.

§ 204. Quite recently in *Krishnamurthi* v. *Krishnamurthi* (*m*) the Judicial Committee considered the whole question. In that case, a testator by his will gave part of his property to his intended adopted son, part to his wife, part to kindred and part to charity. Before the adoption took place the natural father executed a deed by which he consented to the provisions of the will and gave his son in adoption subject to them. It was held that the arrangement was not binding upon the adopted son Proceeding to examine the matter on principle, Lord Dunedin observed: "When a disposition is made *inter vivos* by one who has full power over property, under which a portion of that property is carried away, it is clear that no rights of a son who is subsequently adopted can affect that portion which is disposed of. The same is true when the disposition is by will and the adoption is subsequently made by a widow who has been given power to adopt. For the will speaks as at the death of the testator, and the property is carried away before the adoption takes place. It is also obvious that the consent or non-consent of the natural father cannot in such cases affect the question. But it is quite different when the adoption is antecedent to the date at which the disposition is meant to take effect. The rights which flow from adoption are immediate, and the disposition, if given effect to, is inconsistent with these rights and cannot of itself *vi propria* affect them. There are two propositions so well settled that no authority need be cited. They are, first, that the natural father loses all power over the son from the moment when he is adopted, and, second, that the adopted son has in his new family precisely the same rights as a natural son, save only when the question is one that raises a competition between

(*l*) *Visalakshi* v. *Sivaramien* (1904) 27 Mad., 577. F B, 585, referring to earlier cases, *Panchanon Majumdar* v. *Binoy Krishna* (1918) 27 C.L.J., 274.

(*m*) (1927) 54 I.A., 248, 50 Mad., 508, 525, followed in *Seethiah* v. *Mutyalu* A.I R. 1931 Mad., 106; *Sudarsana Rao* v. *Seetharamamma* (1933) M.W.N., 1148, *Banarsi Das* v. *Sumat Prasad* A.I.R. 1936 All., 641; *Hemendra* v *Jnanendra* (1936) 63 Cal., 155; *Shankar* v. *Channappa* (1938) 40 Bom. L.R. 443, *Kamalabai* v. *Pandurang* (1938) 40 Bom. L.R., 428.

the natural and the adopted son". Eventually their Lordships held (1) that the only ground on which an ante-adoption agreement with the natural father can be sonctioned is custom. (2) that an agreement giving a life interest in the whole property to the widow the adopted son taking it on her death would be valid, and (3) that "as soon, however, as the arrangements go beyond that, *i.e.*, either give the widow property absolutely or give the property to strangers. they think no custom as to this has been proved to exist and that such arrangements are against the radical view of the Hindu law"

Subsequent to this decision it has been held in Madras that an arrangement by a widow with the father of the boy to settle upon her a portion of her husband's landed estate for her absolute enjoyment is valid (*n*) This decision apparently goes back to the older view that what the Court thinks fair and reasonable is valid and binding on the adopted son and is not consistent with the decision in *Krishnamurthi's* case.

Agreement by one *sui juris*

§ 205 An agreement entered into at the time of his adoption by one who is *sui juris* with his adoptive father or with the widow who adopts him affecting his interests in the property that he will acquire on adoption is valid An agreement that the widow shall take half the property for the payment of her debts is valid and binding on the son adopted (*o*) After an adoption. when of full age. an adopted son can also ratify any arrangement between his natural father and the widow making the adoption (*p*). He may after adoption renounce all rights in his adopted family, but this will not destroy his status as the adopted son. nor restore him

(*n*) *Raju* v. *Nagammal* (1929) 52 Mad., 128; *Ramiah* v. *Mahalakshmamma* (1932) 35 M L W, 30, will probably stand on a different footing, as only movables and outstandings were given The Judicial Committee appear to have laid down that only immovable property should not be given absolutely

(*o*) *Mt Tara Munee* v *Dev Narayan* 3 S D, 387 (516), 2 W MacN., 183, *Mt. Bhugobutty* v. *Chowdhry Bholanath* 15 W.R., 63; *Kashibai* v. *Tatya* (1916) 40 Bom, 668, *Pandurang* v *Narmadabai* (1932) 56 Bom., 395, *Vithal Laxman* v. *Yamutai* (1934) 58 Bom, 234, *Mittar Sain* v. *Datta Ram* A.I.R. 1926 All., 7, *Mittar Sain* v. *Datta Ram* A.I.R 1926 All, 194, *Krishnayya Rao* v *Maharaja of Pithapur* (1935) 69 M L.J., 388, P.C

(*p*) *Ramasami* v *Vencataramaiyan* (1879) 6 I.A., 196, 208, 2 Mad, 91, 101, *Kalidas* v. *Bijai Shankar* (1891) 13 All, 391, *Subramania* v *Velayudam* (1932) 55 Mad, 408; *Amar Chandra* v. *Saradamayee* (1930) 57 Cal., 39, 42, see also *Pandurang* v *Narmadabai* (1932) 56 Bom., 395, 399 400.

to the position he has abandoned in his natural family. Upon his renunciation the next heir will succeed (*q*).

Son's rights date from adoption.

§ 206. The second question, which arises in the case of an adoption by a widow after her husband's death, is as to the date at which the rights of the adopted son arise. An adoption, so far as the continuity of the line is concerned, has a retrospective effect and there is no *hiatus* in it (*r*). The rights of the boy as adopted son arise only from the date of the adoption in the sense that he is bound by such acts of the widow as would bind the heirs of the husband after her (*s*) An adopted son is not necessarily bound by all the dealings with the estate between the death of his adoptive father and his own adoption (*t*). The validity of those acts would have to be judged with reference to their own character, and the nature of the estate held by the person whom he supersedes. Where that person, as frequently happens, is a female, either a widow, a daughter, or a mother, her estate is limited by the usual restrictions which fetter an estate which descends by inheritance from a man to a woman. These restrictions exist quite independently of the adoption. The only effect of the adoption is that the person who can question them springs into existence at once, whereas, in the absence of an adoption, he would not be ascertained till the death of the woman. If she has created any incumbrances, or made any alienations which go beyond her legal powers, the son can set them aside at once. If they are within her powers, he is as much bound by them as any other reversioner would be (*u*). And he is also bound, even though they were not fully within

How far he may dispute previous acts of widow

(*q*) *Ruvee Bhudr.* v. *Roopshunker* (1824) 2 Bor., 656, 662, 665, 713; *Lakshmappa* v. *Ramava* (1875) 12 Bom. H.C.A.C., 364, 388, *Mahadu Ganu* v. *Bayaji Sidu* (1895) 19 Bom., 239; *Lunkurn* v. *Birji* (1930) 57 Cal, 1322 Apparently under Burmese Law an adopted son could forfeit his status by unfilial conduct under certain circumstances· *Ma Chit Su* v *Kyaw Maung* A.I.R 1933 Rang, 128.

(*r*) *Pratapsing* v *Agarsingji* (1919) 46 I A, 97, 107, 43 Bom. 778

(*s*) *Bamundoss* v. *Mt Tarinee* (1858) 7 M.I.A., 169, *Moro Narayan* v. *Balaji* (1895) 19 Bom., 809, *Vaidyanatha* v *Savithri* (1918) 41 Mad., 75, F B., at p. 91

(*t*) (1918) 41 Mad., 75, F.B., *supra*, overruling *Sreeramulu* v *Krishnamma* (1903) 26 Mad., 143.

(*u*) *Kishenmunnee* v. *Oodwunt* 3 S D., 220 (304), *Ramkishen* v *Mt Strimutee* 3 S.D., 367 (489), explained in 7 M.I.A., 178, *Doorga Soonduree* v. *Goureepersad* S D. of 1856, 170, *Sreenath Roy* v *Ruttunmulla* S.D. of 1859, 421, *Manikmulla* v. *Parbuttee ib.*, 515, *Lakshmana Rau* v. *Lakshmi Ammal* 4 Mad., 160, *per curiam*, 8 M.I.A., p. 443, *Lakshman Bhau* v *Radhabai* (1887) 11 Bom., 609; *Antaji* v. *Dattaji* (1895) 19 Bom, 36, *Moro Narayen* v. *Balaji Raghunath ib.*, 809, *Ramakrishna* v. *Tripurabai* (1909) 33 Bom., 88. (1918) 41 Mad., 75, *supra*.

her powers, provided she obtained the consent of the persons who, at the time of the alienation, were the next heirs, and competent to give validity to the transaction (*v*) Where a Hindu widow alienated her husband's estate and adopted a son who died a minor and thereupon she adopted a second son, it was held that the second adopted son was entitled to question the alienation and that the previous adoption did not affect his rights (*w*) An adopted son however is not in the same position as a reversioner, his cause of action to recover property alienated or to set aside an alienation arises on the date of his adoption (*x*) It may now be considered as settled law, *first*, that if a widow exceeds the powers conferred upon her by law, her acts in so far as they are in excess of those powers can be set aside by a subsequently adopted son as from the date of his adoption *secondly*, that as the adoption immediately divests the widow's estate, it equally divests the estate of any one claiming under a title derived from her.

Acts of previous male holder

§ 207 Where an adoption defeats the estate of a person who is lawfully in possession, such holder if a male has the ordinary powers of alienation of a Hindu proprietor No doubt he is liable to be superseded, but, on the other hand, he never may be superseded It would be intolerable that he should be prevented from dealing with his own, on account of a contingency which may never happen When the contingency has happened, it would be most inequitable that the purchaser should be deprived of rights which he obtained from one who, at the time, was perfectly competent to grant them (*y*). Accordingly, where the brother of the last holder of a Zemindary was placed in possession in 1869, and subsequently ousted by an adoption to the late Zemindar, the Privy Council

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(*v*) *Rajkristo* v *Kishoree* 3 W R, 14 See also *Bajrangi Singh* v *Manokarnika Baksh Singh* (1908) 30 All, 1 (P C) Compare *Yeshwanta* v *Anta* (1934) 58 Bom, 521 (where the widow and the next reversioner at the time joined in the alienation of the whole estate), *Pilu* v. *Babaji* (1910) 34 Bom, 165 and *Sakharam* v *Thana* (1927) 51 Bom 1019 (invalid surrender—subsequent adoption)

(*w*) *Hanmant* v *Krishna* (1925) 49 Bom., 604, *Gobindonath* v *Ramkanay* 24 W R, 183, and *Kally Prosonno* v. *Gocool Chunder* (1877) 2 Cal, 295, 307, cannot be regarded as good law.

(*x*) *Hanamgowda* v *Irgowda* (1924) 48 Bom, 654, *Banomali* v *Jagat Chandra* (1905) 32 I A, 80, 32 Cal 669 See *Dalel Kunwar* v *Ambika Partap* (1903) 25 All, 266, as to the right of a Hindu widow in *bona fide* possession of her husband's estate and without negligence, ousted by a son adopted by her husband and her liability to account for mesne profits

(*y*) The above passage was cited with approval in *Veeranna* v *Sayamma* (1929) 52 Mad 398, 402

held that he could not be made accountable for mesne profits from the former date. Their Lordships said: "At that time Raghunada was, in default of a son of Adikonda, natural or adopted, unquestionably entitled to the Zemindary. The adoption took place on the 20th November, 1870, and the plaint states that the cause of action then accrued to the plaintiff. The plaint itself was filed on the 15th December, 1870, and there is no proof of a previous demand of possession. Their Lordships are of opinion that the account of mesne profits should run only from the commencement of the suit" (*z*).

In *Veeranna* v. *Sayamma* (*a*), the last surviving member of a joint family was held entitled to alienate all the family properties absolutely, even by gift as against a son adopted to his pre-deceased son. It was only an ordinary case of an alienation made by a grandfather when the grandson was not in existence. It is well-settled that an alienation is binding upon a son or grandson who was not in existence at the date of the alienation, if there were no other son or grandson in existence along with the alienor (*b*). The discussion as to whether a person who holds a defeasible estate can give his donee a better title than he himself possesses was unnecessary in that case. The question whether any distinction between an alienee for value and a volunteer exists, may have to be considered when it arises In the matter of impeaching an alienation, an adopted son is in no better position than an aurasa son. In *Sri Raja Venkata Surya* v. *Court of Wards* (*c*), the Judicial Committee held that the holder of an impartible zemindary who had adopted a son could devise that estate, which was found to be alienable, by will against his adopted son. A Hindu adopting a son does not thereby deprive himself of any power that he may have to dispose of his property by will. There is no implied contract on the part of the adopter in

(*z*) *Raghunadha* v. *Brozo Kishore* (1876) 3 I.A., 154, 193, 1 Mad., 69.

(*a*) (1929) 52 Mad., 398.

(*b*) *Lal Bahadur* v. *Ambika Prasad* (1925) 52 I.A., 443, 47 All., 795. See also *Kalyanasundaram* v. *Karuppa* (1927) 54 I.A., 89, 50 Mad., 193 (gift before adoption); *Krishnamurthi's* case (1927) 54 I.A., 248, 262, 50 Mad., 508, 518.

(*c*) (1899) 26 I.A., 83, 22 Mad., 383.

consideration of the gift of the son by the natural father not to make a will (*d*).

Dwyamushya-yana

§ 208 An exception to the rule that adoption severs a son from his natural family exists in the case of what is called a *dwyamushyayana* or son of two fathers. This term has a two-fold acceptation. Originally it appears to have been applied to a son who was begotten by one man upon the wife of another, but for and on behalf of that other. He was held to be entitled to inherit in both families, and was bound to perform the funeral oblations both of his actual and his fictitious father (*e*). This is the meaning in which the term is used in the Mitakshara, but sons of this class are now obsolete (*f*) Another meaning is that of a son who has been adopted with an express or implied understanding that he is to be the son of both fathers. This again seems to take place in different circumstances. One is what is called the *Anitya*, or temporary adoption, where the boy is taken from a different *gotra*, after the tonsure has been performed in his natural family. He performs the ceremonies of both fathers, and inherits in both families, but *his* son returns to his original *gotra* (*g*). This form of adoption is now obsolete (*h*)

Prevalent form.

The only form of *dwyamushyayana* adoption that is not obsolete is the *nitya* or absolute *dwyamushyayana* in which a son is taken in adoption under an agreement that he should be the son of both the natural and adoptive fathers It appears to be obsolete in Madras on the East Coast (*i*) But in the West Coast among the Nambudri Brahmans, it is the ordinary form (*j*). In Bombay and the United Provinces its existence is

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(*d*) (1899) 26 I.A, 83, 22 Mad., 383 *supra* Where a contract is made by the adopter to leave his separate or self-acquired property to the adopted son and he bequeaths his property to another, the adopted son could only obtain specific performance of the agreement or compensation for the breach but would not become, merely by virtue of the contract, the owner of the properties *Chhatra Kumari Devi* v. *Mohun Bikram Shah* (1931) 58 I A, 279, 10 Pat, 851, 868, 869

(*e*) That is the Kshetraja son Baud., II, 2, 18, 19, Yajn, II, 127; Nar., XIII, 23, Dat Chand, II, 35

(*f*) Mit., I, x, 2, 2 Stra H L, 82, 118

(*g*) 2 Stra H L, 120, 1 W MacN, 71; see futwah of Pandits in *Shumshere* v *Dilraj* 2 S D, 169 (216), Dat Mima, VI, 41-43, Dat Chand, II, 37, *Behari Lal* v *Shib Lal* (1904) 26 All., 472

(*h*) *Basappa* v. *Gurlingawa* (1933) 57 Bom, 74, 76.

(*i*) Stra. Man, s. 99, Mad. Dec of 1859, p. 81; Dat. Chand., V, s. 33, V. May., IV, 5, ss. 22, 25; Dat. Mima., VI, ss. 34-36, 47, 48, W.B., 898. Mr. V. N Mandlik says that, whatever the theory may be, such adoptions are in practice obsolete, p. 506.

(*j*) *Vasudevan* v. *Secy. of State* (1888) 11 Mad., 157, 168.

fully recognised (*k*). It has been recognised by the Judicial Committee in two cases from Bengal (*l*).

§ 209. Where the only son of one brother is taken in adoption by another brother, the double relationship appears to be treated by the older authorities as established without any special contract (*m*). This view, however, has been rejected in a considered judgment of the Bombay High Court which has held that an express agreement must be proved in every case even where the son of a brother is adopted (*n*). The presumption is that an adoption is in the ordinary form; to show that it is of the *dwyamushyayana* type, an express agreement to that effect must be established (*o*) Agreement.

The onus of proving that an adoption was of this type lies upon those who assert it (*p*). So also in Allahabad it has been held that an adoption in the *dwyamushyayana* form depends upon and has its efficacy in the stipulation entered into at the time of adoption between the natural father and the adoptive father (*q*). The whole question was recently considered by the Bombay High Court in *Basappa Dandappa* v. *Gurulingawa Shivshankrappa* (*r*), where it was held that the power of giving and taking even an only son in adoption in the *dwyamushyayana* form is not confined to brothers but may also be exercised by their widows and that the agreement or stipulation can be entered into not only by the fathers but also by their widows.

§ 210. Where a legitimate son is born to the natural father of a *dwyamushyayana*, subsequently to the adoption. After-born son.

(*k*) *Basava* v. *Lingangauda* (1895) 19 Bom., 428, *Chenava* v. *Basangavda* (1897) 21 Bom., 105, *Laxmipatirao* v. *Venkatesh* (1917) 41 Bom., 315, *Huchrao Jinnaji* v. *Bhimrao Gururao* (1918) 42 Bom., 277, (1933) 57 Bom., 74 *supra*, *Behari Lal* v *Shib Lal* (1904) 26 All., 472, Jolly T L L., 166

(*l*) *Nilmadhab Doss* v. *Bishumber Doss* (1869) 13 M I A., 85, *Umadevi* v *Gokoolanund* (1877) 5 I.A., 40, 3 Cal., 587.

(*m*) Dat. Mima., II, 37, 38, VI, 34-36, 47, 48, Dat. Chand., I, 27, 28, III, 17, V, 33, 1 Stra. H.L., 86, 2 Stra. H L., 107; Steele 45, 183, Sarvadhikari, 535, *Perumal Naicken* v. *Pottee Ammal* Mad. Dec of 1851, 234, *per curiam*, *Gocoolanund* v. *Wooma Daee* (1875) 15 B L.R., 415; *Nilmadhub* v *Bishumber* (1869) 13 M.I.A., 101, *Chinna Goundan* v *Kumara* 1 Mad. H.C, 57, *Uma Devi* v. *Gocoolanund* (1878) 5 I.A., 42, 3 Cal., 587, V. May., IV, 5, 21, 22.

(*n*) *Laxmipatirao* v *Venkatesh* (1917) 41 Bom., 315

(*o*) *Huchrao Timmaji* v. *Bhimrao Gururao* (1918) 42 Bom., 277.

(*p*) (1917) 41 Bom., 315, (1918) 42 Bom., 277 *supra*

(*q*) *Behari Lal* v. *Shib Lal* (1904) 26 All., 472.

(*r*) (1933) 57 Bom., 74, 77; *Krishna* v. *Paramshri* (1901) 25 Bom., 537.

the latter takes half the share of the former; if, however, the legitimate son is born to the adopting father, the adopted son takes half the share which is prescribed by law for an adopted son, not being a *dwyamushyayana* in competition with a subsequently born aurasa son (*s*), that is, half of one-fourth or one-third, according to the doctrines of different schools (§ 192) The Mayukha, however, seems only to allow him to inherit in the adoptive family, if there are legitimate sons subsequently born in both, and then gives him the share usual in such a case where the adoption has been in the ordinary form, that is, one-fourth or one-third (*t*) It lays down no rule for the case of legitimate sons arising in one family only

Succession

§ 211 The son adopted in the *dwyamushyayana* form inherits both in the family of his birth and in the family of his adoption Similarly on his death, his heirs are to be found in both families without any preference given to either family In *Behari Lal* v *Shib Lal* (*u*), it was held that a natural mother of a Hindu adopted into another branch of his family by the *nitya dwyamushyayana* form of adoption does not, on account of such adoption, lose her right of succession to her son in the absence of nearer heirs On the death of a son adopted in this form, his adoptive mother and natural mother inherit equally as co-heiresses property left by him (*v*)

Adoption of an orphan

§ 212 Where a custom in derogation of Hindu law permits an orphan to be validly adopted, it would seem he has the same status as a natural-born son (*w*) Where such a custom is proved to exist, only to that extent it supersedes the general Hindu law, which still however regulates all beyond the custom (*x*) It would therefore seem not to be necessary that he should prove a custom regulating his rights of succession (*y*) A custom permitting the adoption of an orphan can only stand on the same footing as a custom

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(*s*) Dat. Ch, V, 33, 34

(*t*) V May, IV, 5, 25

(*u*) (1904) 26 All, 472

(*v*) *Basappa Dandappa* v *Gurulingawa Shivshankrappa* (1933) 57 Bom, 74

(*w*) *Ramkishore* v *Jainarayan* (1922) 48 I A, 405, 412-14, 49 Cal, 120, *Chiman Lal* v *Harichand* (1913) 40 I A., 156, 40 Cal, 879, *Purshottam* v *Venichand* (1921) 45 Bom, 754.

(*x*) *Neel Kisto Deb* v *Beerchunder* (1869) 12 M.I A, 523

(*y*) The dictum in *Subramanian* v *Somasundaram* (1936) 59 Mad, 1064, 1070-1 seems wrong It is not like the succession to a mutt which, as there is no general Hindu law governing it, is regulated entirely by usage.

permitting a brother or a daughter's son or a married man to be adopted. The adoption of an orphan where it is valid by custom cannot be held to revive the obsolete institution of *svayamdatta* or the *krıtrima* except in Mithila (*z*).

§ 213. An adoption may be invalid not only for non-compliance with any of the requirements of Hindu law on the matter, but also on the ground that it was the result of coercion, fraud or undue influence (*a*). The question whether an adoption which has been procured by coercion, fraud or undue influence is void *ab initio* or is only voidable has given rise to conflicting views. In *Sri Rajah Venkata* v. *Sri Rajah Rangayya* (*b*) it was held that an adoption made under coercion is only voidable as a contract. But in *Sathiraju* v. *Venkataswami*, Sadasiva Ayyar, J., observed: "The act of adoption is not an act in the nature of a contract, and the validity of an act changing the status of a person cannot be made to remain in suspense at the option of one of the actors in the transaction" (*c*). When both the giver and the taker have full legal capacity to consent and they only are concerned and there is no question of an unwilling boy of sufficient age being coerced into it, it is difficult to see why the adoption should not be treated as voidable only and capable of being acquiesced in or ratified (*c*[1]). **Ratification.**

§ 214. In *Murugappa Chetty* v. *Nagappa Chetty* (*c*[2]), it was held that the receipt of money by the natural father in consideration of giving his son in adoption though illegal and opposed to public policy, does not make the adoption invalid, as the gift and acceptance of the boy is a distinct transaction clearly separable from the illegal agreement and payment. **Consideration for giving in adoption.**

(*z*) *Pappamma* v *Appa Row* (1893) 16 Mad., 384, 393.

(*a*) *Bayabai* v *Bala* (1870) 7 Bom H C App, 1; *Somasekhara* v. *Subhadramaji* (1882) 6 Bom., 524, *Shri Sitram* v. *Harihar* (1911) 35 Bom., 169, 179-180, *Ghanshyamdas Vishnudas* v. *Laxmibai* (1922) 24 Bom. L R., 726, *Ranganayakamma* v *Alwar Chetty* (1890) 13 Mad., 214, *Sri Rajah Venkata* v. *Sri Rajah Rangayya* (1906) 29 Mad, 437. (Revd. by the Privy Council on another point). Compare Narada IV, 9, 10.

(*b*) (1906) 29 Mad., 437 *supra*

(*c*) (1917) 40 Mad. 925, 930, Per Oldfield, J., at pp. 936-937, Compare *Venkatacharyulu* v *Rangacharyulu* (1891) 14 Mad., 316, 320.

(*c*[1]) Compare *Scott* v. *Sebright* (1886) 12 Prob., 21.

(*c*[2]) (1906) 29 Mad., 161; *Subbaraju* v. *Narayanaraju* (1926) 51 M.L.J., 366, 371, *Narayan Laxman* v. *Gopalrao Trimbak* (1922) 46 Bom., 908.

Effect of an invalid adoption

§ 215 It was held by the Madras High Court as early as 1863 that an invalid adoption of a person does not affect his rights in his natural family nor does it confer upon him any rights to maintenance in the adoptive family. He loses nothing and acquires nothing. It is as if no adoption ever took place (*d*). The view taken by the Madras High Court, that an adoption must be effectual for all purposes, or a nullity, has the merit of being practical and intelligible, while doing substantial justice to all parties. It was followed by Sir Michael Westropp, C. J., who observed: "An invalid adoption works nothing It leaves the alleged adoptee precisely in the same position which he occupied before the ceremony, no matter how formally it may have been celebrated"(*e*). As was succintly stated by the Judicial Committee. 'where a man's adoption was wholly invalid, he is in the view of the law an absolute stranger' (*f*) An exception has been sought to be made where *upanayanam* or marriage has been performed in the adoptive family But as observed by Muttuswami Ayyar, J., "the ceremony is inefficacious because of the invalidity of the adoption, and there is no objection to its being repeated in the natural family as is generally done when the ceremony first performed had some essential defect which rendered it inefficacious As to the contention that *upanayanam* has the effect of fixing the *gotra* it would be valid only if the *upanayanam* ceremony itself were valid" (*g*) In a later case this view has been affirmed after a fresh examination of the relevant texts (*h*). Accordingly a person whose first adoption is invalid can validly be given and taken in

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(*d*) *Bawani* v. *Ambabay* (1863) 1 Mad H C, 363

(*e*) *Lakshmappa* v *Ramava* (1875) 12 Bom. H C., 364, 397, see *Parvatibayamma* v *Ramakrishna* (1895) 18 Mad., 145, 151, *Vaithilingam* v. *Murugaian* (1914) 37 Mad, 529, *Dalpatsingji* v *Raisingji* (1915) 39 Bom, 528, *Vaman* v *Venkaji* (1921) 45 Bom, 829, *Sajanisundari* v *Jogendra* (1931) 58 Cal, 745, 749, *Haridas Chatterjee* v *Manmathanath Mukerji* [1937] 2 Cal, 265, 302 The observations to the contrary in *Rajcoomaree* v *Nobocomar* (1856) 1 Boulnois, 137, *Ayyavu* v *Niladatchi* (1863) 1 Mad H C, 45, *ib*, 363, 367, and in *Eshan Kishor* v *Haris Chandra* (1874) 13 B L R, Appx, 42, 12 W R, 381, are no longer good law [1937] 2 Cal, 265, 302 Dat Mima, V. 45, and Dat. Chand, II, 17, V, 13, are only directory and have been so treated The Dat Mima, III, 1-3 appears to lay down that adoption of one of a different class is invalid 'Food and raimant' or maintenance is in all cases mentioned as a compassionate allowance The text has no obligatory force

(*f*) *Ram Kishore* v *Jainarayan* (1913) 40 I A., 213, 40 Cal., 966, 980.

(*g*) *Parvatibayamma* v *Ramakrishna Row* (1895) 18 Mad, 145 152

(*h*) *Viswasundara* v. *Somasundara* (1920) 43 Mad., 876, 891 93.

adoption and the performance of *upanayanam* after his first invalid adoption will not be a bar to his subsequent adoption (*i*). Nor can the marriage of a person whose adoption is invalid, whether he is a Sudra or of the twice-born classes, destroy on principle his rights in the natural family. If he is so married, it is what, on an invalid adoption, is prescribed as a moral, if not a legal, obligation (*j*). To the extent to which the marriage expenses have been borne by the family in which he is taken, he is benefited. But as the Dattaka Mimamsa clearly lays down (*k*), his filial relation is not produced. In what cases and to what extent estoppel prevents the adoption being disputed is quite a different question (*k*[1]).

Gift or bequest to a person whose adoption is invalid.

§ 216. The validity of an adoption often becomes material as determining the validity of a gift or a bequest. Suppose a gift is made to a person who is believed to be an adopted son, but whose adoption turns out to be invalid, is the gift to fail or to stand good? The answer to this question does not depend upon any special doctrine of Hindu law, but upon general principles applicable to all similar cases Where a gift or bequest is made to a certain person under the belief that he filled a certain character and the language shows that the intention of the donor or testator was that the person named should take the gift or bequest only in that character. the gift or bequest fails if the belief turns out to have been mistaken and the pre-supposed condition does not exist. But where a gift or bequest is made to a person as possessing a particular character, the intention may be to benefit a designated individual, the words referring to the character or relationship being merely a matter of description. In the latter case, if the identification is complete, the gift or bequest prevails though the description turns out to be incorrect. The distinction between what is descriptive and what is the reason or motive for the gift or bequest may often be very fine but it is a distinction which must be drawn from the consideration of the language and the surrounding circumstances. Where therefore the assumed fact of the donee's adoption is the reason and motive of the gift and indeed a condition of it,

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(*i*) *ib. Bhau Abaji Deshpande* v. *Hari Ramachandra* A.I.R. 1923 Bom., 301.

(*j*) Dat. Mima, V, 45.

(*k*) Dat. Mima., V, 46. See also Dat. Chand., VI, 3.

(*k*[1]) See *post* § 219.

the gift fails if it turns out that there is no valid adoption (*l*). Where however a gift is made to a person in the erroneous belief that he is an adopted son but the intention is to benefit him in any event, it is a gift to a *persona designata,* which does not depend upon his being in law an adopted son (*m*). Where again a gift or bequest is made to a person as an adopted son and it appears that the donor or testator knew he was not an adopted son, the false description does not prevent the gift taking effect (*n*) So a foster child, that is, one who has been taken into the family of another, nurtured, educated, married and put forward in life as his son, but without the performance of an actual adoption, does not obtain any rights of inheritance thereby (*o*) But a gift made to such a person by his foster-father, if in other respects valid, will not be made void, merely because he was under the mistaken belief that the foster-son would be able to perform his funeral obsequies (*p*)

Breach of agreement to adopt.

§ 216-A It was said by the Privy Council in an old case, that where there is an agreement between two parties to give or accept a child in adoption, breach of it by one of the parties is a good ground for an action for damages or for specific performance (*p*[1]). This would seem to be a very doubtful proposition at least so far as the remedy by way of specific performance is concerned Adoption is a question of status like that of husband and wife Neither the child nor the giving or taking in adoption can at all be a proper subject for specific

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(*l*) *Kamindra Deb* v *Rajeswar* (1885) 12 I A, 72 11 Cal, 463, *Surendro Keshav* v *Doorgasundari* (1892) 19 I A, 108, 19 Cal, 513, *Lali* v *Murlidhar* (1906) 33 I A, 97, 28 All, 488. *Karamsi* v *Karsandas* (1899) 23 Bom, 271, P C, affg (1896) 20 Bom, 718, *Shamavahoo* v. *Dwarkadas* (1888) 12 Bom, 202. *Abbu* v *Kuppammal* (1893) 16 Mad., 355, *Ishar* v. *Surat* (1923) 4 Lah, 356

(*m*) *Nidhoomoni Debya* v *Saroda Pershad* (1876) 3 I A 253, 26 W R, 91, *Bireswar* v *Arda Chunder* (1892) 19 I.A, 101, 19 Cal, 452, *Subbarayer* v *Subbammal* (1901) 27 I A, 162, 24 Mad, 214, *Hira Naikin* v *Radha Naikin* (1913) 37 Bom, 116, *Bai Dhondubai* v. *Laxmanrao* (1923) 47 Bom, 65, *Murari Lal* v *Kundal Lal* (1909) 31 All, 339, *Khub Singh* v *Ramji Lal* (1919) 41 All, 666. *Probadh Lall* v. *Harish Chandra* (1904) 9 C W N, 309, *Navaneetha Marudappa Thevar* v *The Collector of Tinnevelly* 69 M L J, 632 affirmed in (1938) 65 I A, 93, 42 C W N, 449

(*n*) *Venkatasurya* v *The Court of Wards* (1899) 26 I A, 83, 22 Mad, 383, affg. 20 Mad, 167 Compare *Hill* v *Crook* 6 H L, 265.

(*o*) 2 Str H L, 111, 113, Steele, 184 *Bhimana* v *Tayappa* Mad. Dec. of 1861, 124, Sorg H L, 142 Co Con, 369.

(*p*) *Abhachari* v *Ramachandrayya* (1863) 1 Mad. H C, 393.

(*p*[1]) *Sree Narain Mitter* v. *Sreemutty Kishen* (1872) I A, Sup. Vol., 149, 160.

performance; and none but the refusing parent can either give or take in adoption.

§ 217. SIXTH, THE EVIDENCE OF AN ADOPTION:—

There is no particular kind of evidence required to prove an adoption. Those who rely on it must establish it like any other fact, whether they are plaintiffs, or defendants (*q*). Any person who seeks to displace the natural succession of property by alleging an adoption must discharge the burden that lies upon him by proof of the factum of adoption and the performance of any necessary ceremonies as well as all such facts as are necessary to constitute a valid adoption. Where the adoption is by a widow, her authority to adopt must also be proved (*r*). No writing is necessary; though, of course, in case of a large property, or of a person of high position, the absence of a writing would be a circumstance which would call for strict scrutiny, and for strong evidence of the actual fact (*s*). Nor is it even in all cases necessary to produce direct evidence of the fact of the adoption, where it has taken place long since, and where the adopted son has been treated as such by the members of the family and in public transactions, every presumption will be made that every circumstance has taken place which is necessary to account for such a state of things as is proved, or admitted, to exist (*t*). To insist upon proof of factum of adoption in such cases would lead to the anomaly that the older the

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(*q*) *Chowdry Pudum* v. *Koer Oodey* (1869) 12 M.I.A., 350, 356-7, *Kishori Lal* v *Chunni Lal* (1908) 36 I.A., 9, 12, 31 All., 116; *Tarini Charan* v *Saroda Sundari* 3 B.L.R., A.C.J., 146, 11 W.R., 468, *Hur Dyal Nag* v *Roy Krishto* 24 W.R., 107

(*r*) *Dal Bahadur Singh* v *Bijai Bahadur Singh* (1930) 57 I.A., 14, 19, 52 All., 1, 6, *Balak Ram* v. *Nanun Mal* (1930) 11 Lah., 503. See *Huradheen* v *Muthoranath* (1849) 4 M.I.A., 414, where the Privy Council reversed concurrent decisions of the lower Courts finding against the adoption, *Chandra Kunwar* v *Chaudhri Narpat Singh* (1907) 34 I.A., 27, 29 All., 184 (admission shifts the onus), *Lal Kunwar* v *Chiranji Lal* (1910) 37 I.A., 1, 32 All., 104; *Padmalav* v. *Fakira Debya* A.I.R. 1931 P.C., 84, 60 M.J.J., 619; *Lal Harihar* v *Bajrang* (1937) 2 M.L.J., 711, 41 C.W.N., 1126, *Lal Durga Bakhsh* v. *Rani Brij Raj Kuar* A.I.R. 1938 P.C., 40.

(*s*) *Sootrugun* v *Sabitra* (1834) 2 Kn P.C., 287, *Ondy Kadaron* v *Aroonachella* Mad. Dec. of 1857, p. 53, *Diwaker Rao* v. *Chandanlal Rao* (1917) 44 Cal., 201 (P.C.).

(*t*) *Perkash Chunder* v *Dhunmonnee* S.D. of 1853, 96; *Nittanand* v *Krishna Dyal* 7 B.L.R., 1, *Rajendro Nath* v. *Jogendro Nath* 14 M.I.A., 67, *Hur Dayal* v *Roy Krishto* 24 W.R., 107; *Sabo Bewa* v. *Nuboghun* 11 W.R., 380. *Vyas Chimanlal* v *Vyas Ramchandra* (1900) 24 Bom., 473, *Lal Achal Ram* v. *Kazim Hussain* (1905) 32 I.A., 113 at p. 121, 27 All., 271, *Mt Binda Kuar* v. *Lalita Prasad* (1936) 41 C.W.N., 161, A.I.R. 1936 P.C., 304.

adoption set up the more vulnerable becomes the occupant's position (*u*) In *Kanchumarthi Venkata Seetharama Chandra Rou* v *Kanchumarthi Raju*. the authority of a widow to make an adoption was in fact questioned by a reversionary heir forty-two years after the adoption. The Judicial Committee observed that "after such a long term of years. and the variety of transactions of open life and conduct, upon one footing, and one footing alone—namely. that the adoption was recognised as a valid act—the burden, resting. altogether apart from the law of limitation. upon any litigant who challenges the authority of an admitted adoption. is indeed of the heaviest order" (*v*)

Effect of *res judicata*

§ 218 A decision in favour of or against an adoption, in a suit in which it was in dispute, will of course only bind the parties to the suit and those claiming under them (*w*) Though a decree establishing an adoption in a suit not *inter parties* might not be admissible as evidence of its truth. both the decree and the proceeding in which it was made might be good evidence of the successful assertion of the right under Sec. 13 of the Indian Evidence Act (*x*) Where a Hindu widow sued for a declaration that an adoption made by her to her deceased husband was invalid and the suit was dismissed on the ground that she was personally estopped by her conduct from denying the validity of the adoption and also on the ground that the adoption was valid upon the facts. it was held by the Judicial Committee that the personal estoppel did not prevent her from representing the estate in the previous suit and that the former decision

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(*u*) *Ramakrishna Pillai* v. *Tirunarayana Pillai* (1932) 55 Mad., 40, 56. See *Lala Rup Narain* v *Gopal Devi* (1909) 36 I A, 103, 36 Cal, 780 (lapse of time), *Prem Devi* v *Shambhu Nath* (1920) 42 All. 382 (lapse of time)

(*v*) (1927) 53 M L J, 858. 861, P.C , Lapse of time is like that repute which is much relied on in cases of disputed marriage or legitimacy *Rajendronath* v *Jogendro Nath* (1870) 14 M.I A, 57, *Anandrav* v. *Ganesh* (1870) 7 B H C Appx. 33, *Ajabsing* v *Nanabhau* (1898) 26 I.A, 48, 3 C W N, 130 (pedigree), *Achal Ram* v *Kazim* (1905) 32 I.A 113 27 All., 271 (tradition in *wajib ul-arz*)

(*w*) It is not binding on strangers; *Varakalamma* v *Anakala* 2 Mad H C., 276, *Kanhya* v *Radha Churn* 7 W.R., 388, F.B , at p. 341, followed in *Jogendra Deb* v *Funundro* (1870) 14 M I A, 369 *Katama Nachiar* v. *Raja of Sivaganga* (1863) 9 M.I.A, 539, *Jumoona Dassya* v *Bamasoonderai* (1876) 3 I.A., 72, 84, 1 Cal, 289

(*x*) *Ram Ranjan* v *Ram Narain* (1895) 22 I A., 60, 22 Cal, 533, *Dinomoni* v. *Brojo* (1902) 29 I.A, 24. 29 Cal, 187; *Collector of Gorakpur* v. *Ram Sundar Mal* (1934) 61 I A, 286, 56 All, 468, 490, *Gobinda Narayan* v *Shyam Lal* (1931) 58 I A, 125, 136, 58 Cal, 1187, *Sir Kesha Prasad* v *Mt Bhagjogra* (1937) 2 M L J. 631, 643 P C.

which was given on the merits was binding upon the reversioners (*y*).

Estoppel.

§ 219. A person otherwise entitled to question an adoption may by his declaration, act or omission, be estopped from disputing it, if the conditions of Sec. 115 of the Indian Evidence Act, 1872 are fulfilled. But estoppel is purely personal and it cannot affect anyone who claims by an independent title and who is not bound by the acts of the person estopped (*z*). Where a widow who made an adoption to her deceased husband had represented that she had an oral authority to adopt, but after the adoption contended that the authority did not extend to making the particular adoption and that it had become exhausted, it was held that she was estopped from disputing the validity of the adoption, but that the estoppel was purely personal to her (*a*). In that case the adopted son had been married on the faith of his adoptive mother's word. In another case, where a boy was adopted and his *upanayanam* and marriage were performed in the adoptive family, and for many years he performed the *sraddhas* and other ceremonies also in that family, it was held that those who by their conduct inspired that belief were estopped from denying the validity of the adoption (*b*). But estoppel does not convert an invalid adoption into a valid one (*c*). It is only a rule of evidence which under certain special circumstances can be invoked by a party to an action (*d*). To operate as an estoppel, the representation must be of a matter of fact and not an erroneous expression of opinion that an adoption was valid in law (*e*). Where a will on its true construction precluded a widow from adopting

(*y*) *Risal Singh* v. *Balwant Singh* (1918) 45 I.A., 168, 179, 40 All., 593

(*z*) *Dharam Kunwar* v *Balwant Singh* (1912) 39 I A, 142, 34 All., 398, *Dhanraj* v. *Sonibai* (1925) 52 I A., 231, 52 Cal., 482, *Sarat Chunder Dey* v *Gopal Chunder Laha* (1892) 19 I A, 203, 209-212, 20 Cal., 296, see *Dhanraj* v. *Sonibai supra,* distinguished in *Subramanian* v. *Somasundaram* (1936) 59 Mad., 1064, 1081.

(*a*) (1912) 39 I.A., 142, 34 All., 398 *supra, Venkatasubbamma* v. *Venkamma* (1924) 46 M.L.J., 52, *Sudarsana Rao* v. *Seetharamma* (1933) M.W.N., 1148.

(*b*) *Santappayya* v. *Rangappayya* (1895) 18 Mad., 397.

(*c*) (1925) 52 I.A., 231, 241, 52 Cal., 482 *supra,* per Ramesam, J., in (1933) M W.N., 1148.

(*d*) *Maritime Electric Co.* v. *General Dairies, Ltd.* [1937] A C, 610, 620.

(*e*) *Gopee Lall* v. *Chundraolee* (1872) I.A. Sup. Vol. 131, 133, (1925) 52 I.A., 231, 242 *supra; Kalawati* v. *Dharam Prakash* (1933) 60 I.A., 90, 55 All., 78 revg. (1928) 50 All., 885.

the son of a daughter of her brother, it was held that she was not estopped from denying that the adoption she made was invalid under the terms of the will (*f*). In order to create an estoppel, it is quite unnecessary that the person whose acts or declarations induced another to act in a particular way should have been under no mistake himself, or should have acted with an intention to mislead or deceive Estoppel mainly results from the fact that another has been induced to act, as he would not otherwise have done, in reliance upon personal representations, acts or omissions (*g*) Neither acquiescence nor even presence at an adoption ceremony would create an estoppel (*h*).

Statute of Limitations

§ 220 Under the Limitation Act IX of 1871, a reversioner whose right to sue for possession accrued upon the death of a Hindu widow was not given any further time than the twelve years provided under Art 129, Sch II of that Act when he had to recover the property from a person holding under colour of an adoption The twelve years prescribed under Art 129 began to run, not from the date of the death of the widow, but from the date of the adoption or (at the option of the plaintiff) the date of the death of the adoptive father Art 129 applied in terms to a suit to set aside an adoption But it was held by the Privy Council that the phraseology covered all cases where, without displacing the adoption, the plaintiff could not recover possession (*i*). But now under the Indian Limitation Act, 1908, as under the immediately preceding Act of 1877, Art 118 of Sch I which prescribes a period of six years applies only to a suit under Sec 42 of the Specific Relief Act, 1877, for a declaratory decree that an adoption is invalid or did not take place The article applicable to a

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(*f*) (1933) 60 I A, 90, 55 All, 78 *supra*

(*g*) *Sarat Chander* v *Gopal Chunder* (1892) 19 I A, 203, 215, 20 Cal, 296, 310-311 overruling *Ganga Sahai* v *Hira Singh* (1880) 2 All, 809 F B and *Vishnu* v. *Krishnan* (1884) 7 Mad, 3 on this point

(*h*) *Vaithilingam* v *Natesa* (1914) 37 Mad, 529 which approved of the principles laid down in *Gopalayyan* v *Raghupatiayyan* (1873) 7 M H C R 250 and *Parvatibayamma* v *Ramakrishna Rau* (1895) 18 Mad, 145, *Papamma* v *Appa Rao* (1893) 16 Mad, 384, 391 See also *Narsingdas* v *Rahimanbai* (1903) 28 Bom, 440, and *Kannamal* v *Perasami* (1892) 15 Mad, 486

(*i*) *Jugadamba Choudhrani* v *Dakhina Mohun* (1886) 13 I A., 84, 13 Cal, 308, explaining *Raj Bahadur* v *Achumbit Lal* (1879) 6 I A, 110, *Mohesh Narain* v *Taruck Nath* (1893) 20 I A, 30, 37, 20 Cal, 487, *Malharjun* v *Narhari* (1901) 27 I A, 216 230, 25 Bom, 337, 352, *Vaithilinga Mudaliar* v *Srirangath Ammi* (1925) 52 I A, 322, 48 Mad, 883.

suit by a reversioner for possession of immovable property on the death of a Hindu female is Art. 141, even if it is necessary to decide in the suit whether an adoption was or was not valid (*j*).

Article 119 fixes a limit of six years to a suit "to obtain a declaration that an adoption is valid", the period beginning to run from the time "when the rights of the adopted son as such are interfered with". It must now be taken that this also applies only to suits for declaratory reliefs and not to suits for recovery of possession (*k*).

A suit for a declaration that an adoption is invalid is a representative suit, and the reversioner bringing it does so on behalf of himself and the whole body of reversioners (*l*). According to the Madras High Court, all of them have but a single cause of action, and the time begins to run from the date when the adoption becomes known to the next reversioner (*m*).

Creates right not status.

§ 221. Neither the law of Estoppel nor the Statute of Limitations can make a person an adopted son if he is not one. They can secure him in the possession of certain rights, which would be his if he were adopted, by shutting the mouths of particular people, if they propose to deny his adoption; or, by stopping any suit which might be brought to eject him from his position as an adopted son. But if it becomes necessary for the person who alleges himself to have been adopted to prefer a suit to enforce rights of which he is not in possession, he would be compelled strictly to prove the validity of his adoption, as against all persons but the particular individuals who were precluded from disputing it.

Widow cannot adopt to herself

§ 222. It is hardly necessary to say that, as under the ordinary Hindu law, an adoption by a widow must always be to her husband, and for his benefit, an adoption made by

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(*j*) *Kalyanadappa* v. *Chanbasappa* (1924) 51 I A, 220, 48 Bom, 411 revg, 41 Bom., 728, overruling *Srinivasa Sargerar* v. *Balwant Venkatesh* (1913) 37 Bom, 513 and approving *Velaga Mangamma* v *Bandlamudi* (1907) 30 Mad, 308, *Padmalav* v *Fakira Debya* (1931) 60 M L.J, 619 P.C.

(*k*) *Bhagirathi* v *Appa* (1934) 58 Bom., 280, *Lali* v *Murledhar* (1902) 24 All., 195, *Chandania* v *Salig Ram* (1904) 26 All., 40, *Jagannath* v *Ranjit* (1898) 25 Cal, 354; see the dissenting judgment of Bhashyam Iyengar, J., in *Ratnamasari* v. *Akilandammal* (1903) 26 Mad., 291, *Gangabai* v *Tarabai* (1902) 26 Bom, 720, and (1903) 26 Mad, 291 *supra* are no longer good law.

(*l*) *Venkatanarayana* v. *Subbammal* (1915) 42 I A., 125, 38 Mad, 406, (1924) 51 I A, 228, 233-4, 48 Bom., 411 *supra*.

(*m*) *Polepeddi Venkatasivayya* v. *Polepeddi Ademma* (1921) 44 Mad., 218; see *Varamma* v. *Gopala* (1918) 41 Mad, 659 F.B.; but see *Das Ram Chowdhury* v. *Thirtha Nath Das* (1924) 51 Cal., 161.

her to herself alone would not give the adopted child any right, even after her death, to property inherited by her from her husband (*n*). Nor, indeed, to her own property, however acquired, such an adoption being nowhere recognized as creating any new *status*, except in Mithila, under the *Kritrima* form With this exception a Hindu woman can in no circumstances adopt a son to herself even if she were a prostitute (*o*).

Adoption of daughters.

Nandapandita in his Dattaka Mimamsa would construe '*putra*' (or son) as including a daughter and he draws the inference that on failure of a daughter, a daughter of another could be adopted He supports his conclusion by referring to ancient precedents, such as the adoption of Shanta, the daughter of King Dasaratha by King Lomapada and the adoption of Pritha or Kunti, the daughter of Sura by Kunti Bhoja (*p*) This view is sharply criticised by Nilakantha in the Vyavahara Mayukha (*q*). It is now settled that the adoption of a daughter is invalid under the Hindu law (*r*) But among dancing girls it was customary, in Madras and Pondicherry and in Western India, to adopt girls to follow their adoptive mother's profession, and the girls so adopted succeeded to their property No particular ceremonies were necessary, recognition alone being sufficient (*s*). In Calcutta and Bombay, however, such adoptions have been held illegal (*t*) But in Madras, an adoption of a daughter by a dancing girl, where it is not for the purpose of prostitution, has been held to be valid by custom (*u*) The

Among dancing girls.

(*n*) *Choudhry Pudum* v. *Koer Oodey* (1869) 12 M.I.A., 350, 356.

(*o*) *Narendra Nath Bairagi* v *Dina Nath Das* (1909) 36 Cal, 824.

(*p*) Dat Mima, VII, 30, 34

(*q*) V Mayukha, IV, V, 6-7

(*r*) *Gangabai* v *Anant* (1889) 13 Bom, 690 In re *Munshi Ram* (1931) 12 Lah, 658, 660, 661, *Ram Piari* v *Diwan Shiv Ram* AIR 1931 Lah, 659 (2).

(*s*) *Venkatachellum* v *Venkataswamy* Mad Dec of 1856, 65, Stra Man, ss 98, 99, Steele, 185, 186, Sorg II L, 321, Co Con, 90, 124, 337, 341 In the absence of a special custom, and on the analogy of an ordinary adoption, only one girl can be adopted *Venku* v *Mahalinga* (1888) 11 Mad., 393, *Muttukannu* v *Paramasami* (1889) 12 Mad, 214, *Shanmugam Pillai* v. *Krishnaveni* 1931 M W N., 288.

(*t*) *Hencower* v *Hanscower* 2 M. Dig, 133; *Mathura* v *Esu* (1880) 4 Bom, 545, *Hira Naikin* v *Radha Naikin* (1913) 37 Bom., 116. See also *Guddati* v *Ganapati* (1912) 23 M.L J, 493.

(*u*) *Veeranna* v. *Sarasiratnam* (1936) 71 M.L.J, 53, (1936) M W N, 555, in which a Bench of the Madras High Court has reviewed all the authorities.

question of the legality of such adoptions has already been discussed (*u*[1]).

§ 223. KRITRIMA ADOPTION.—According to the *Dattaka Mimamsa* the *Kritrima* form is still recognized by the general Hindu law, since the modern rule, which refuses to recognize any sons except the legitimate son and the son given, includes the *Kritrima* under the latter term (*v*). But the better opinion seems to be that this form is now obsolete, except in the Mithila country where it is the prevalent species (*w*), and among the Nambudri Brahmans of the West Coast where it exists along with the usual form (*x*). It is not known in the Punjab (*y*). Prevails in Mithila.

The *Kritrima* son is thus described by Manu (*z*): "He is considered as a son made (or Kritrima), whom a man takes as his own son, the boy being equal in class, endued with filial virtues, acquainted with (the) merit (of performing obsequies to his adopter) and with (the) sin (of omitting them)." The Mitakshara adds the further definition "being enticed by the show of money or land, and being an orphan without father or mother; for, if they be living, he is subject to their control" (*a*). Described

§ 224. No ceremonies or sacrifices are necessary to the validity of a *Kritrima* adoption. "The form to be observed is this: At an auspicious time, the adopter of a son having bathed, addressing the person to be adopted, who has also bathed, and to whom he has given some acceptable chattel, says: 'Be my son.' He replies: 'I am become thy son.' The giving of some chattel to him arises merely from custom. It is not necessary to the adoption. The consent of both parties is the only requisite; and a set form of speech is not essential" (*b*). Ceremonies.

(*u*[1]) See *ante* § 37

(*v*) Dat. Mima., II, 65

(*w*) Suth. Syn., 663, 674, 3 Dig., 276, 2 Stra. H.L., 202, note to *Sutputtee* v. *Indranund* 2 S.D., 173 (221), Madhaviya, s. 32 Mr. Sarvadhikari says (526) that this form of adoption is still practised in Bihar, Benares and other places, citing the note to *Strikant Sarma* v. *Radhakant* 1 S.D.A., 15 (19); *Kamla Prasad* v *Murli Manohar* (1934) 13 Pat., 550.

(*x*) *Vasudevan* v. *The Secretary of State* (1888) 11 Mad., 157, 174, 176.

(*y*) *Shri Dev* v. *Dwaraka Das* A I R. 1933 Lah., 1050.

(*z*) Manu, IX, 169.

(*a*) Mit., I, XI, 17.

(*b*) *Rudradhara*, cited in note to *Mitakshara*, I, xi, 17; 1 W. MacN., 98; *Kullean* v. *Kirpa* 1 S.D., 9 (11), *Durgopal* v. *Roopun* 6 S.D., 271 (340).

§ 225 The consent of the adoptee is necessary to an adoption in this form (*c*), and the consent must be given in the lifetime of the adopting father (*d*) This involves the adoptee being an adult Consequently there appears to be no limit of age Beyond the requirement that the *Kritrima* son should be of the same caste as the adopter, there does not appear to be any other restriction Neither the performance of his *upanayana* nor marriage in the natural family is a bar to his adoption in the *Kritrima* form (*e*). It appears that in the Mithila country, a minor can be adopted in this form with the consent of his parents (*f*) The Mitakshara however states that it is an orphan who can be adopted in the *Kritrima* form, it seems therefore he should be an adult It would however seem that the *Kritrima* form of adoption mentioned in the Smritis is not its modern form as prevalent in the Mithila country (*g*). There, the *Kritrima* form is said to be now in almost universal use and the word *'kartaputra'* will generally refer to *Kritrima* adoption, but it is at times used in respect of the *dattaka* son (*h*)

Only adult.

§ 226 A *Kritrima* son "does not lose his claim to his own family, nor assume the surname of his adoptive father, he merely performs obsequies, and takes the inheritance" (*i*)

Results of adoption

Accordingly, the *Kritrima* son losing no rights of inheritance in his natural family, becomes the son of two fathers to this extent, that he takes the inheritance of his adoptive father, but not of the father's father, or other collateral relations, nor of the wife of his adoptive father, or her relations (*j*) Nor do his sons or other heirs take any interest in the property of the adoptive father, the relationship between adopter and adoptee being limited to the contracting parties themselves, and not extending further on either

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(*c*) Suth Syn, 673, Baudh, II, 2, 14, 2 W MacN, 196

(*d*) *Sutputtee* v. *Indranund* 2 S D., 173 (221), *Durgopal* v *Roopun* 6 S D, 271 (340), *Luchmon* v *Mohun* 16 W R, 179

(*e*) 2 Stra H L, 204, 2 W. MacN, 196, *Shibo Koeree* v *Joogun* 8 W R, 158, 1 W MacN, 76, *Chowdree* v *Hunooman* 6 S D, 192 (235), *Oomum Dut* v. *Kunhia* 3 S D, 145 (192)

(*f*) *Lalita Prasad Chaudhury* v *Sarnam Singh* A I R 1933 Pat, 165, reversed on another point in A I R 1936 P C, 304

(*g*) W. MacN, H L, Vol I, 95-100

(*h*) A.I.R. 1936 P C, 304 *supra*

(*i*) Dig., II, 409, n, 1 W MacN, 76

(*j*) See note to *Srinath Serma* v. *Radhakunt* 1 S D., 15 (19), 1 W MacN., 76; *Deepoo* v. *Gowreeshunker* 3 S D, 307 (410), *Sreenarain Rai* v. *Bhya Jha* 2 S.D, 23 (29, 34), *Shibo Koree* v *Jugun* 8 W R, 155.

side (*k*). Among the Nambudri Brahmans where it is desired to perpetuate the line of the adopter, the adopted son receives a special appointment to marry and raise up issue for the *illom* or line of the adopter (*l*). A *kartaputra* is liable to supersession by the subsequent birth of an aurasa son (*m*).

Female may adopt to herself.

§ 227. It has already been stated that in Mithila a woman cannot adopt to her husband, after his death, whether she has obtained his permission or not. But she is at liberty to do in Mithila, what she can do nowhere else, *viz.*, adopt a son *to herself*, and this she may do either during her husband's life, or after his death. And husband and wife may jointly adopt a son, or each may adopt separately (*n*)

Illatom adoption.

§ 228 A custom known as that of *Illatom* adoption prevails among the *Reddi* and *Kamma* castes in the Madras Presidency. It consists in the affiliation of a son-in-law, in consideration of assistance in the management of the family property. No religious significance appears to attach to the act. Neither the execution of any document nor the performance of any ceremony is necessary. The incidents of an *illatom* adoption have not become crystallized into fixed rules of law by a long course of decisions (*o*). To constitute a person an *illatom* son-in-law, a specific agreement is necessary. It is not sufficient merely to show that he lived in his father-in-law's house, assisted his widow or managed the

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(*k*) *Juswant* v. *Doolee* 25 W R, 255

(*l*) *Vasudevan* v *Secretary of State for India* (1888) 11 Mad, 157, 175, 179

(*m*) *Kanhaiya Lal Sahu* v *Mt Suga Kuer* (1925) 4 Pat, 824

(*n*) Futwah of Pundits, *Sree Narain Rai* v *Bhya Jha* 2 S D, 23 (39, 34), 1 W MacN, 101, *Collector of Tirhoot* v *Huropershaud* 7 W R, 500, *Shibo Koeree* v *Jugan* 8 W R, 155 Among the Buddhists of Burma, the term *Kritrima* adoption is applied to cases where one or more girls are adopted into a family as daughters The essential part of such an adoption is publicity and notoriety of the fact of adoption—publicity of the relationship and of the intention of the adoptive parents in regard to the inheritance of their estate by the adoptive child. There are two kinds of adoption—the *Keitima* child who is obtained from its own parents and openly brought up with a view to inherit; the *Apatitha*, who has no parents and has been casually picked up and adopted. The former stands in the same position as a natural child for all purposes, including the right to inherit The latter is excluded from inheritance by either natural or *Kritrima* children. *Ma Me Gale* v. *Ma Sa Yi* (1904) 32 I.A., 72, 32 Cal., 219, *Maung Thse* v *Maung* Tun Pe (1918) 44 I.A, 251, 45 Cal., 1

(*o*) *Subba Rao* v *Mahalakshmamma* (1931) 54 Mad., 27, 55.

property (*p*). The existence of a custom in some *Kamma* families of Guntur of the affiliation of an *illatom* son-in-law when there is a son living has been recognised by the Madras High Court and by the Privy Council (*q*) After the death of the adopter he is entitled to the full rights of a son, even as against natural sons subsequently born or a son subsequently adopted in the usual manner (*r*). The affiliation of a son-in-law does not deprive the man who takes him in adoption of the right to alienate his property *inter vivos* or even to devise it by will (*s*) The *illatom* son-in-law has no right to claim partition with his father-in-law unless there is an express agreement or custom (*t*) The *illatom* son is not a coparcener with the natural born or adopted son, though they may live together like an undivided family Consequently there is no survivorship between them (*u*) His share passes to his own heirs as if it were separate property (*v*). As between himself and his own descendants he takes the property as self-acquisition, and therefore free from all restraints upon alienation (*w*) The property so taken descends to his relations, not to the heirs of the adopter (*x*) while he himself loses no rights of inheritance in his natural family (*y*). Apart from any special custom, the descendants of an *illatom* son-in-law cannot claim rights of collateral inheritance to the estate of the last holder of the estate An *illatom* son-in-law is not therefore an adopted son in any sense (*z*)

(*p*) (1931) 54 Mad, 27, *supra*, *Gadiyam Narayudu* v *Venkamma* (1912) 22 M L J, 265, *Sidda* v *Subbamma* 10 Mys., L J, 352, 37 Mys H C R, 320, taking of a person as *illatom* followed by marriage even after the death of the taker seems by custom sufficient *Venkatachellam* v *Butchamma* (1911) 2 M W N., 193.

(*q*) *Nalluri Krishnamma* v *Kamepalli Venkatasubbayya* (1919) 46 I A, 168 42 Mad, 805, see also unreported case in S A 45 of 1905

(*r*) *Hanumantamma* v *Rami Reddi* (1881) 4 Mad, 272, *Chinna Obayya* v *Sura Reddi* (1898) 21 Mad, 226, *Narasimha* v *Veerabadra* (1894) 17 Mad, 287

(*s*) (1931) 54 Mad, 27, 55 *supra*

(*t*) *Chinna Obayya* v *Sura Reddi* (1897) 21 Mad, 226, (1931) 54 Mad, 27, 56 *supra*

(*u*) *Emi Sooramma* v *Yarabati Varahalu* (1926) 101 I C, 828, *Malla Reddi* v *Padmamma* (1894) 17 Mad, 48, *Muthala* v *Sankarappa* (1935) 67 M L J, 706

(*v*) *Chenchamma* v *Subbayya* (1886) 9 Mad, 114, (1894) 17 Mad, 114 *supra*

(*w*) *Chella Papi* v *Chella Koti* (1872) 7 Mad H.C, 25

(*x*) *Ramakrishna* v. *Subbakka* (1889) 12 Mad, 442

(*y*) *Balarami* v *Pera* (1883) 6 Mad, 267.

(*z*) *Muthala* v *Sankarappa Reddiar* (1935) 67 M L J, 706, A.I R 1935 Mad., 3 (2),

CHAPTER VI.

FAMILY RELATIONS.

Minority and Guardianship.

Period of minority under Hindu law.

§ 229. MINORITY under Hindu law terminates at the age of sixteen. There is, however, a difference of opinion as to whether this age is attained at the beginning, or at the end, of the sixteenth year. Sanskrit writers seem to take the former view (*a*), and this was always held to be the law in Bengal (*b*). The latter limit is stated to be the rule in Mithila and Benares, and was at one time followed in Southern India and apparently in Bombay (*c*). The only expression of judicial opinion on the subject in Southern India agrees with the Bengal view (*d*).

The Indian Majority Act (IX of 1875) (*e*) lays down, as a general rule for all persons domiciled in British India, that in the case of every minor of whose person or property a guardian has been, or shall be, appointed by any Court of Justice, and of every minor under the jurisdiction of any Court of Wards, minority terminates at the completion of the twenty-first year; in all other cases, at the completion of the eighteenth year (*f*).

(*a*) Daya Bhaga, III, 1, 17, note; Dat. Mima., IV, 47; Dig., I, 202; Nar., I, 35-36, Kulluka's gloss on Manu, VIII, 27, Vyav. Dharp, I, 591, Vyav. Chand., II, 590, The foundation of the rule is the text of Narada· "A child is comparable to an embryo upto his eighth year. A youth who has not yet reached the age of sixteen is called *Poganda*. Afterwards he is no longer a minor and independent in case his parents are dead" (I, 35-36). On the question whether minority terminates at the end or at the beginning of the sixteenth year, Dr. Jolly says that most, if not all, Indian writers take the latter view. Asahaya, the commentator on Narada, was apparently of the same opinion (S.B E., Vol. XXXIII, p. 51).

(*b*) 1 W. MacN., 103, 2 W. MacN., 220, 288 (note); *Cally Churn* v. *Bhuggobutty* 10 B.L.R, 231, 19 W.R, 110, *Mothoor Mohun* v *Surendro* (1876) 1 Cal, 108 F B.

(*c*) W. MacN., *up sup*; 1 Stra. H L, 72; 2 Stra. H L, 76, 77, *Lachman* v *Rupchand* 5 S.D., 114 (136); *Shivji* v. *Datu* (1875) 12 Bom. H.C, 281, 290; *Ramesh Chandra Das* v. *Maharaj Birendra Kishore* (1924) 29 C.W.N., 287, 289; (under the Benares school, he must have completed his sixteenth year).

(*d*) *Sattiraju* v. *Venkataswami* (1917) 40 Mad., 925, 931.

(*e*) The Act extends to the subjects of the Crown in the Indian States also. See also the definition of 'minor' in S. 2 of the Indian Succession Act (XXXIX of 1925).

(*f*) *Khwahish* v. *Surju* (1881) 3 All., 598, *Reade v. Krishna* (1886) 9 Mad., 391; *Mungniram* v. *Gursahai* (1890) 16 I.A., 195, 17 Cal., 347,

Where a guardian has once been appointed by a Court of Justice, minority will last till 21, whether the guardian so appointed continues to act or not, or has or has not taken out a certificate (*g*). An appointment by the Court of a guardian conditional on his furnishing security is not a valid appointment and the minor attains majority when he completes eighteen (*h*) Where the Court of Wards has assumed jurisdiction, the disability of minority only continues so long as the Court of Wards retains charge of the minor's property and no longer (*i*) The Act does not affect the capacity of any person in respect of marriage, dower, divorce, or adoption (*j*), but it affects his power to execute a valid will (*k*) Where the fact of minority is itself in dispute, a certificate of guardianship is not evidence of the fact (*l*), nor is a horoscope cast by a deceased person admissible for that purpose (*m*), though it could doubtless be used to corroborate the testimony of a living witness who had cast it.

§ 230. Under the Guardians and Wards Act (VIII of 1890), no guardian of the property of an infant can be appointed where the minor is a member of an undivided family governed by the Mitakshara law or Aliyasantana or Marumakkattayam law, the reason being that the infant's interest is not individual property (*n*) The High Court has inherent jurisdiction to

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(*g*) *Rudra Prokash* v *Bholanath Mukherjee* (1886) 12 Cal, 612 *Girish Chunder* v *Abdul Selam* (1887) 14 Cal, 55, *Gordhan Das* v *Harivalubh Das* (1897) 21 Bom, 281, *Sadho Lal* v *Murlidhar* (1907) 29 All, 672 F.B, *Jagon Ram* v *Mahadeo Prasad* (1909) 36 Cal, 768 As to the duration of a guardianship *ad litem*, see *Jwala Dei* v *Pirbhu* (1892) 14 All, 35, *Shivram* v *Krishnabai* (1907) 31 Bom, 80

(*h*) *In re Venkatesaperumal* (1926) 49 Mad, 809 F B

(*i*) *Birjmohun Lal* v *Rudra Perkash* (1890) 17 Cal, 944

(*j*) *Arulananda Muthu* v *Ponnuswami* A I R 1922 Mad, 1 12 M L.J, 129

(*k*) *Hardwari* v *Gomi* (1911) 33 All, 525, *Bai Gulab* v *Thakorelal* (1912) 36 Bom, 622, *Krishnamachariar* v *Krishnamachariar* (1915) 38 Mad, 166, *In the goods of the L F C Miranda* (1924) 28 C.W N., 527

(*l*) *Satischunder* v *Mohendro Lal* (1890) 17 Cal, 849, *Gunjra Kuar* v *Ablokh Pande* (1896) 18 All, 478, *Saidunnissa* v *Ruqaiya Bibi* (1931) 53 All, 428, 435

(*m*) *Krishnamachariar* v *Krishnamachariar* (1915) 38 Mad, 166 *Nirmalanalini* v *Kamalabala* (1932) 36 C W N, 838

(*n*) *Gharibullah* v *Kholak Singh* (1903) 30 I A 165, 25 All, 407 416, *Shamkuar* v *Mohananda* (1892) 19 Cal., 301, *Harihar* v *Mathura* (1908) 35 Cal, 561, *Kajikar* v *Maru Devi* (1909) 32 Mad, 139 *Bandhu Prasad* v *Dhiraji Kuar* (1898) 20 All, 400, *Jagannath Prasad* v *Chunnilal* A I.R. 1933 All, 180, *Rattan Chand* v *Ram Kishen* A.I R 1928 All, 447, *Banamali* v *Arjun Sen* A I R 1932 Cal, 730, 36 C W N, 769, *Jambagathachi* v *Rajamannar* (1920) 11 M L W 596, *Hiran Devi* v. *Chanan Shah* A I R. 1937 Lah., 918

appoint a guardian of the property of a minor who is a member of a joint Hindu family even where the minor's property is an undivided share in the family property(*o*), unlike under the Guardians and Wards Act. Of course the Court has power under the Act to appoint a guardian in case the infant has self-acquired or separate property (*p*) or where the infant is governed by the Dayabhaga law. When all the coparceners of a Mitakshara joint family are minors, the Court can appoint a guardian of the property of the minors, though in such a case as soon as the eldest member of the family attains majority, the guardianship is *ipso facto* determined as regards all the members (*q*). A guardian of the person of a minor member of an undivided Mitakshara family may however be appointed by the Court (*r*).

§ 231. The Hindu law vests the guardianship of the minor in the sovereign as *parens patriae*(*r*[1]). Necessarily this duty is delegated to the child's relations. Of these, the father, and next to him the mother, is his natural guardian; any other relative must derive his authority from the Courts (*s*) Guardianship.

(*o*) *In re Mahadeo Krishna Rupji* A.I.R. 1937 Bom, 98, *In re Dattatraya* (1932) 56 Bom, 519, *Narsi Tokersey* v. *Sachindranath* (1930) 54 Bom, 75, *In re Jairam Luxmon* (1892) 16 Bom., 634, *In re Jagannath Ramji* (1895) 19 Bom, 96, *In re Munilal Hargovan* (1901) 25 Bom, 353, *In re Bijay Kumar Singh* (1932) 59 Cal., 570, *In re Hari Narain Das* (1923) 50 Cal., 141, *In the matter of Govind Prasad* (1928) 50 All, 709 In *Raja of Vizianagaram* v. *The Secretary of State for India* [1937] Mad, 383, the Madras High Court held that under cl. 17 of the Letters Patent, the High Court has jurisdiction in regard to Indian minors in the mofussil as well and that the jurisdiction was saved by S. 3 of the Guardians and Wards Act (VIII of 1890).

(*p*) *Sadhu Ram* v. *Pirthi Singh & Co.* A I.R. 1936 Lah., 220, *Banamali Patra* v *Arjun Sen* A.I.R. 1932 Cal., 730.

(*q*) *Bindaji* v *Mathurabai* (1906) 30 Bom, 152, *Ramchandra* v *Krishnarao* (1908) 32 Bom., 259; *Shamnath Sahi* v. *Lalji Chaube* (1913) 35 All., 150; *Jagannath Prasad* v. *Chunnilal* A.I.R. 1933 All., 180, *Chandrapal* v *Sarabjit* A I R. 1935 Oudh, 334, 16 Luck., 67.

(*r*) *Virupakshappa* v. *Nilgangava* (1895) 19 Bom., 309 F.B. *Goura* v. *Gujadhur* (1880) 5 Cal., 219, *Jhabbu Singh* v. *Ganga Bishan* (1895) 17 All, 529, 531; *Jambagathachi* v. *Rajamannar* (1920) 11 M L W, 596.

(*r*[1]) Manu, VIII, 27, IX, 146, 190, 191; Gaut., X, 48; Vishnu, III, 65, Vas, XVI, 7, F MacN., 25; 1 Stra. H.L., 71; 2 Stra. H.L., 72-75

(*s*) The Guardians and Wards Act S. 19 (*b*). This is cited in *Chandulal* v *Mukhandi* A I R. 1925 Lah, 503, *Thayammal* v. *Kuppanna Koundan* (1915) 38 Mad., 1125; *Lachmi Narain* v. *Balaram Sahai* (1917) 2 Pat L J, 190, *Kaulesra* v. *Jorai* (1906) 28 All., 233; *Mt Bhikuo Koer* v *Mt Chamela Koer* (1898) 2 C.W.N., 191; *Purushottama* v. *Brundavana* A I.R 1931 Mad., 597. A father is entitled to the custody of his child in preference to the mother. *In re Prankrishna Surma* (1882) 8 Cal., 969.

Order of guardianship

In default of the mother, or if she is unfit to exercise the trust, his nearest male kinsmen should be appointed, the paternal kindred having the preference over the maternal (*t*). The Court has no power to appoint or declare any one as a guardian of the person of a minor whose father is living and is not, in its opinion, unfit to be the guardian of his person (*u*). Nor can a father be *appointed* guardian of his minor child though he can obtain an order directing the return of the child to his custody (*v*). A Hindu father can by will appoint a guardian of the person of his child, even to the exclusion of the mother, its natural guardian (*w*), a Hindu mother cannot (*x*). Of course, in an undivided family, governed by Mitakshara law, the management of the whole property, including the minor's share, would be vested not in the mother, but in the eldest male It would be otherwise where the family was divided (*y*) or where the minor has separate property But this would not interfere with her right to the custody of the child itself (*z*) A Hindu father or other

Parents.

(*t*) This is cited *In re Gulbai and Lilbai* (1908) 32 Bom., 50, 53, *Gungama* v *Chendrappa* Mad Dec of 1859, 100, 1 W MacN., 103, *Mooddookrishna* v *Tandavaroy* Mad Dec of 1852, 105, *Muhtaboo* v *Gunesh* S D of 1854, 320 Under Mithila law, however, it has been held that the mother is entitled to be guardian of the person of her minor son in preference to the father *Jussoda* v *Lallah Nettya* (1880) 5 Cal., 43 As to the claim of the step mother, see *Lukmee* v *Umurchund* 2 Bor., 144 [1631], *Ram Bunsee* v *Soobh Koonwaree* 7 W R., 321, *Baee Sheo* v *Ruttonjee* Morris, Pt I, 103 As to the Punjab, see Punjab Customary Law, II, 133.

(*u*) The Guardians and Wards Act, S 19 (*b*), *Besant* v *Narayaniah* (1915) 41 I A., 314, 38 Mad., 807, *Ma Ya Shin* v *Nehal Singh* A I R 1937 Rang., 360.

(*v*) *Lakshma Reddi* v *Alla Vira Reddi* A I R 1925 Mad., 1085

(*w*) *Soobah Doorgah Lal Jha* v *Raja Neelamund Singh* 7 W R., 74, *Alagappa Ayyangar* v *Mangathai Ammangar* (1917) 40 Mad., 672, *Dr Albrecht* v. *Bathee Jellamma* (1912) 22 M L J., 247, *Konthalathammal* v *Thangaswamy* (1923) 46 Mad., 873, 881, *Deba Nand* v. *Anandmani* (1921) 43 All., 213, *Amirthavalli Ammal* v *Sironmani Ammal* (1938) 1 M.L J., 422

(*x*) Where she has professed to do so, the actual appointment must be made under Act VIII of 1890, ss 7, 8, *Venkayya* v *Venkata* (1898) 21 Mad., 401, see *Pathan Alikhan* v *Bai Panibai* (1895) 19 Bom 832 Where the father has appointed a guardian by will, no other guardian can be appointed under Act VIII of 1890, s 7 (3), until it is established that the will is invalid *Sayad Shahu* v. *Hapija* (1893) 17 Bom., 560, see (1938) 1 M L J., 422 *supra*

(*y*) *Alimelammal* v *Arunachellam* (1866) 3 Mad. H C, 69, *Bossonauth* v *Doorgapersad* 2 M. Dig., 49, *Gourahkoeri* v *Gujadhur* (1880) 5 Cal., 219 But she can sue on his behalf if the proper guardian refuses to do so. *Mokrund Deb* v *Ranee Bissessuree* S D. of 1853, 159.

(*z*) *Kooldeep* v *Bajbunsee* S D. of 1847, 557. After the Hindu Women's Rights to Property Act, the position of a woman who succeeds to her husband's coparcenary interest will not be different,

senior coparcener of a Mitakshara family has no power to appoint, by will or otherwise, testamentary guardians of the coparcenary properties of his minor sons or brothers or nephews as the case may be (*a*). But a Hindu authorising his widow to adopt can, at the same time, appoint a guardian by will for the boy to be adopted, even though the property is ancestral (*b*).

Husband.

The husband, if of full age, is the guardian of his wife, and the fact that she has not attained puberty is immaterial. Under section 19 of the Guardians and Wards Act, the husband's right to be guardian of the person of his minor wife, unless he is unfit, cannot be overridden by the Court, and under section 21 of the Act, a minor husband can apparently act as the guardian of his own wife or child (*c*). In *Arumuga* v. *Viraraghava* (*d*), however, it was held that by the general custom among Hindus in the province of Madras, the husband was not entitled to the actual custody of the wife, till she attains maturity, unless such custody should be necessary in the interest of the minor wife. But the Act does not except custom. The husband's relations, if any exist within the degree of sapinda relationship, are the guardians of a minor widow, in preference to her father and his relations (*e*). But if it is to the interest or welfare of the minor to do so, the Court may appoint her father in preference to the sapindas of her husband (*f*).

Remarriage of mother.

On re-marriage, a mother loses her preferential right to the guardianship of the children of her first marriage (*g*) except where such re-marriage is permitted by custom (*h*). But

(*a*) *Chidambaram Pillai* v *Rangaswami* (1918) 41 Mad., 561 F.B., *Hari Lal* v *Bai Mani* (1905) 29 Bom., 351, *Brijbhukandoss* v. *Ghashiram* (1935) 59 Bom., 316 F B, overruling *Mahableshwar* v. *Ramchandra* (1914) 38 Bom., 84, see also *Venkatraman* v. *Janardhan* (1928) 52 Bom., 16, *Ambalavana* v *Gowri* A.I.R. 1936 Mad., 871.

(*b*) *Jagannadha Rao* v. *Ramayamma* (1921) 44 Mad., 189.

(*c*) *Audiappa* v *Nallendrani* (1916) 39 Mad, 473, *Lakshmidevamma* v *Dhanalakshmamma* 42 Mys H C R, 464

(*d*) (1901) 24 Mad, 255, *Akamma* v. *Puttaiya* 3 Mys., 119, *Lakshmanachari* v. *Subbamma* 12 Mys. L.J, 180, 39 Mys. H.C., 198

(*e*) *Khudiram Mookerjee* v *Bonwari* (1889) 16 Cal, 584, *Chinna Alagumperumal* v *Vinayagathammal* (1928) 55 M.L J, 861; *Mt. Ganga Devi* v. *Narshing Das* A.I.R. 1935 Lah., 25.

(*f*) *Tota Ram* v. *Ram* (1911) 33 All., 222, *Suryyamoni* v. *Kali Kanta* (1900) 28 Cal., 37, *Navnitlal* v. *Purshotam* (1926) 50 Bom., 268.

(*g*) See *Ganga Pershad Sahu* v. *Jhalo* (1911) 38 Cal., 862.

(*h*) *Mt. Indi* v. *Ghania* (1920) 1 Lah., 146; *Mt. Ram Labhai* v. *Durgadas* (1934) 15 Lah., 28; compare *Fakirappa* v. *Savitrewa* (1921) 23 Bom. L.R., 482 overruling *Putlabai* v. *Mahadu* (1908) 33 Bom., 107 and following *Panchappa* v. *Sanganbasawa* (1899) 24 Bom., 89; but see *Raoji Thakaram* v. *Hemraj Sadaram* A.I.R. 1923 Bom., 213; see Hindu Widows' Remarriage Act (XV of 1856) S. 3.

there is nothing either in Hindu or in statutory law to make it obligatory on a Court to remove her from that position. The Court has an entire discretion in the matter: it acts solely with a view to the best interests of the children, it must consider the claim of the mother, but must treat it as a claim made by a stranger If it thinks it is in the best interests of the children to appoint her, it is free to do so.

Guardianship of adopted son.

A father loses his right by giving his son in adoption (*i*) and ordinarily the adoptive father or in his absence the adoptive mother is the guardian of the adopted son.

Loss of caste

After the Caste Disabilities Removal Act (XXI of 1850), the natural guardian does not forfeit his right of guardianship by loss of caste (*j*). Of course, any guardian, however appointed, may be removed for proper cause (*k*). Little is to be found on the subject of guardianship in works on Hindu law The matter is principally regulated by statute (*l*).

Right of guardian to custody of minor

§ 232. The guardian has a prima facie right to the possession of the infant, a right which arises out of his obligations in respect of the child (*m*), he cannot therefore be deprived of it, even by the desire of the minor himself, except upon sufficient grounds The father is the natural guardian of his children, but this guardianship is in the nature of a sacred trust, and he cannot therefore during his lifetime substitute another person to be guardian in his place. He may entrust the custody and education of his children to another, but the authority he thus confers is essentially a revocable authority, and, if the welfare of his children require

(*i*) *Lakshmibai* v *Shridar* (1879) 3 Bom, 1; *Sree Narain Mitter* v. *Sreemutty Kishen Soondory* (1873) Supp Vol I A 149, 163, *Monomohini Dasi* v. *Hari Prasad Bose* (1925) 4 Pat, 109, but see *Rathnammal* v. *Govindaswami* A.I.R. 1934 Mad, 44

(*j*) *Kanahi* v. *Biddya* (1879) 1 All., 549, *Kaulesra* v *Jorai* (1906) 28 All., 233.

(*k*) *Alimelammal* v. *Arunachellam* (1866) 3 Mad. H.C, 69, *Gourmonee* v. *Bamasoonderee* S D of 1860, I, 532, *Skinner* v *Orde* (1871) 14 M I.A, 309.

(*l*) For the texts of Hindu law relating to the protection of estate of infants, see *Ganga Pershad* v *Jhalo* (1911) 38 Cal, p. 867. See the Guardians and Wards Act (VIII of 1890) and the various Court of Wards Acts, Madras Court of Wards Act I of 1902, Bombay Court of Wards Act I of 1905, Bengal Court of Wards Acts III of 1881 and I of 1906; U P Act IV of 1912; The Punjab Act II of 1903 Where the law requires the appointment of a guardian under any statute, no greater powers can be exercised by a guardian *de facto* than would have been vested in him by statute, if he had been duly appointed, *Abhassi Begam* v. *Rajroop Koonwar* (1879) 4 Cal, 33

(*m*) See per Vaughan Williams and Stirling, L, JJ., *Humphreys* v. *Polak* [1901] 2 K.B., 385.

it, he can, notwithstanding any contract to the contrary, take such custody and education once more into his own hands (*n*). If however his authority has been acted upon in such a way as to create associations or give rise to expectations on the part of the infants which it would be undesirable in their interests to disturb or disappoint, the Court will interfere to prevent its revocation (*o*). No Civil Court in the mofussil has jurisdiction to entertain a suit by a father for the custody of his child after the Guardians and Wards Act; but he can obtain an order on petition for his return from a competent Court, under section 25 of the Act (*p*). The Bombay High Court has however held that such a suit lies (*q*).

Change of religion by parents

§ 233. The fact that a father has changed his religion, whether the change be one to Christianity or from Christianity, is of itself no reason for depriving him of the custody of his children (*r*). The case of a change of religion by the mother would, however, be different. The religion of the father settles the law which governs himself, his family, and his property. "A child in India, under ordinary circumstances, must be presumed to have his father's religion, and his corresponding civil and social *status*" (*s*). Therefore, where a change of religion on the part of the mother would probably result in her seeking to change the religion and therefore the legal status of the infant, the Court would remove her from her position as

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(*n*) *Besant* v *Narayaniah* (1915) 41 I.A., 314, 38 Mad., 807; *Sukdeo* v. *Ramchunder* (1924) 46 All, 706; *The Queen* v. *Barnardo* 23 Q.B.D., 305, *Humphreys* v. *Polak, ub. sup.*

(*o*) *Besant* v. *Narayaniah* (1915) 41 I.A, 314, 38 Mad., 807 citing *Lyons* v *Blenkin* (1821) Jac., 245. See also *Pollard* v. *Rouse* (1910) 33 Mad., 288.

(*p*) *Sathi* v. *Ramandi Pandaram* (1919) 42 Mad., 647 F.B.; *Shamlal* v. *Bindo* (1904) 26 All, 594, *Lakshma Reddi* v. *Alla Vira Reddi* A.I.R. 1925 Mad, 1085; *Utma Kuar* v. *Bhagwanta Kuar* (1915) 37 All., 515; *Shadeo* v. *Mahraji* (1931) 9 Rang., 569.

(*q*) *Acharatlal* v *Chimanlal* (1916) 40 Bom., 600, *Sharifa* v *Munekhan* (1901) 25 Bom., 574, see *In the matter of Kashi Chunder Sen* (1882) 8 Cal, 266.

(*r*) *R.* v. *Bezonji* Perry O. C, 91; *Muchoo* v. *Arzoon* 5 W.R., 235, *Shamsingh* v. *Santabai* (1901) 25 Bom., 551. A Hindu father who becomes a Christian is *prima facie* entitled to say in what religion his infant child should be brought up; but his wishes are not conclusive and the Court may, where it would be injurious to the minor to give effect to the father's wishes, prevent him from altering the son's religion *Rev. Dr Albrecht* v *Bathee Jellamma* (1912) 22 M.L.J., 247, but see *Dasappa* v. *Chikama* 17 Mys., 324.

(*s*) *Skinner* v. *Orde* (1871) 14 M.I.A., 309, *Mokoond Lal* v. *Nobodip Chunder* (1898) 25 Cal., 881; *In the matter of Joshy Assam* (1896) 23 Cal., 290; *In re Saithri* (1892) 16 Bom., 307; compare *Kanahi* v. *Biddya* (1878) 1 All., 649 and *Kaulesra* v. *Jorai* (1906) 28 All., 233.

guardian (*t*). The question as to the extent and limitation of a father's right to determine in what religion his child shall be brought up has been discussed in many English cases (*u*). How far those decisions would be applied in India, where religion is not merely a matter of belief but is intimately connected with questions of caste and status, it is not easy to say. No doubt the equitable principle would be adhered to, that the paramount consideration is the welfare of the child, though its application to particular cases might prove extremely difficult

Change of religion by minor.

§ 231. The case of a child voluntarily leaving its parents has frequently occurred where there has been a conversion to Christianity (*v*). In *Reade* v. *Krishna* (*w*), where a Brahmin boy sixteen years of age, having left his father's house went to and resided in the house of a missionary where he embraced Christianity, the Madras High Court held, on a review of the previous decisions that the father was entitled to have the custody of his son. It may also be observed that it is a criminal offence under the Indian Penal Code to entice from the keeping of the lawful guardian a male minor under the age of fourteen, or a female minor under the age of sixteen (*x*).

English decisions

More recently the Indian Courts following the rules of equity as administered in England, have refused to give effect to any inflexible application of paternal rights over minor children The English practice, as deduced from recent cases, is laid down as follows in Seton on Decrees (*y*). "In equity

(*t*) *Durjapada Karmakar* v *Miss Baulean* (1915) 20 Cal W N, 608, *Veeraswami* v *Ratnamma* A I R 1928 Mad, 1087, *Ganesh Lala* v *Ratan Bai* A I.R 1937 Mad, 976, see *Abdul Rahman* v. *Jagannath* A.I R 1930 All, 86 (removal refused as too late)

(*u*) See *e.g*, *The Queen* v *Barnardo* 23 Q B D, 305, *Humphreys* v *Polak* (1901) 2 K B, 385

(*v*) *R* v *Nesbitt* Perry O. C., 103, 109, *Kulloor Narrainswamy's* case (1858) unreported, *Re Himnath Bose* (1863) 1 Hyde, 111.

(*w*) (1886) 9 Mad, 391. No agreement by which a parent surrenders to another the right to the custody of the child is binding, and in this respect the mother of an illegitimate child is in the same position as the father of one that is legitimate, *Reg.* v. *Barnardo* (1891) A.C, 388.

(*x*) Sections 361, 363. The consent, or wish, of the minor is quite immaterial, *Reg* v *Bhungee* 2 W R, Cr., 5, *Reg.* v. *Shooku* 7 W.R, Cr., 36.

(*y*) II, 884, 17 Hals, 2nd edn, p. 666; *Reg* v *Gyngall* (1893) 2 Q.B., 232; *Re Newton* (1896) 1 Ch., 740, *Re A and B* (1897) 1 Ch., 786; *Re Mathieson* (1918) 87 L.J. (ch.) 445, C.A.

a discretionary power has been exercised to control the fathers' or guardians' legal rights of custody, where their capricious exercise would materially interfere with the happiness and welfare of the child, or where such rights have been forfeited by misconduct or acquiescence, or where the father has so conducted himself, or is placed in such a position as to render it not merely better for the children, but essential to their welfare in some very serious and important respect that his rights should be superseded or interfered with" (*z*).

Illegitimate child.

§ 235. The mother is the natural guardian of an illegitimate child (*a*). But the putative father on whom the obligation to maintain falls has *prima facie* the preferential right to the custody (*b*). Where the mother has allowed the child to be separated from her and brought up by the father, or by persons appointed by him, the Court will not allow her to enforce her rights, especially if the result would be disadvantageous to the child by depriving it of the advantages of a higher mode of life and education (*c*). Her own continued immorality would of itself be a sufficient reason against handing over to her a child which was otherwise properly provided for (*d*).

Effect of contracts.

§ 236. The contractual capacity of a Hindu minor is governed by the provisions of the Indian Contract Act (IX of 1872). A Hindu minor's agreements are absolutely void and not merely voidable; and even if he is supplied with necessaries suited to his condition in life, no remedy could be obtained against himself personally, though under s. 68 the person who supplied the articles would be entitled to be reimbursed

(*z*) *Re Saithri* (1892) 16 Bom., 307, *Re Joshy Assam* (1896) 23 Cal., 290; *Mookoond Lal* v. *Nobodip Chunder* (1898) 25 Cal, 881; *Satyanarayana* v. *Narasayamma* A.I.R. 1924 Mad., 45, *Sukhdeo* v. *Ram Chandra* (1924) 46 All., 706, see *Audiappa* v. *Nallendrani* (1916) 39 Mad, 473, dissenting from *Bindo* v. *Shamlal* (1907) 29 All., 210, *Atchayya* v. *Kosaraju Naraharı* A.I.R., 1929 Mad., 81, doubting *Rev Dr. Albrecht* v. *Bathee Jellamma* (1912) 22 M.L.J, 247.

(*a*) *Venkamma* v *Savitramma* (1889) 12 Mad., 67, *In re Saithri* (1892) 16 Bom., 307

(*b*) *Premkuar* v. *Banarsi Das* (1934) 15 Lah., 630; *Ghana Kanta* v. *Gerali* (1905) 32 Cal., 479; *Kooverji Devji* v. *Motibai* A.I.R 1936 Sind, 63.

(*c*) *Lal Das* v. *Nekunjo* (1879) 4 Cal., 374 *Kariyadan Pokkar* v *Kayat Beeran* (1896) 19 Mad., 461

(*d*) *Venkamma* v. *Savitramma* (1889) 12 Mad., 67.

from his property (*e*). Being void, the contract of a minor cannot be ratified by him after he comes of age: and it makes no difference that a further advance or other fresh consideration is superadded to the original contract (*f*). Where that part of the contract into which he entered after attaining age is severable from the rest, it might be separately enforced

It is not within the competence of a manager of a minor's estate or of a guardian of a minor to bind the minor or the minor's estate by a contract for the purchase of immovable property, and as the minor is not bound by the agreement there is no mutuality and the minor cannot obtain specific performance of the contract (*g*). On the other hand, there is nothing in law to prevent a minor from being a transferee of property; and if a deed of sale has been executed in favour of a minor and no part of the consideration remains to be executed by him, he can sue for possession of the property (*h*) So too a mortgage executed in favour of a minor where the whole consideration has been paid (*i*)

(*e*) *Mohori Bibee* v *Dharmodas* (1903) 30 I A, 114, 30 Cal, 539, *Balwan Singh* v. *R Clancy* (1912) 39 I A., 109, 34 All, 296 As to what are necessaries see, *Jagon Ram* v *Mahadeo* (1909) 36 Cal, 768, *Mahmud Ali* v. *Chinki Shah* (1930) 52 All, 381, and the reasonable expenses of a sister's marriage, aged 13, are chargeable on the family property in the hands of her minor brother. *Nandan* v *Ajudhia* (1910) 32 All, 325, *Sheo Govind* v *Ram Adhin* A I R. 1933 Oudh, 31 *Pathakhali* v *Ram Deni Ram* (1917) 2 P L J, 627, *Sham Charan Mal* v *Chowdhry Debia* (1894) 21 Cal, 872 (costs incurred in defending criminal proceedings against minor), *Sundara Raja* v *Pattanathusami* (1894) 17 Mad, 306 (vakils' fees—not a necessity), *Suchit Chaudhuri* v *Harnandan Singh* (1933) 12 Pat, 112

(*f*) *Indran Ramaswami* v *Anthappa* (1906) 16 M L J, 422, *Arumugam Chetty* v *Duraisingha* (1914) 37 Mad, 38, *Bindeshri* v *Chandika Prasad* (1927) 49 All., 137 dissenting from *Kundan Bibi* v *Sri Aditya Deb* (1906) 11 C W N., 135. *Govind Ram* v *Pirandutta* (1935) 16 Lah, 546 F B.

(*g*) *Mir Sarwarjan* v *Fakhiruddin* (1912) 39 I A, 1, 39 Cal, 232, *Malla* v *Muhammad Sharif* (1927) 8 Lah., 212; *Venkatachalam* v *Sethuram Rao* (1933) 56 Mad, 433 F B, *Suchit Chaudhuri* v *Harnandan* (1933) 12 Pat, 112, *Ramakrishna* v *Kasivasi Chidambara* (1928) 54 M L J, 412, *Kishen Lal* v *Lachmi Chand* A I.R. 1937 All 456, see *Sohan Lal* v. *Atal Nath* (1934) 56 All, 142 (where a minor was held bound on special facts).

(*h*) *Ulfat Rai* v *Gauri Shankar* (1911) 33 All, 657; *Munni Kunwar* v. *Madan Gopal* (1916) 38 All, 62, *Narain Das* v *Musammat Dania*, *ib.*, 154, *Munia Kone* v. *Perumal* (1914) 37 Mad., 390.

(*i*) *Raghavachari* v *Srinivasa Raghavachari* (1917) 40 Mad, 308 F B, overruling *Navakoti Narayana* v *Logalinga* (1910) 33 Mad, 362, *Thakor Das* v *Mt Putli* (1924) 5 Lah, 317, *Zafar Ahsan* v *Zubaida Khatun* A I.R. 1929 All, 604, *Madhab Koeri* v. *Baikunta* (1919) 4 P.L.J, 682; *Hari Mohan* v. *Mohini Mohan* (1917) 22 C W.N., 130.

Power of guardian to bind infant.

§ 237. The power of the manager for an infant heir to charge an estate not his own, is under the Hindu law, a limited and qualified power. It can only be exercised rightly in a case of need, or for the benefit of the estate. But where, in the particular instance, the charge is one that a prudent owner would make in order to benefit the estate, the *bona fide* lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be averted or the benefit to be conferred upon it in the particular instance is the thing to be regarded. Under the things to be included in the expression 'benefit to the estate' will come the preservation of the estate, defence against hostile litigation, the protection of it from injury or deterioration by inundation and such like things (*j*). Where a lender, dealing with a guardian, inquires and acts honestly, the real existence of an alleged and reasonably credited necessity is not a condition precedent to the validity of his charge, rendering him liable to see to the application of the money (*k*). A guardian is not entitled to sell the minor's property for increasing the minor's income (*l*) or to involve the minor's estate in debts for the purpose of purchasing lands to be added to his estate. In the latter case, however, the creditor will be entitled to a decree against the lands actually purchased with the money advanced by him (*m*). It would be within the powers of a guardian to sell land which could not be conveniently cultivated with other property of the minor and invest the proceeds in buying lands which could be so conveniently cultivated or to sell lands in order to raise money to secure irrigation or permanent improvement of other lands of the minor or to make a beneficial exchange (*n*). And where the act is done by a person who is not his guardian, but who is the manager of the estate in which he has an interest, he will equally be

(*j*) *Hunooman Persaud* v. *Mussummat Babooee* (1856) 6 M.I.A., 393, 423, *Palaniappa Chetty* v. *Devasikamony* (1917) 44 I.A., 147, 40 Mad., 709, *Mohanund Mondul* v. *Nafur* (1899) 26 Cal., 820, *Nathu* v. *Balwant Rao* (1903) 27 Bom., 390, *Hemraj* v. *Nathu* (1935) 59 Bom, 525 F.B, *Krishna Chandra* v. *Rattan Ram* (1915) 20 C.W.N., 645; *Punnayyah* v. *Viranna* (1922) 45 Mad., 425, *Nrishinga Charan* v *Ashutosh Deo* (1938) 19 Pat. L.T., 35. See §§ 361, 365.

(*k*) *Hunooman Persaud* v. *Mussumat Babooee* (1856) 6 M.I.A., 393, *Sri Krishan Das* v. *Nathu Ram* (1927) 54 I.A., 79, 49 All, 149, see *Ram Sunder Lal* v. *Lachhmi Narain* (1929) 51 All., 430 A.I.R. 1929 P.C., 143; *Rajaballabh* v. *Bishun Prasad* A.I.R. 1935 Pat., 74; *Imperial Bank of India* v. *Veerappan* A.I.R. 1934 Mad., 595, 67 M.L.J., 573, *Ponnari Rao* v. *Lakshmi Narasamma* 1938 M.W.N., 67.

(*l*) *Hemraj* v. *Nathu* (1935) 59 Bom., 525 F.B.

(*m*) *Burrayya* v. *Ramayya* (1927) 47 Mad., 449.

(*n*) *Hemraj* v. *Nathu* (1935) 59 Bom., 525, 544 F.B.

bound, if in the circumstances the step taken was necessary, proper, or prudent (*o*) The person who so deals with a guardian is bound to inquire into the propriety of his act (*p*).

Guardian's power to acknowledge

There were conflicting decisions on the question whether a guardian of a minor could keep alive a debt by acknowledgment of or by payment towards the interest or the principal of the debt Such acknowledgments and payments are almost always made to avert an impending suit, and guardians of minors and managers of their estates are now declared to be agents duly authorised in that behalf by s 21 of the Indian Limitation Act (IX of 1908).

In *Temmakkal* v. *Subbammal* (*q*), it was said that all

(*o*) *Hanooman Persaud* v. *Mt Babooee* (1856) 6 M.I A., 393, *Mohanund Mondul* v *Najur Mondul* (1903) 26 Cal, 820, *Balaji Narayen* v *Nana* (1903) 27 Bom. 287 So held also in a case where the member of a joint family was a lunatic, and the manager had no certificate under Act XXXV of 1858, *Kartu Chunder* v *Bisheshwar Goswami* (1898) 25 Cal, 585 F B As to the acts of a *de facto* guardian, see *Majidan* v. *Rau Narain* (1904) 26 All, 22. As to partition of family property when one of the members is a minor, see *Bhagwati* v *Bhagwati* (1913) 35 All, 126

(*p*) *Dalibai* v. *Gopebai* (1902) 26 Bom, 433, *Anant Ram* v. *Collector of Etah* (1918) 40 All, 171 P C See as to carrying out, after the removal of a personal disability, a contract which was agreed upon while the disability lasted, *Gregson* v. *Aditya Deb* (1890) 16 I A. 221, 17 Cal, 223

(*q*) (1861) 2 Mad H.C, 47, *Manishankar* v *Bai Muli* (1888) 12 Bom, 686, *Nathuram* v *Shoma Chhagan* (1890) 14 Bom, 562, *Soonder Narain* v *Bennud Ram* (1879) 4 Cal, 76, *Roshan Singh* v *Har Kishan* (1881) 3 All, 535, *Sikher Chun* v *Dulputty* (1880) 5 Cal 363, *Nirvanaya* v. *Nirvanaya* (1885) 9 Bom, 365. As to contracts requiring statutory sanction, see *Debi Dutt* v *Subodra* (1877) 2 Cal, 283, *Manji Ram* v *Tara Singh* (1881) 3 All, 852, *Harendra Narain* v. *Moran* (1888) 15 Cal, 40, *Bhupendro Narayan* v. *Nemye Chand* (1888) 15 Cal, 627 As to mortgages, see *Doorga Persaud* v *Kesho* (1882) 9 I A, 27, 8 Cal, 656, *Rai Balkrishna* v *Mt Masuma Bibi* (1883) 9 I.A., 182, 5 All, 142, *Dunput Singh* v *Shoobudra* (1882) 8 Cal, 620, *Giraj Baksh* v *Kasi Hamid* (1887) 9 All, 340, as to dealings with the property of a minor by a guardian without sanction of Court, Act VIII of 1890, S. 29, *Sinaya* v *Muniswami* (1899) 22 Mad, 289, *Ganga Prasad* v *Mahrani Bibi* (1884) 12 I A, 47, 11 Cal, 379, *Lala Hurro* v *Basaruth* (1898) 25 Cal, 909, *Dattaram* v. *Gungaram* (1899) 23 Bom., 287, *Tejpal* v *Ganga* (1903) 25 All, 59, *Gharib Ullah* v. *Khalak* (1903) 30 I.A, 165, 25 All, 407, *Gobardhan* v *Sheo Narayan* (1929) 8 Pat, 226, as to the power of a guardian when carrying on an ancestral trading establishment, *Rampertab* v *Foolibai* (1896) 20 Bom., 767, p 777, *Raghunathji* v *The Bank of Bombay* (1911) 34 Bom, 72, *Sanka Krishna* v *The Bank of Burma* (1912) 35 Mad, 692, Documents executed by a Hindu widow who described herself as "mother of *A*, a minor," were held, in the absence of evidence to the contrary, to be executed by her in her capacity as guardian of the infant, *Watson* v *Sham Lal Mitter* (1888) 14 I.A., 178, 15 Cal, 8 As to the power of the committee of a lunatic, see *Abilakh Bhagut* v *Bhekhi Mahto* (1895) 22 Cal, 864, *Anpurnabi* v *Durgapa* (1896) 20 Bom, 150. As to the guardian's power to refer to arbitration, see *Punuswami* v. *Veeramuth* (1925) 3 Rang., 452.

acts of a guardian of a Hindu infant which are such as the infant might, if of age, reasonably and prudently do for himself, must be upheld when done for him by his guardian. This was explained by West, J. in *Dharmaji* v. *Currao Shrinivas* (*r*) as meaning that the transaction into which guardians enter on behalf of their wards must secure to the latter some demonstrable advantage or avert some obvious mischief in order to obtain recognition of the Courts. Beaumont, C.J. criticising the view of the Allahabad High Court holds that the test of what a prudent owner would do in dealing with his own estate goes too far (*s*). The rule laid down in s. 27 of the Guardians and Wards Act (VIII of 1890) that a guardian may do all acts which are reasonable and proper for the realisation, protection and benefit of the property and is bound to deal therewith as carefully as a man of ordinary prudence would deal with it, if it were his own, would cover all acts of the guardian on behalf of the minor other than alienations of the infant's property, as to which, the test of necessity or demonstrable benefit as explained by Lord Atkinson in *Palaniappa Chetty's* case (*t*) must apply.

Contracts made by a guardian on behalf of a minor will bind him though his name is not mentioned and will also enure to his benefit. Of course, such contracts must be within the guardian's powers and such as to bind the infants (*u*) Accordingly, a minor can call upon an agent appointed by his guardian to account to him in respect of properties received by him and not accounted for to the guardian (*v*).

A *de facto* guardian of an infant's estate has, in case of necessity or benefit to the minor, power to sell or mortgage

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(*r*) (1873) 10 Bom. H.C., 311

(*s*) *Hemraj* v. *Nathu* (1935) 59 Bom., 525, 543 F B. dissenting from *Jagat Narain* v *Mathura Das* (1928) 50 All, 969 F.B

(*t*) *Palaniappa Chetty* v. *Devasikamony* (1917) 44 I.A., 147, 40 Mad., 709.

(*u*) *Ranmal Singji* v. *Vadilal* (1896) 20 Bom., 61, *Sundararaja* v. *Pattanathuswami* (1894) 17 Mad., 306; *Duraiswami* v. *Muthial* (1908) 31 Mad., 458; *Bhawal Sahu* v. *Baijnath* (1908) 35 Cal., 320, *Watson & Co.* v. *Shamlal* (1887) 14 I.A, 178, 15 Cal., 8; see *Murari* v *Tayana* (1896) 20 Bom., 286, 288; *Balwant Singh* v. *R. Clancy* (1912) 39 I.A., 109, 34 All., 296 In a case before the Madras High Court, it was held that a minor might bind himself by a contract of apprenticeship, if it is for his benefit, but such a contract could not be specifically enforced against him either directly or indirectly by restraining him from taking service under others or by restraining others from employing him. *Pollard* v. *Rouse* (1910) 33 Mad, 288.

(*v*) *Suyamprakasam* v. *Murugesa Pillai* (1924) 47 Mad., 774 F.B.

his property (w). Conversely, a *de facto* guardian or manager who takes possession of a minor's estate will be bound to account to him for his management as it is open to the minor on attaining majority to elect to sue him either for damages or for an account (*x*). But one who has no authority under the personal law applicable to the minors to enter into a contract or to make a compromise or family settlement on their behalf cannot bind them by any such transaction (x^1).

Cannot bind infant personally

§ 238. In all cases the power of the guardian or manager is limited to the disposal of the estate with which he is entrusted He cannot bind the minor by any purely personal covenant and a minor cannot be bound by contracts entered into by the guardian which do not purport to charge the estate (*y*). When it is said that a minor is not personally liable, it means not only exemption from liability to arrest but also that a decree cannot be passed against his estate (*z*). There is one clear exception engrafted on this rule: where the contract is for necessaries supplied to or on behalf of the minor, a decree can be passed against the general assets of the minor (*a*). The Madras High Court has held that where the liability is imposed by the personal law of the minor, a decree can be passed against the properties of the minor on a guar-

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(*w*) *Hunooman Persaud* v. *Mussummat Babooee* (1856) 6 M I.A. 393, 412, 413, *Mohanund* v *Nafur* (1899) 26 Cal, 820, As to who is a *de facto* guardian, see *Seetharamanna* v. *Appiah* (1926) 49 Mad., 768, *Chinna Alagumperumal* v *Vinayagathammal* (1928) 55 M L J 861, *Tulsidas* v *Vaghela Raisinghji* (1933) 57 Bom, 40 F B, overruling *Limbaji* v. *Rahi* (1925) 49 Bom., 576, *Kundan Lal* v. *Beni Prasad* (1932) 13 Lah, 399, *Piare Lal* v. *Lajjia Ram* (1936) 17 Lah., 78, *Ram Nath* v. *Sant Ram* A I R. 1935 Lah, 820, but see *Narayanan* v *Ravunni* (1924) 47 M L.J, 686 and the observations of Beaumont, C.J., in *Tulsidas* v. *Vaghela Raisinghji* (1933) 57 Bom., 40 and of Kumaraswami Sastri, J. in *Ramaswami* v *Kasinatha* A I R 1928 Mad, 226, compare *Imambandi* v *Mutsaddi* (1919) 45 I A. 73, 45 Cal. 878, *Harilal* v *Gordhan* (1927) 51 Bom. 1040 (sale by a guardian *ad hoc* is void)

(*x*) *Ramanathan Chettiar* v *Raja Sir Annamalai Chettiar* (1934) 57 Mad., 1031, 1051-2, *Sankaralingam Chetty* v. *Kuppuswami* A.I.R. 1935 Mad, 305 (2).

(x^1) *Partap Singh* v *Sant Kuer* (1938) 42 C W N. 817. A I R 1938 P C, 181.

(*y*) *Waghela Raj Sanji* v *Shekh Masludin* (1887) 14 I.A., 89, 11 Bom., 551, *Ranmal Singji* v *Vadilal* (1896) 20 Bom., 61.

(*z*) *Ramajogayya* v. *Jagannadhan* (1919) 42 Mad., 185 F.B., *Muthuswami* v. *Annamalai* A I.R. 1937 Mad, 1.

(*a*) *Muthuswami* v. *Annamalai* A.I.R. 1937 Mad., 1; *Ranmal Singh* v *Vadilal* (1896) 20 Bom, 61, *Bhawal Sahu* v *Baijnath* (1908) 35 Cal, 320; *Suchit Chaudhuri* v. *Harnandan Singh* (1933) 12 Pat, 112, compare *Inder Chunder Singh* v. *Radha Kishore Ghose* (1892) 19 I.A. 90, 19 Cal, 507, *Benares Bank, Ltd.* v. *Harinarain* (1932) 54 All., 564 P.C., A.I.R. 1932 P.C., 182,

dian's contract on behalf of the minor (*b*). The mere fact, however, that the debt was incurred for the benefit of the minor or for necessary purposes will not suffice (*c*). In *Zamindar of Polavaram* v. *Maharajah of Pittapur* (*d*), the Privy Council, reversing the decision of the Madras High Court, held that where a minor is not personally responsible for the payment of the debt, no decree against the "general assets" could be given. It does not however appear that the Privy Council intended to overrule the decision in *Ramajogayya's* case (*e*) which was cited before it. The observation probably proceeded on the special facts of the case. Where the guardian or legal representative carries on a business on behalf of the minor, creditors of the business have no right of direct recourse against the minor or his estate (*f*); but as the guardian is entitled to indemnity for liabilities properly incurred out of the assets of the minor embarked in the business, creditors are entitled to proceed directly against such assets for liabilities properly incurred by the guardian. Where, therefore, the guardian has no right to indemnity against such assets, as where he acted improperly, neither have his creditors. This conclusion is arrived at not on considerations of Hindu law, but of justice, equity and good conscience following the English decisions (*g*).

Where the act is done by a person in possession of property, who does not profess to be acting on behalf of the minor, but who claims to be an independent owner, and to be

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(*b*) *Ramajogayya* v. *Jagannadhan* (1919) 42 Mad., 185 F.B., *Satyanarayana* v. *Mallayya* (1933) 58 Mad., 735 F.B.; *Subramania Ayya* v. *Arumugam Chetty* (1903) 26 Mad., 330, *Duraisami Reddi* v *Muthial Reddi* (1908) 31 Mad., 458; *Padmakrishna Chettiar* v. *Nagamuni* (1916) 39 Mad., 915, *Meenakshi Sundaram* v. *Ranga Ayyangar* A.I.R. 1932 Mad., 696, compare *Syed Sabir Husein* v. *Farzand Hasan* (1938) 65 I.A., 119 128.

(*c*) *Muthuswami* v. *Annamalai* A.I.R. 1937 Mad., 1.

(*d*) (1936) 63 I.A., 304, 59 Mad., 910. overruling (1931) 54 Mad., 163.

(*e*) (1919) 42 Mad., 185 F.B.

(*f*) *Khetra Mohan* v. *Nishi Kumar* (1917) 22 C.W.N., 488. See also a discussion of this subject in *Sanyasi Charan Mandal* v. *Krishnadan* (1922) 49 I.A., 108, 49 Cal., 560. *Ramalinga Chetty* v *The Vellore Mercantile Bank Ltd.* (1929) 57 M.L.J., 822; see *Ram Din* v. *Mansa Ram* (1929) 51 All., 1027 (guardian has no power to start a new business), see *Lakshmi Ammal* v. *Ratna Naicker* A I R 1935 Mad., 589 (1).

(*g*) *Sanka Krishnamurthi* v. *The Bank of Burma* (1912) 35 Mad., 692; see *Natesa Nattar* v. *Manikka Nattar* (1938) 1 M L.J., 181; *Perumal* v. *Ramasubramaniam* A.I.R. 1938 Mad., 265.

acting on his own behalf, it will not bind the infant who is really entitled (*h*).

Equities on setting aside

§ 239. Where a minor on coming of age sues to set aside a sale or a mortgage by his guardian, he is bound to refund the purchase money, if his estate has benefited by it, or to hold the property charged with the amount of debt from which it has been freed by the sale or mortgage (*i*) But the purchaser has to establish that the minor had in fact received or got the benefit of the purchase money (*j*) Where the contract relied on has been made by the minor himself it is void *ab initio*, and therefore can form no consideration which would render the agreement binding on the other party Nor can it raise any equities against the minor. As Romer, L.J., said in a case which was affirmed by the House of Lords "The short answer is that a Court of Equity cannot say that it is equitable to compel a person to pay any moneys in respect of a transaction which, as against that person, the Legislature has declared to be void" (*k*)

False statement by minor as to his age

§ 240. A fraudulent representation by a minor that he is of full age by which he induces another to contract with him will not estop the minor from setting up the plea of minority. Where, for instance, by such fraudulent representation, he obtains a loan, he is not liable either in an action based upon fraudulent misrepresentation or in an action for money had and received The action in such cases is, in substance, *ex contractu*. Where, however, the infant is still in possession of some property or fund which he obtained by fraud, he will be compelled to restore it to the former owner But equity stops short of enforcing against him a contractual

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(*h*) *Bahur Ali* v *Sookeea* 13 W R, 63, *Gadgeppa* v *Apaji* (1879) 3 Bom, 237, *Inderchunder Singh* v *Radhakishore* (1892) 19 I A, 90, 19 Cal, 507, *Balwant Singh* v *R. Clancy* (1912) 39 I.A., 109, 34 All, 296, *Nandan Prasad* v *Abdul Aziz* (1923) 45 All., 497

(*i*) *Konwar Doorganath Roy* v *Ram Chunder Sen* (1877) 4 I A, 52, 66, 2 Cal, 341, *Kuvarji* v *Moti Haridas* (1879) 3 Bom, 234, *Sinaya Pillai* v *Munisami* (1899) 22 Mad, 289, *Jagar Nath* v. *Lalta Persad* (1909) 31 All., 21, *Tejpal* v *Ganga* (1903) 25 All, 59, *The Eastern Mortgage & Agency Co, Ltd* v *Rebati Kumar* (1906) 3 C.L J, 260, 268, 269, *Jai Narain Lal* v *Bechoo Lall* 1938 A L J, 521.

(*j*) *Inuganti Venkatrama Rao* v. *Sobhanadri Appa Rao* (1936) 63 I.A., 169, 179, 59 Mad, 539, 548, reversing (1931) 54 Mad., 352.

(*k*) *Thurstan* v. *Nottingham Building Society* (1902) 1 Ch., 13, *affd.* (1903) A C., 6, follid. *Mohori Bibee* v. *Dhurmodas* (1903) 30 I.A., 114, 125, 30 Cal, 539, 548.

obligation entered into when he was an infant even by means of fraud (*l*).

§ 241. A minor, who is properly represented in a suit, will be bound by its result, whether that result is arrived at by decree after contest, or by compromise or withdrawal (*m*). But the Court will not make a decree by consent without ascertaining whether it is for the benefit of the infant. The attention of the Court must be directly called to the fact that the minor was a party to the compromise, and it ought to be shown by an order on the petition or in some way not open to doubt, that the leave of the Court was obtained (*n*). Where the leave of the Court has not been given to enter into the compromise, the compromise and decree are voidable at the option of the minor (*o*). Decrees.

Where the father or any other person is a guardian *ad litem* for his minor son, he is bound by the provisions of the Civil Procedure Code, and has no authority to bind the minor by any compromise or agreement, even if he was himself a party to the suit, and had entered into such agreement under condi-

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(*l*) *R. Leslie Ltd* v *Sheill* (1914) 3 K B., 607, approved by the Judicial Committee in *Mahomed Syedol Ariffin* v. *Yeoh Ooi Gark* (1916) 43 I A, 256, 21 C.W.N, 257, (1917) M W.N, 162; *Golam Abdin* v *Hemchandra* (1915) 20 C W.N, 418, *Gadigeppa* v. *Balangauda* (1931) 55 Bom., 741 F.B.; *Mt Hamidan Bibi* v. *Nanhe Mal* A.I.R 1933 All, 372, *Guruswamy* v *Budhkarn Lal* (1919) 26 M.L.T., 245, *Khan Gul* v *Lakha Singh* (1928) 9 Lah., 701 F.B, *Manmatha Kumar Saha* v. *Exchange Loan Co, Ltd* (1936) 41 C W N., 115, A.I.R. 1936 Cal., 567.

(*m*) *Kamaraju* v. *Secretary of State* (1888) 11 Mad., 309, *Chengal Reddi* v. *Venkata Reddi* (1889) 12 Mad., 483; *Kanungoe Krishen* v. *Romesh Chunder* (1909) 13 C W.N., 163; *Lekraj* v. *Mahtab* (1871) 14 M I.A., 393; *Mrinamoyi* v *Jogo Dishuri* (1880) 5 Cal., 450.

(*n*) *Manohar* v. *Jadunath* (1906) 33 I A., 128, 28 All., 585; *Partab Singh* v. *Bhabuti Singh* (1913) 40 I.A., 182, 35 All., 487.

(*o*) Civil Procedure Code, Act V of 1908, Or. 32, r. 7, *Rajagopal* v. *Muttupalem* (1880) 3 Mad, 103, *Kalavati* v. *Chedi Lal* (1895) 17 All, 531; *Ranga Rao* v. *Rajagopala* (1899) 22 Mad, 378; *Virupaksh-appa* v. *Shidapa* (1902) 26 Bom., 109 *Phulwanti Kunwar* v. *Janeshar Das* (1924) 46 All, 575; *Tarubala Dasi* v. *Sourendra Nath Mitter* (1924) 29 C W N, 597. A certificate of counsel for the minor that the compromise is beneficial is sufficient. *Sakinbai* v. *Shrinibai* (1919) 47 I.A., 88, 38 M L J., 431, as to agreement by guardian *ad litem* to refer to arbitration, see *Lakshmana* v. *Chinnathambi* (1901) 24 Mad., 326; *Vijaya* v. *Venkatasubba* (1916) 39 Mad., 853; *Sadashivappa* v *Sangappa* A.I.R. 1931 Bom., 500, but see *Lutawan* v. *Lachya* (1914) 36 All., 69 F B. A compromise decree will be set aside in a regular suit or on an application for review to the court that passed the decree. *Khajooroonissa* v *Rowshan Jehan* (1877) 3 I.A., 291, 2 Cal., 184; *Surendra* v. *Hemangini* (1907) 34 Cal., 83; *Aushootosh Chandra* v. *Tara Prasanna Roy* (1884) 10 Cal., 612; *Murali* v. *Rehmoobhoy* (1891) 15 Bom., 594, *Subramanian Chettiar* v. *Raja Rajeshwara Dorai* (1916) 39 Mad., 115 P.C.

tions which would have made it binding on the minor if he were not a party to the suit (*p*)

If either the compromise or the leave of the Court was obtained by fraud or false representation or upon an admission by a person who had in reality an interest opposed to that of the infant, it will not bind the minor and can be set aside (*q*). Leave of the Court to withdraw an appeal or suit, if it is in terms of a compromise entered into with a guardian *ad litem* on behalf of a minor, is necessary as it would be necessary where the next friend withdraws the suit or appeal (*r*) Where a decree binding on a minor has once been obtained, the creditor will not be deprived of the benefit of his decree, because he has by mistake taken out execution against the guardian by name instead of against the minor as represented by the guardian (*s*) Cases might also arise in which a guardian, by carelessness, amounting to gross neglect of duty, but without fraud, failed properly to support the interests of his ward, and thereby failed in a suit which he ought to have won A minor is not bound by a decree against him in a suit where his guardian conducted it with gross negligence (*t*) The Privy Council recently remarked that the distinction made in some of the cases between negli-

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(*p*) *Ganesh Rou* v *Tuljaram Rou* (1913) 40 I.A., 132, 36 Mad 295, *Letchmana Chetty* v *Subbiah Chetty* (1924) 47 Mad., 920, *Pitchakkuttiya* v *Doraiswami* (1924) 47 M L J, 498

(*q*) *Muhammad Mumtaz* v *Sheo Rattangir* (1896) 23 I A, 5, 23 Cal, 934, *Ram Autar* v *Raja Muhammad Mumtaz* (1897) 24 I A, 107, 24 Cal 853, *Lekhraj* v *Mahtab* (1871) 14 M.I A, 393, *Bibee Solomon* v *Abdul Aziz* (1881) 6 Cal., 687, *Raghubar Dayal* v. *Bhikya Lal* (1887) 12 Cal, 69, *Bhanudas* v *Krishnabai* (1926) 50 Bom, 716

(*r*) *Sakinbai* v *Shrimbai* (1919) 47 I A, 88, 38 M L J, 431, *Doraisami* v *Thungasami* (1904) 27 Mad 377, *Karmali* v *Rahimbhoy* (1889) 13 Bom., 137

(*s*) *Hari* v *Narayan* (1888) 12 Bom., 427

(*t*) *Mungniram* v *Mohunt Gursahai* (1890) 16 I A, 195, 204, 17 Cal, p. 361, *Lalla Sheo Churn* v *Romnandan* (1895) 22 Cal., 8, *Cursandas* v *Ladkavahu* (1895) 19 Bom, 571, *Gopal Rao* v *Narasinga* (1899) 22 Mad, 309, per Lord Watson, *Ram Autar* v *Raja Muhammad Mumtaz* (1897) 24 I A., 107, p. 114, 24 Cal, 853, 861, or by review *Ram Sarup Lal* v *Shah Latafat* (1902) 29 Cal, 735, *Siraj Fatima* v *Mahmud Ali* (1932) 54 All 646 F.B, *Punnayya* v *Viranna* (1921) 45 Mad, 425, *Ananda Rao* v *Appa Rao* (1924) 47 M L J., 700, *Visvesvara* v *Suriya Rao* (1936) 59 Mad, 667, *Mathura Singh* v *Rama Rudra* (1936) 14 Pat, 824; *Bhagat Ram* v *Buta Singh* A.I.R 1935 Lah, 349, *Subbarathanam* v. *Gunavantha Lal* (1937) 1 M.L.J., 224, *Balabhadra* v. *Rangarao* (1937) 2 M.L J, 236.

gence and gross negligence was elusive (t^1) and disapproved of the ruling in *Karri Bapanna's* case (t^2) which extended the principle of s. 44 of the Indian Evidence Act to cases of gross negligence.

A formal error in the mode of describing the minors will not affect the validity of the decree, if they have been really represented and sued (u). It is the duty of the Court to appoint a proper person on behalf of a minor in the conduct of a suit; and where the Court by its action has given its sanction to the appearance of a person as guardian, a formal order of appointment is not necessary (v).

A decree in a suit in which a minor is properly represented may be liable to be set aside for fraud or other reasons, but till set aside it binds him, and proceedings to get rid of it must be commenced within three years from the date of the discovery of the fraud or from the termination of the minority (v^1). Where the minor has not been properly represented the decree is a nullity, as far as he is concerned, even without any allegation of fraud (w). He need take no notice of it, and may proceed to enforce his rights within the period of limitation which would be applicable if no decree had been passed (x). Where a plaintiff does not choose to sue the managing member alone but impleads the minor member

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(t^1) *Talluri Venkata Seshayya* v *Thadikonda Kotiswara* (1937) 64 I.A., 17, 26, [1937] Mad., 263.

(t^2) (1923) 45 M.L.J., 324

(u) *Jogi Singh* v. *Behari Singh* (1885) 11 Cal., 509, *Bhaba Pershad* v. *Secretary of State* (1887) 14 Cal., 159 F B., *Suresh Chunder* v *Jugat Chunder* (1887) 14 Cal., 204, *Natesayyan* v. *Narasimmayyar* (1890) 13 Mad., 480, *Hari Saran Moitra* v *Bhubaneswari Debi* (1889) 15 I.A., 195, 16 Cal., 40.

(v) *Walian* v. *Bankh Behari Pershad Singh* (1903) 30 I.A., 182, 30 Cal., 1021, *Munnu Lal* v. *Ghulam Abbas* (1910) 37 I.A., 77, 32 All., 287. If the irregularity results in the minor not being substantially represented, the result of the proceeding cannot stand, *Bhagwan Dayal* v. *Poram Sukh Das* (1915) 37 All., 179; *Shaik Abdul Karim* v *Thakurdas* (1928) 55 Cal., 1241.

(v^1) The Indian Limitation Act, IX of 1908, Sched. I, Art. 95. *Mungniram Marwari* v. *Mohunt Gursahai* (1890) 16 I.A., 195, 203, 17 Cal., 347. As to the mode of setting aside such a decree, see *Mirali Rahimbhoy* v. *Rehmoobhay* (1891) 15 Bom., 594.

(w) *Rashidunnissa* v. *Muhammad* (1909) 36 I A., 168, 31 All, 572. *Partab Singh* v. *Bhabuti Singh* (1913) 40 I.A., 182, 35 All., 487. *Dakeshur* v. *Rewar* (1897) 24 Cal., 25; *Daji Himat* v. *Dhirajram* (1888) 12 Bom., 18, *Sham Lal* v *Ghasita* (1901) 23 All., 459, *Lokenath Das* v. *Biharee Lal* (1936) 63 Cal., 1227; *Hitendra Narain* v. *Sukhdeb* (1929) 8 Pat, 558, *Chitradhar* v *Kidar* (1938) 17 Pat, 236.

(x) *Daji Himat* v. *Dhirajram* (1888) 12 Bom., 18. As to the remedies available to a minor, see *Bhagwan Dayal* v. *Param Sukh Das* (1917) 39 All., 8.

in his individual capacity. it is his duty to get a proper guardian *ad litem* appointed for him. Otherwise, the decree will not bind him (x^1).

Suits against guardian.

A guardian is liable to make compensation to his ward for losses arising from his maladministration of the estate or negligence in management or in respect of his malversation and fraudulent acts (y).

(x^1) *Chandi* v *Balaji* (1931) 53 All., 427.

(y) *Issur Chunder* v *Ragab* S D of 1860, 1, 349, 611, *Alumelammal* v *Arunachalam Pillai* (1866) 3 M H C, 69, *Sarat Chandra Roy* v *Rajoni Mohun Roy* (1908) 12 C W N 481 (extent of accountability), see also *Dhurm Das Pandey* v *Mt Shama Soondari* (1843) 3 M I A 229, *Basanta Kumari Debi* v *Kamkshya Kumari* (1905) 32 I A, 181, 33 Cal, 23 (liable for mesne profits without regard to the period of limitation), *Rajaram* v *Kothandapani* A I R 1937 Mad, 280

CHAPTER VII

EARLY LAW OF PROPERTY.

Misleading effect of English analogies.

§ 242. The student who wishes to understand the Hindu system of property must begin by freeing his mind from all previous notions drawn from English law. They would not only be useless, but misleading. In England ownership, as a rule, is single, independent, and unrestricted. It may be joint, but the presumption will be to the contrary. It may be restricted, but only in special instances, and under special provisions. In India, on the contrary, joint ownership is the rule, and will be presumed to exist in each individual case until the contrary is proved. If an individual holds property in severalty, it will in the next generation, relapse into a state of joint tenancy. Absolute, unrestricted ownership, such as enables the owner to do anything he likes with his property, is the exception. The father is restrained by his sons, the brother by his brothers, the woman by her successors. If property is free in the hands of its acquirer, it will resume its fetters in the hands of his heirs. Individual property is the rule in the West: corporate property is the rule in the East.

Different forms of corporate property

§ 243. Three forms of the corporate system of property exist in India: the Patriarchal Family, the Joint Family and the Village Community. The two former, in one shape or other, may be said to prevail throughout the length and breadth of India. The last still flourishes in the north-west of Hindustan. It is traceable, though dying out, in Southern India. It has disappeared, though we may be sure it formerly existed, in Bengal and the upper part of the peninsula. The Village Community is a corporate body, of which the members are families. The Joint Family is a corporate body, of which the members are individuals. But it is certain that there are many villages which have never sprung from the same family, and many places where the Family system has shown no tendency to grow into the Village system.

Village communities in the Punjab.

§ 244. The Village system of India may be studied with most advantage in the Punjab, as it is there that we find it in its most perfect, as well as in its transitional forms (*a*).

(*a*) The result of some of the researches upon this subject will be found in two works by Mr. B. H. Baden-Powell upon Indian Village Communities, a large and exhaustive volume published in 1896, and a smaller work which is a summary of the former, dated 1899.

It presents three marked phases, which exactly correspond to the changes in an undivided family The closest form of union is that which is known as the *Communal Zemindari* village. Under this system "the land is so held that all the village co-sharers have each their proportionate share in it as common property, without any possession of, or title to distinct portions of it, and the measure of each proprietor's interest is his share as fixed by the customary law of inheritance The rents paid by the cultivators are thrown into a common stock, with all other profits from the village lands, and after deduction of the expenses the balance is divided among the proprietors according to their shares" (*b*) This corresponds to the undivided family in its purest state

The Punjab.

The second stage is called the *Pattidari* village In it the holdings are all in severalty, and each sharer manages his own portion of land But the extent of the share is determined by ancestral right, and is capable of being modified from time to time upon this principle (*c*) This corresponds to the state of an undivided family in Bengal The transitional stage between joint holdings and holdings in severalty is to be found in the system of re-distribution, which is still practised in the Pathan communities of Peshawar According to that practice, the holdings were originally allotted to the individual families on the principle of strict equality But as time introduced inequalities with reference to the numbers settled on each holding, a periodical transfer and re-distribution of holdings took place (*d*) This practice naturally dies out as the sense of individual property strengthens, and as the habit of dealing with the shares by mortgage and sale is introduced. The share of each family then becomes its own The third and final stage is known as the *Bhaichari* village. It agrees with the *Pattidari* form inasmuch as each owner holds his share in severalty. But it differs from it, inasmuch as the extent of the holding is strictly defined by the amount actually held in possession. All reference to ancestral right has disappeared, and no change in the number of the co-sharers can entitle any member to have his share enlarged His rights have become absolute instead of relative, and have ceased to be measured

(*b*) Punjab Customs, 105, 161. This stage is the same as that described by Sir H. S Maine, as existing in Servia and the adjoining districts Ancient Law, 267, see Evans, Bosnia, 44

(*c*) Punjab Customs, 106, 156

(*d*) Punjab Customs, 125, 170 See Corresponding Customs, Maine Anc. Law, 267, Village Communities, 81, Lavaleye, ch VI, Wallace, Russia, I, 189.

by any reference to the extent of the whole village and the numbers of those by whom it is held (*e*). This is exactly the state of a family after its members have come to a partition.

Southern India.

§ 245. The same causes which have broken up the Joint Family of Bengal have led to the disappearance of the Village system in that province. In Western and Central India, the wars and devastations of Muhammadans, Mahrattas, and Pindarries swept away the village institutions, as well as almost every other form of ancient proprietary right (*f*). But in Southern India, among the Tamil races, we find traces of similar communities (*g*). The village landholders are there represented by a class known as *Mirasidars*, the extent and nature of whose rights are far from being clearly ascertained (*h*). It is certain, however, that they have a preferential right over other inhabitants to be accepted as tenants by the Government, a right which, it is said, they do not even lose by neglecting to avail themselves of it at each fresh settlement (*i*). They are jointly entitled to receive certain fees and perquisites from the occupying tenants, and to share in the common lands (*j*). Some villages are even at the present time held in shares by a body of proprietors who claim to represent the original owners, and a practice of exchanging and re-distributing these shares is known still to exist though it is fast dying out (*k*). In Madras the Government claim is made upon each occupant separately, not upon the whole village, as in the Punjab; but the contrary usage must have once existed

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(*e*) Punjab Customs, 106, 161.

(*f*) See speech of Sir J. Lawrence, cited Punjab Customs, 138.

(*g*) Elphinstone, India, 66, 249.

(*h*) For a discussion of their rights see *Seshachela Chetty* v. *Chinnasawmy* (1917) 40 Mad., 410, *Kumarappa Reddi* v. *Manavala Goundan* (1918) 41 Mad, 374, *Narasimha Raghavachari* v. *The Secy of State for India* (1931) 60 M.L.J, 137.

(*i*) *Ramanooja* v. *Peetayen* Mad. Dec. of 1850, 121; *Alagappa* v. *Ramasawmy* Mad. Dec. of 1859, 101; 5th Report, House of Commons, cited *Mootoopermall* v. *Tondaven* 1 N.C., 320 (275). See *Fakir Muhammad* v. *Tirumala Chariar* (1876) 1 Mad., 205.

(*j*) *Mootoopermall* v. *Tondaven* 1 Stra. N.C., 300 (260); *Koomaraswamy* v. *Ragava* Mad. Dec. of 1852, 38; *Viswanadha v. Moottoo Moodely* Mad. Dec. of 1854, 141; *Muniappa* v. *Kasturi* Mad. Dec. of 1862, 50. In the Punjab this right may be retained by a co-sharer, though he has ceased to possess any land in the village. Punjab Customs, 108.

(*k*) Madura Manual, Pt. V, 12; *Venkataswami* v. *Subba Rau* (1866) 2 Mad. H.C., 1, 5; *Anandayyan* v. *Devarajayyan*, *ib.*, 17; *Saminathiyan* v. *Saminathaiyan* (1868) 4 Mad. H.C., 153; *Sitaramiyar* v. *Alagiri* 3 Mad. Rev. Reg., 189.

Patriarchal family, its origin and nature.

§ 246. The Patriarchal Family may be defined as "a group of natural or adoptive descendants, held together by subjection to the eldest living ascendant, father, grandfather, great-grandfather. Whatever be the formal prescription of the law, the head of such a group is always in practice despotic; and he is the object of a respect, if not always of an affection, which is probably seated deeper than any positive institution" (*l*) The absolute authority over his family possessed by the Roman father in virtue of this position is well-known A very similar authority was once possessed by the Hindu father Manu says. "Three persons, a wife, a son, and a slave, are declared by law to have in general no wealth exclusively their own, the wealth which they may earn is regularly acquired for the man to whom they belong"(*m*) And so Narada says of a son, "he is of age and independent, in case his parents be dead; during their lifetime he is dependent, even though he be grown old" (*n*). But this doctrine was not peculiar to the Aryan races (*o*)

Origin of Joint Family.

§ 247. The transition from the Patriarchal to the Joint Family arises (where it does arise) at the death of the common ancestor, or head of the house If the family choose to continue united, the eldest son would be the natural head (*p*) But it is evident that his position would be very different from that of the deceased Patriarch The one was head of the family by a natural authority The other can only be so by a delegated authority He is *primus* but *inter pares*. Therefore, in the first place, he is head by choice, or by natural selection, and not by right. The eldest is the most natural, but not the necessary head, and he may be set aside in favour of one who is better suited for the post Hence Narada says (*q*) "Let the eldest brother, by consent, support the rest like a father, or let a younger brother, who is capable, do so, the prosperity of the family

Difference between Patriarchal and Joint Family

(*l*) Early Institutions, 116, Ancient Law, 133. Here seems to be the origin of the great Hindu canon of inheritance, that the funeral cake stops at the third in descent.

(*m*) Manu, VIII, § 416, Narada, V, § 41, Dig, II, 29

(*n*) Nar, I, 36 S.B E, Vol XXXIII, 51, See, too, Sankha & Likh., Dig, II, 503.

(*o*) For instances of similar usage among the Kandhs, see Hunter's Orissa, II, 72, among the Tamils in Jaffna, see Thesawaleme, IV, among the Tamils in Pondicherry, see Sorg H L., 173.

(*p*) Manu IX, § 105 For Joint Family of Matriarchal type, see Appx III

(*q*) Nar, XIII, § 5

depends on ability." But he is no longer looked upon as the owner of the property, but as its manager (*r*).

Early Hindu writers.

§ 248. The ancient Hindu writers give us little information as to the earlier stages of the law of property. There is no Vedic evidence that the village community, as such held land. But the indications are in the direction of individual or family holdings (*s*). Traces of communal ownership may perhaps be found in the common pasturage and in the mode of settling boundary disputes between villages (*t*). There are also traces indicating that the rights of a family in their property were limited by the rights of others outside the family. Alienation of land appears to have been subject to the consent of the village community and kinsmen, probably because they were given the right of pre-emption. This is perhaps the real import of two anonymous texts cited in the Mitakshara: "Land passes by six formalities; by consent of townsmen, of kinsmen, of neighbours and of heirs, and by gift of gold and water." "In regard to the immovable estate, sale is not allowed; it may be mortgaged by consent of parties interested" (*u*). This would also explain the text of Brihaspati, cited in the Mitakshara, I, 1, § 30. "Separated kinsmen, as those who are unseparated, are equal in respect of immovables, for one has not power over the whole to make a gift, sale or mortgage." It is evident that partition would put an end to further rights within the family, but would not affect the rights which the divided members, in common with the rest of the village sharers, might possess as ultimate reversioners. Consequently they would retain the right to forbid acts by which that reversion might be affected. And this is the law in the Punjab to the present day (*v*). For the same reason, when the sub-division of a co-sharer became saleable, the members of the community had a right of pre-emption, so as to keep the land within their own body. This right exists, and is recognized at present by statute, in the Punjab (*w*).

Limitation of family rights.

Rights of pre-emption.

(*r*) See Maine, Early Institutions, 116.

(*s*) Vedic Index, I, 245, Jolly, L. & C., 203-204; T.L.L., 89.

(*t*) Manu, VIII, §§ 237-265; Jolly, T.L.L., 88-89; L. & C., 205-210.

(*u*) Mit., I, 1, §§ 31, 32; see, too, Vivada Chintamani, p. 309. Vijnanesvara however treats this consent as required for the publicity of the transaction and to prevent disputes, not as affecting its validity.

(*v*) Punjab Customs, 73; Mitakshara, I, 4, § 26; see the text of Uçanas that land "was indivisible among kinsmen even to the thousandth degree"; see Mayr., 24, 30, 31.

(*w*) Punjab Customs, 186; Act XII of 1878, § 2; for a similar usage among the Tamils of Jaffna, see Thesawaleme, VII, 1, 2.

§ 249. With the exception of these scattered and doubtful hints, the Sanskrit writers take up the history of the family at a period when it had become an independent unit, unrestrained by any rights external to itself. When the family is undivided, the worship of the manes, gods and Brahmins by those residing together and cooking their food together in one house, is single (*x*). Giving, receiving, cattle, food, houses, fields and servants, cooking, religious duties, income and expenditure—are all joint amongst the brothers (*y*). As the status of the undivided family was too familiar to everyone to require discussion, the Smritis notice only those new conditions which were destined to bring about the dissolution of the family itself These were *Self-Acquisition, Partition* and *Alienation.*

Origin of self acquired property

§ 250. Self-acquired property in the earliest state of Indian society did not exist (*z*). So where the family was of the purely Patriarchal type, the whole of the property was owned by the father, and all acquisitions made by the members of the family were made for him, and fell into the common stock (*a*) When the Joint Family arose, self-acquisition became possible, but was gradual in its rise. While the family lived together in a single house, supported by the produce of the common land, the labour of all went to the common stock and there could be no room for separate acquisition.

Its earliest forms

§ 251. But as society progressed and as arts, crafts and industries developed, self-acquisition received increasing recognition and its area gradually widened. The claims of the joint family and the claims of the individual to his acquisitions were finally reconciled either by giving a greater share to the acquirer or by the requirement that the acquisition must not have been at the expense of the common property The earliest forms of self-acquisition appear to have been the gains of science and valour, peculiar to the Brahman and the Kshatriya Wealth acquired with a wife, gifts from relations or friends, and ancestral property lost to the family and recovered by the independent exertions of a single member, were also included in the list; and Manu laid down the general rule: "What a brother has acquired by labour or skill, without using the patrimony, he shall not give up without his assent, for it was

(*x*) Brih., XXV, 6, Nar, XIII, 37
(*y*) Nar, XIII, 38
(*z*) See Mayr, 28
(*a*) Manu, VIII, § 416.

gained by his own exertion" (*b*). But we can see that self-acquisitions were at first not favoured, and that Manu's formula was rather strained against the acquirer than for him. Katyayana and Brihaspati refuse to recognize the gains of science as self-acquisition, when they were earned by means of instruction imparted at the expense of the family (*c*); and Vyasa similarly limits the gains of valour, if they were obtained with supplies from the common estate, such as a vehicle, a weapon, or the like, only allowing the acquirer to retain a double share (*d*). It would also seem doubtful whether the acquirer was originally entitled to the exclusive possession of the whole of his acquisitions. Vasishtha says: "If any of the brothers has gained something by his own efforts, he receives a double share." This text is supposed by Dr. Mayr to mark a stage at which the only benefit obtained by the acquirer was a right to retain, on partition, an extra portion of the fruits of his special industry (*e*). If that be the correct explanation, the text of Vyasa just quoted shows a further step in advance. He restricts the rights of the acquirer, only in cases where assistance, however slight, has been obtained from the family funds; as where a warrior has won spoil in battle, by using the family sword or chariot. In later times all trace of such a restriction had passed away. The text of Vasishtha had lost its original meaning, and was explained as extending Manu's rule, not as restricting it, and as establishing that a member of a family, who made use of the patrimony to obtain special gains, was entitled to a double portion as his reward (*f*). This is evidently opposed both to the spirit and the letter of the ancient law. It has, however, come to be the present rule in Bengal.

Not favoured.

§ 252 It does not appear that an acquirer had from the first an absolute property in his acquisition, to the extent of disposing of it in any way he thought fit. Originally the benefit which he derived from a special acquisition seems to have come to him in the form of a special share at the time of partition (*g*). While the family remained undivided,

Right over self-acquisitions.

(*b*) Manu, IX, §§ 206-209, Gautama, XXVIII, §§ 30, 31; Nar., XIII, §§ 6, 10, 11; Vyasa, Dig., II, 444.

(*c*) Dig., II, 444, 448.

(*d*) Dig., II, 281; V. May., IV, 7, § 12.

(*e*) Vas., XVII, § 51; Mayr., 29, 30; Dr. Burnell's translation of Varadarajah (p. 31) renders it. "If any of them have self-acquired property, let him take two shares." The text seems to be similarly interpreted by Jimutavahana. Daya Bhaga, II, § 41.

(*f*) Mit., I, 4, § 29; Daya Bhaga, VI, 1, §§ 24-29.

(*g*) Vishnu, XVII, § 1; Yajn., II, 118-120.

he would be entitled to the exclusive use of his separate gains. If he died undivided, they would probably fall into the common stock (*h*) Probably he was only allowed to alienate, where such alienation was the proper mode of enjoying the use of the property This would account for the distinction which is drawn between self-acquired movables and immovables. The right to alienate the former is universally admitted by the commentators, but the Mitakshara cites with approval a text, which states· "Though immovables or bipeds have been acquired by a man himself, a gift or sale of them should not be made without convening all the sons" (*i*).

Motives for Partition.

§ 253. Partition of property by the father was even a Vedic custom and the Smritis refer to Manu having divided his property amongst his sons (*j*). According to the text of Usanas (*k*), sacrificial gains, land, written documents, prepared food, water and women are indivisible amongst kinsmen even to the thousandth degree. When the family became too numerous or when a father wished to become a *vanaprastha* (hermit) or an ascetic or where more adventurous members wanted to take their shares and leave the family home or when there were dissensions amongst members or their wives or when each member wanted to retain and improve his self-acquisitions, partition would suggest itself as the obvious solution; but land itself would continue to be held in common. A minor reason for partition is probably to be found in the dictum of Gautama: "But in partition there is an increase of spiritual merit" (*l*). Apastamba apparently required that the father should, during his lifetime, divide his wealth equally amongst his sons so as to enable him to become an ascetic or a hermit (*m*). Manu says: "Either let them thus live together, or apart, if each desires to gain spiritual merit; for by their being separate, their merit increases, hence separation is meritorious" (*n*). Medatithi's comment upon it is: "for brothers who have not divided their property, a single religious duty is performed,"

(*h*) This is at present the case with the Nambudri Brahmans of the West Coast (11 Mad, 162)

(*i*) Mit., I, 1, § 27. This text is ascribed by Mr Colebrooke to Vyasa. In the Vivada Chintamani, p. 309, it is attributed to Prakasa, while Jagannatha quotes it as from Yajnavalkya. Dig., I, 411.

(*j*) Baudh, II, 2, 3, 2, Apas, II, 6, 14, 11

(*k*) The text is cited in Mit, I, IV, 26.

(*l*) Gaut., XXVIII, 4

(*m*) Apas, II, 6, 14, 1

(*n*) Manu, IX. III; see Dayabhaga, I, 27, Vivada Ratnakara, I, 12.

and that "neither separation by itself nor nonseparation by itself is either meritorious or sinful" (*o*). It does not appear therefore that the institution of partition was in the main due to the doctrine that separation was productive of greater spiritual benefit. Secular motives must have been largely responsible for partition from very early times and Manu does not appear to insist on partition, for he makes it entirely optional to separate or not to separate. Sankha and Likhita go further: "Willingly let them live together; by union they exhibit thrift" (*p*). Sons who enforced a division of the family estate against the wish of their father were excluded from funeral repasts, showing that the division though not illegal, was *contra bonos mores* (*q*). According to the Arthasastra of Kautilya, partition after the death of the parents was normal and there is no trace in it of the doctrine of spiritual benefit. On the other hand, partition of inheritance, more than any other institution was governed by "the customs prevalent in the country, caste, guild (*sangha*) or the village of the inheritors" (*r*).

Its development.

§ 254. It was, however, by very slow steps that the right to a partition reached its present form. At first it is possible that a member who insisted on leaving the family for his own purposes, went out with only a nominal share, or such an amount as the other members were willing to part with (*s*). This is the more probable, since, so long as the family retained its Patriarchal form the son could certainly not have compelled his father to give him a share at all, or any larger portion than he chose. The doctrine that property was by birth—in the sense that each son was the equal of his father—had then no existence. The son was a mere appendage to his father, and had no rights of property as opposed to him (*t*). It is quite certain that in the earlier period of Hindu law, no son could compel his father to come to a partition with him. Manu speaks only of a division after the death of the father, and says expressly that the brothers have no power over the property while the parents live. Kulluka Bhatta adds in a gloss:

Originally subject to consent of father.

(*o*) Jha's Manusmriti with Medhatithi Bhashya, Vol. V, 91.

(*p*) Dig., II, 204; Smriti Chandrika, I, 40.

(*q*) Gaut, XV, 19; Jolly, T.L.L., 99.

(*r*) Arthas., III, 7; Shamasastri, 203.

(*s*) Manu, IX, 207; Yajn., II, 116; see *Peddayya* v. *Ramalingam* (1888) 11 Mad., 406.

(*t*) Manu, VIII, 416; the property of the family was not legally family property but only the property of the head of the house, the other members having only moral claims upon it. Vedic Index, I, 351.

"Unless the father chooses to distribute it" (*u*). The consent of the father is also stated by Baudhayana, Gautama, and Devala to be indispensable to a partition of ancestral property (*v*), and Sankha and Likhita even make his consent necessary where the sons desire to have a partition of their own self-acquired property (*w*). Subsequently a partition was allowed even without the father's wish, if he was old, disturbed in intellect, or diseased; that is, if he was no longer fit to exercise his paternal authority (*x*). A final step was taken when it was acknowledged that father and son had equal ownership in ancestral property; that is to say, when the Patriarchal Family had changed into the Joint Family. It then became the rule that the sons could require a division of the ancestral property, but not of the acquired property (*y*) The joint family then ceased to be a corporation with perpetual succession, and became a coparcenary, terminable at will.

Growth of son's right.

Partition deferred till death of mother.

§ 255. There seems to be no doubt that originally the right of brothers to divide the family estate was deferred till after the death, not only of the father, but of the mother (*z*) Gautama, Narada and Brihaspati allow of partition during the mother's life, but make it an essential that she should have become incapable of child-bearing, or that cohabitation on the part of the father should have ceased (*a*). The latter limitation, which is also the later, may be explained as intended to protect the interests of after-born children (*b*). After the father's death, during the nonage of sons, while the daughters were yet unmarried, partition was probably postponed till after the death of the mother (*c*). The text

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(*u*) Manu, IX, § 104 A text of Manu (IX § 209) is, however, cited in the Mit (I, v, § 11) as evidencing the right of sons to compel a partition of the ancestral property held by their father The translation given by Sir W Jones (*brethren* for *sons*) is incorrect, see 2 W & B, xxiv, 1st edn The text itself refers, not to partition, but to self-acquisition It contemplates the continuance of the coparcenary, not its dissolution, and points out what property falls into the common stock and what does not

(*v*) Baudh, II, 2, 3, 8, Gaut, XXVIII, 2, Devala, Dig, II, 196.

(*w*) Dig, II, 203, 205

(*x*) Sankha cited Mitakshara I, 2, § 7

(*y*) Vyasa, Dig, II, 258; Vishnu, XVII, §§ 1, 2

(*z*) Manu, IX, § 104, Sankha and Likhita, Dig II 203, Yajn, II, § 117, Mitakshara, I, 3, §§ 1-3, Daya Bhaga, III, § 1.

(*a*) Gaut., XXVIII, § 2, Nar, XIII, § 3, Dig, II, 266

(*b*) Daya Bhaga, I, § 45 The Saraswati Vilasa, p 12 § 61, treats it as introduced in the father's interest, so as to secure him against a compulsory partition, so long as he might wish to marry again,

(*c*) Nar, I, 36; XIII, 3, Jolly, L & C, 179,

of Manu (IX, 104) which defers partition till after the death of both parents, probably means, as Visvarupa, the Smriti Chandrika and the Vyavahara Mayukha put it, that the property of each parent can only be divided after his or her death (*d*). It may be that as the mother was entitled to a share on partition, if the sons wanted to make a partition completely, they had to wait till the mother's death.

Mitakshara.

The Mitakshara, in dealing with the time of partition, quotes several texts as establishing that partition, during the father's lifetime, can only be made in three cases, *viz.*, first, when he himself desires it; or, secondly, even against his will, when both parents are incapable of producing issue; or, thirdly, when the father is addicted to vice, or afflicted with mental or bodily disease (*e*). And so it quotes, without any objection or explanation, the passage which directs partition to take place after the death of both parents (*f*). But in treating of the rights of father and son to ancestral property, it explains these texts as referring only to the self-acquired property of the father, and concludes that "while the mother is capable of bearing more sons, and the father retains his worldly affections, and does not desire partition, a distribution of the grandfather's estate does nevertheless take place by the will of the son" (*g*).

Bengal writers.

§ 256. The author of the Dayabhaga had to perform an exactly opposite feat of interpretation to that accomplished by the author of the Mitakshara. The latter considered the sons to be joint owners with their father, and had to explain away the texts which restricted or delayed their right to a partition. The former considered that the father was the exclusive owner, and had to explain away the other texts which authorised a partition. The mode in which he attained this result will be found in the first chapter of the Daya Bhaga. Jimutavahana takes up all the texts which assert that sons cannot compel a partition during the father's lifetime, as supporting his view that property in the sons arises not by birth, but by the death of the father. Consequently, even in the case of ancestral property, there can be no partition during the father's life, without his

(*d*) Visvarupa, 243; Smriti Chandrika, I, 12-17; Vyav. Mayukha, IV, 4, 1 (Gharpure's trans., 51); Viramit, II, 1, 2-3, Setlur's ed, 309.

(*e*) Mit., I, 2, § 7. The Viramitrodaya only recognises the 1st and 3rd cases II, i, 2-3, Setlur's ed., 309.

(*f*) Mit., I, 3, §§ 1, 2.

(*g*) Mit., I, v, §§ 5, 7, 8, 11. To the same effect is the Mayukha, IV, iv, §§ 1-4.

consent. Upon his death, whether actual or civil, the property of the sons arises for the first time, and with it their right to a division (*h*).

Rights of mother.

The condition that the mother should be past child-bearing is taken by the writers of this school to be a limitation upon the father's power to make a partition, where the property is ancestral, on the ground that, if the ancestral estate were divided while the mother was still productive, the after-born children would be deprived of subsistence (*i*) It is settled that neither the mother's death nor her consent is now required to effect a partition (*j*)

§ 257. The result is that the right to a partition at any time, between co-sharers, is now admitted universally But the writers of the Bengal school do not allow that sons are co-sharers with their father. Elsewhere all members of a Joint Family are considered to be co-sharers, whether they are related to each other lineally or collaterally.

Development of right to alienate.

§ 258 The right of alienation in ancient Hindu law appears, at first, to have been absolute when the father was the head of the family and his supreme power was admitted (*k*). Restrictions, however, were gradually imposed. Gautama refers to purchase as a mode of acquisition and to acceptance as an additional mode for a Brahmin (*k*[1]) Sales and mortgages are mentioned and the frequent reference to gifts argues in favour of the right of alienation from early times (*l*). The texts of Manu and Narada support the conclusion that the father had absolute control over the property, whether ancestral or self-acquired (*l*[1]) According to Narada and Brihaspati, the first restriction appears to have been that neither joint property nor the whole property of one who has offspring could be the subject of gift (*m*) The maintenance of the family was the principal consideration and any gift which causes hardship to the family is reprehensible

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(*h*) Daya Bhaga, I, §§ 11-31, 38-44, 50, II, § 8 Raghunandana, I, 5-14, II, 26, 34, 35 This appears to be the rule in the Punjab. See Punjab Customary Law, II, 168, III, 122

(*i*) Daya Bhaga, I, § 45, D K S, VI, § 1.

(*j*) Dig., II, 286; 1 W. MacN, 50; but see Daya Bhaga, III, 1-11; D.K.S., VII, 1.

(*k*) Vedic Index., I, 351.

(*k*[1]) Gaut., X, 39 40; Manu, X, 115.

(*l*) Manu, VIII, 165, 199.

(*l*[1]) Manu, IX, 104; Nar., XIII, 15.

(*m*) Nar., IV, 4; Brih., XV, 2.

and not meritorious (*n*). Otherwise, Brihaspati says that the religious merit supposed to be acquired by the giver, though tasting like honey at first, will change into poison in the end (*o*). A man was permitted to "drink the soma-juice" at a sacrifice only when he had, for three years at least, property sufficient to provide for those whom he was bound to maintain (*p*). Absolute powers of alienation were therefore, from the beginning, recognised over self-acquired property (*q*). The power of alienation also existed in respect of property inherited from the father or other ancestor, subject to the later restriction as to the bestowal of the whole. Even an ancestral field or house could be alienated (*r*). But the alienation of the entire or perhaps a large portion of the property required the assent of the wife, kinsmen and the ruler for its validity (*s*).

The older view of ownership to be found in Manu, evidently was that sons had no right of ownership so long as their father was alive. Any doubt on this point is dispelled by the Arthasastra of Kautilya which states the rule almost in the same terms (*t*). There was evidently a difference in the law schools of ancient India on the question long before the time of Vijnanesvara. Vishnu, Yajnavalkya and Brihaspati, while they concede the absolute right of the father as to self-acquired property, make the sons joint owners with him in respect of ancestral property (*u*). The claims of the sons to enforce a partition, even during the father's lifetime, were probably adjusted by allowing him to exercise absolute control over self-acquired property while their equal rights were declared in ancestral property. When once the equal right of sons in ancestral property was conceded, it followed that their ownership was by a title antecedent to partition and to the death of their father and the right by birth became logically inevitable. A text attributed to Gautama (*v*)

(*n*) Nar, IV, 6, and Asahaya's commentary on it. S.B.E., Vol. XXXIII, 128.

(*o*) Brih, XV, 3.

(*p*) Yajn, I, 124, Nar., IV, 7, The Visvajit sacrifice (V. Mayukha, IV, 1, 11) which consisted in the gift of the whole property, might have suggested these restrictions.

(*q*) Brih., XV, 4-5, XXV, 12-13.

(*r*) Brih., XV, 4-5.

(*s*) Brih., XV, 6-7; Yajn., II, 175.

(*t*) Arthas., III, 5; Shamasastri, 197.

(*u*) Vishnu, XVII, 2; Yajn., II, 121; Brih., XXV, 2, 3.

(*v*) Mit., I, 1, 23; Smriti Chandrika, I, 27; V. Mayukha, IV, 1, 3; Sarasvati Vilasa, para 460; Viramitrodaya, I, 23 (Setlur's ed., 285); Parasara Madhaviyam, s. 4.

expressly settling the question is relied on in the Mitakshara, the Smriti Chandrika, the Vyavahara Mayukha, the Parasara Madhaviyam, the Sarasvati Vilasa and the Viramitrodaya. The Smriti Chandrika quotes or interprets a text of Sankha in the same sense (*w*). The right by birth was, long before Vijnanesvara, known to Visvarupa (*x*), and is certainly discussed by Medhatithi who quotes an anonymous text: "The son becomes the owner of the property as soon as he is born" (*y*). The texts of Manu, Narada and Devala (*z*) were, however, followed by the other school of Hindu lawyers, for instance, by the author of the Sangraha (c. 800 A.D.) and Dharesvara (c 1000 A D) (*a*). Vijnanesvara and Jimutavahana were only the most logical and successful exponents of their respective schools. As Dr. Jolly says, Jimutavahana's opinions were neither peculiar to himself nor to the Bengal school of lawyers (*b*).

The Arthasastra of Kautilya says that after the parents' demise, the division of the property shall take place *per stirpes* (according to fathers). "In the undivided paternal property which has descended, sons and grandsons till the fourth degree from the father shall have their shares because the *pinda* is undivided upto that degree and all those who are of the divided *pinda* shall share equally" (*c*). The right of representation is equally recognised by Yajnavalkya and others (*d*). The germs of the right by birth may perhaps be traced to the right of representation according to which, the son, grandson and great-grandson take together (*e*). But the doctrine of right by birth was, in effect, established when the equal rights of the father and

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(*w*) Smriti Chandrika, I, 19-20

(*x*) Visvarupa, 244-245, Kane, 259

(*y*) Medhatithi on Manu, IX, 212, see also 209, Jha's edn, Vol V, 176; also 172-174

(*z*) Manu, IX, 104, Nar, XIII, 2, For Devala's text, see Dayabhaga, I, 18

(*a*) See Smriti Chandrika, I, 27, V Mayukha, IV, 1, 3 (Mandlik, 32). They hold that "partition only was the cause of son's ownership" Jolly, T L L., 108-109

(*b*) Jolly, T.L.L., 109. Mr. Jayaswal considers that the germs of the theory of the Bengal school are to be found in the law of the Arthasastra and in Manu, M. & Y., 255, 263.

(*c*) Arthas., III, 5; Shamasastri, 197

(*d*) Yajn, II, 120, Vishnu, XVII, 23, Brih., XXV, 14

(*e*) In Roman law, "the *Sui heredes* were entitled to the first place and that not so much in the character of heirs as of person now entering upon the active exercise of rights hitherto existing, though, in a manner, dormant." Muirhead, Historical Introduction to the Private Law of Rome, 156.

the son in ancestral property were admitted (*f*). Vijnanesvara does not, however, confine the son's right by birth to ancestral property. As sonship was the cause of ownership he extended it logically to the father's self-acquired or separate property, the only difference being that while in ancestral property, the son had equal rights with the father, in self-acquired property his rights were subordinate and unequal (*g*). His opinion as to the son's right both in self-acquired as in ancestral properties is followed by all the writers of the Mitakshara school (g^1).

Mitakshara.

§ 259. The author of the Mitakshara enters into an elaborate disquisition, as to whether property in the son arises for the first time by partition, or the death of the previous owner, or exists previously by birth (*h*). He quotes two anonymous texts, "The father is master of the gems, pearls, corals,, and of all other (movable property), but neither the father nor the grandfather is of the whole immovable estate;" and this other passage, "By favour of the father, clothes and ornaments are used, but immovable property may not be consumed even with the father's indulgence" (*i*). He sums up his views in §§ 27, 28 as follows:—

Property is by birth.

"Therefore it is a settled point that property in the paternal or ancestral estate is by birth, although the father has independent power in the disposal of effects other than immovables for indispensable acts of duty, and for purposes prescribed by texts of law, as gifts through affection, support of the family, relief from distress, and so forth; but he is subject to the control of his sons and the rest in regard to the immovable estate, whether acquired by himself or inherited from his father or other predecessor; since it is ordained, 'though immovables or bipeds have been acquired by a man himself, a gift or sale of them should not be made without convening all the sons. They who are born, and they who are yet unbegotten, and they who are still in the

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(*f*) See also Jayaswal, M. & Y, 256.

(*g*) Mit., I, 1, 23, 24, 27; I, v, 10. It is a settled point that property in the father's or paternal grandfather's estate is by birth; 'ancestral' in Colebrooke's translation is a mistake for 'grandfather's'. *Muhammad Hussain Khan* v. *Kishva Nandan Sahai* (1937) All., 655, 664, 665, 64. I.A, 250.

(g^1) Smriti Chandrika, VIII, 21-24; Vyav. Mayukha, IV, 1, 3 (pp. 44-45, Gharpure) Parasara Madhaviyam, pages 5-6 (para 4); Sarasvati Vilasa, para 460; Viramitrodaya, I, 23 (Setlur's ed., 285).

(*h*) Mit., I, 1, §§ 17-27, Viramit., ch. I.

(*i*) Mit., I, 1, § 21. The former of these texts is cited by Jimutavahana, II, § 32, as from Yajnavalkya, but cannot be found in the existing text. It is also opposed to Yajnavalkya, II, § 121.

womb, require the means of support. No gift or sale should therefore be made.' An exception to its follows: "Even a single individual may conclude a donation, mortgage, or sale of immovable property during a season of distress, for the sake of the family, and especially for pious purposes."

The opinion of Vijnanesvara that sons have by birth an *equal* ownership with the father, in respect of ancestral immovable property, is followed by all writers, except those of the Bengal school (*j*). But upon the other points, *viz.*, as to the extent of the father's power over ancestral movables, and the limitation upon his power over self-acquired land, there is no such harmony, and his own views appear to have been in a state of flux upon the subject.

Father's power over movables.

As regards movables, it is evident that the head of the family, whether in his capacity as father or as manager, must necessarily have a very large control over them. The very instance adduced by the text—gems, pearls and corals—points to things over which the father would necessarily have a special control (*k*) And the Mayukha says of this very text, "it means the father's independence only in the wearing and other use of ear-rings, rings, etc., but not so far as gift or other alienation. Neither is it with a view to the cessation of the cause of his ownership in the production of a son This very meaning is made manifest also by the text noticing only gems and such things as are not injured by use" (*l.*)

In another portion of the Mitakshara (*l*[1]) is quoted without comment a text of Yajnavalkya (II, §121) "The ownership of father and son is the same in land which was acquired by the grandfather, or in a corody (or settled income), or in chattels which belonged to him." This evidently contradicts the idea that the father had any absolute power of disposal over ancestral movables. Further, although in ch I, 1, § 24, he lays down the general principle that "the father has power, under the same texts, to give away such effects, though acquired by his father;" in § 27, already quoted, he seems to limit this power to the right of disposing of movables for such necessary or suitable purposes as would

(*j*) Smriti Chandrika, VIII, §§ 17-27, Madhaviyam, §§ 15, 16, Varadarajah, pp 4-6, V May, IV, 1, §§ 3, 4, Vivada Chintamani, 309, Vivada Ratnakara, II, 2-5, Madana Parijata, 660-662 (Calcutta edn.), Setlur's ed., 524-525, Sarasvati Vilasa, paras 214-226; Viramit., I, 23-30, Setlur's ed., 284-286.

(*k*) Mit., I, 1, 21.

(*l*) V. May., IV, 1, § 5.

(*l*[1]) Mit., I, 5, § 3.

come within the ordinary powers of the head of a household. Lastly, it is important to observe that none of the later writers in Southern India, who follow the Mitakshara, make any such distinction. They quote the above text of Yajnavalkya, and a similar one from Brihaspati, which place ancestral movables and immovables on exactly the same footing as regards the son's equal right by birth (*m*).

§ 260. As regards the second point, *viz.*, the restriction upon a father's power to dispose of his own self-acquired land, Vijnanesvara is equally at variance with himself. He asserts the restriction in the most unqualified terms in the passage already quoted. He denies it in equally unqualified terms in a later passage (*n*). "The grandson has a right of prohibition, if his unseparated father is making a donation, or a sale of effects inherited from the grandfather; but he has no right of interference, if the effects were acquired by the father. On the contrary, he must acquiesce, because he is dependent. Consequently the difference is this: although he has a right by birth in his father's and in his grandfather's property, still, since he is dependent on his father in regard to the paternal estate, and since the father has a predominant interest, as it was acquired by himself, the son must acquiesce in the father's disposal of his own acquired property; but since both have indiscriminately a right in the grandfather's estate, the son has a power of interdiction." And in the next paragraph he quotes Manu, IX, § 209, as showing that the father was not compelled to share self-acquired wealth with his sons. The Smriti Chandrika is explicit on the point that as regards all self-acquired property, without any exception, the father has independent power, to the extent of giving it away at his pleasure or enjoying it himself, and he cites texts of Katyayana and Brihaspati, which state this to be the rule as plainly as can be (*o*). On the other hand, the Vivada Chintamani, which always maintains the rights of the family in their strictest form, cites with approval the same text as that which is relied on by the Mitakshara, as restraining the dealings of the father with self-acquired land (*p*). But in an earlier

Over self-acquired land.

Mitakshara.

Smriti Chandrika.

Vivada Chintamani.

(*m*) Smriti Chandrika, VIII, §§ 17-20; Madhaviyam, §§ 15, 16; Varadarajah, §§ 4-6. A conflict of opinion exactly similar to that which is found in the Mitakshara as regards the father's power of disposal over movable property appears in the Viramitrodaya, at p. 6, § 9; p. 74, § 17, and p. 16 § 30.

(*n*) Mit., I, 5, §§ 9, 10, 11.

(*o*) Smriti Chandrika, VIII, §§ 22-28.

(*p*) Vivada Chintamani, p. 309.

chapter the author states the unqualified rule. "Self-acquired property can be given by its owner at his pleasure" (p 76), and at p. 229 he repeats the same rule expressly as to a father.

The Dayabhaga.

§ 261. When we come to Jimutavahana, we find that he arrives at exactly the opposite conclusion to that of the Mitakshara. He relies on the texts of Manu and Devala which prohibit partition in the father's lifetime, without his consent, as showing that the father was the absolute owner of the property (*q*). He then grapples with the text—"The father is master of the gems, pearls, and corals, and of all other (movable property), but neither the father nor the grandfather is so of the whole immovable estate." From this he argues. (1) That since the grandfather is mentioned, the text must relate to his effects, *viz.*, to ancestral property; (2) That with regard to such property, "the father has authority to make a gift or other similar disposition of all effects other than land, etc, but not of immovables, a corrody, and chattels (*i e*, slaves)," (3) That even as to land "the prohibition is not against a donation or other transfer of a small part not incompatible with the support of the family. For the insertion of the word 'whole' would be unmeaning (if the gift of even a small part were forbidden). The other texts which forbid a transfer by one of several joint owners, or even the sale by a father of his own self-acquisitions without the consent of his sons, he dismisses with the simple remark, that they only show a moral offence. "Therefore, since it is denied that a gift or sale should be made, the precept is infringed by making one. But the gift or transfer is not null, for a fact cannot be altered by a hundred texts" (*r*). He therefore concludes that "sons have not a right of ownership in the wealth of the living parents, but in the estate of both, when deceased" (*s*).

Attempt to reconcile usage with texts.

§ 262. We have already seen that the doctrine of Jimutavahana was derived from a more ancient tradition and is as authoritative an exposition of one of the two ancient schools of Hindu law as Vijnanesvara's theory of right by birth is of the other. Probably the opinions of Manu, Narada and Devala had from early times more influence in Bengal than those of Yajnavalkya. The two schools must have represented the customary law of different parts

(*q*) Daya Bhaga, I, §§ 12-34

(*r*) Daya Bhaga, II, §§ 22, 30, D.K.S, VI, §§ 18-20.

(*s*) Daya Bhaga, I, 30, D.K.S., VI, 18, Raghunandana, I, 5-14, 26.

of India and were probably not the result of a difference in later legal theory. The exposition in the Mitakshara asserting the right by birth and the exposition in the Daya Bhaga negativing it, are both largely dialectical. Their conclusions alone are material; and their long and undisturbed acceptance, notwithstanding the subsequent controversy between the two schools, warrants the inference that each school was concerned in giving its own legal formulae for its customary law, thus establishing, on a firm basis what before was not quite settled.

Power of father to distribute.

While Jimutavahana lays down that the absolute ownership of the father enables him to deal with his ancestral property as he likes, he also lays down that if he chooses to distribute it, he must do so upon general principles of equality, and cannot, even for himself, reserve more than a double share (*t*).

Interest of coparcener in his share.

Vijnanesvara and his followers consider that no coparcener has such an ascertained share, prior to partition, as admits of being dealt with by himself, apart from his fellow-sharers (*u*). They look upon every co-sharer as having a proprietary right in the whole estate, subject to a similar right on the part of all the others. Jimutavahana, on the other hand, denies the existence of such a general right, and says that their property consists in unascertained portions of the aggregate (*v*). Hence he argues that the text of Vyasa which prohibits sale, gift or mortgage by one of several coparceners, cannot be taken literally, for each has a property consisting in the power of disposal at pleasure (*w*).

Rights of women.

According to the Mitakshara, a widow could never inherit unless her husband had been a sole or a separated owner (*x*). This resulted from the nature of his interest in the property. So long as he was undivided, he had not a share but a right to obtain a share by partition. If he died without exercising this right, his interest merged, and went to enlarge the possible shares of the survivors. But according to the Daya Bhaga, a widow inherits to an issueless husband whether he dies divided or undivided. This would have been a logical result of holding that each coparcener during his lifetime

(*t*) Daya Bhaga, II, §§ 15-20, 47, 56-82.
(*u*) Mit., I, 1, 27-29.
(*v*) Daya Bhaga, XI, 1, § 26.
(*w*) Daya Bhaga, II, § 27; D.K.S., XI.
(*x*) Mit., II, 1, § 30.

held a definite though unascertained share. But though Jimutavahana relies upon this as an answer to his opponents, he grounds the right itself upon the texts of early sages. It is probable that in this respect he may have been really reviving the older law (*y*).

(*y*) Daya Bhaga, XI, 1, §§ 1-26.

CHAPTER VIII.

THE JOINT FAMILY.

Division of subject.

§ 263. In discussing the joint family or coparcenary which forms the subject of this chapter, we shall have to consider: *first*, who are its members; *secondly*, what is coparcenary property; *thirdly*, separate property including self-acquisition; *fourthly*, the mode in which the joint property is managed and enjoyed; and *fifthly*, trading families.

Presumption of union.

The joint and undivided family is the normal condition of Hindu society. An undivided Hindu family is ordinarily joint not only in estate but in food and worship (*a*). The presumption therefore is that the members of a Hindu family are living in a state of union, unless the contrary is established. "The strength of the presumption necessarily varies in every case. The presumption of union is stronger in the case of brothers than in the case of cousins, and the farther you go from the founder of the family, the presumption becomes weaker and weaker" (*b*). Even where separation, either of person or estate, is established, it can never be more than temporary. The man who has severed his union with his brothers, if he has children, becomes the head of a new joint family, composed of himself and his children, and their issue. And so property, which was the self-acquisition of the first owner, as soon as it descends to his heirs becomes their joint property, with all the incidents of that condition (*c*).

Joint property, not a prerequisite.

There is no presumption that a family, because it is joint, possesses joint property (c^1). Possession of property is not under the Mitakshara law a necessary requisite for the constitution of a joint family. Where persons live together, joint in food and worship, it is difficult to conceive of their

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(*a*) *Raghunadha* v. *Brozo Kishoro* (1876) 3 I.A., 154, 191, 1 Mad, 69, 81; *Neelkisto Deb* v *Beerchunder* (1869) 12 M.I.A., 523, 540.

(*b*) *Moro Viswanath* v. *Ganesh* (1873) 10 Bom. H.C., 144, 468; this passage is cited with approval in *Yellappa* v. *Tippanna* (1929) 56 I.A., 13, 19, 53 Bom., 213, 220. *Pirthee* v. *Mahadeo Pershad* (1895) 21 I.A., 134, 22 Cal., 85. See also *Kanhaya Lal* v. *Devi Dayal* A.I.R., 1936 Lah., 514; *Muna Mahto* v. *Raghunath* A.I.R. 1933 Pat., 153.

(*c*) *Ram Narain Singh* v. *Pertum Singh* (1873) 11 B.L.R., 397, 20 W.R., 189.

(c^1) *Rai Shadilal* v. *Lal Bahadur* A.I.R. 1933 P.C., 85, 64 M.L.J., 298 P.C.; *Magan Lal* v. *Krishna Bibi* A.I.R. 1935 All., 303.

possessing no property whatever, such as ordinary household articles which they would enjoy in common. Hindu law does not require that properties of a joint family should be immovable properties or that they should be of appreciable value (c^2).

Its members

§ 264. It is evident that there can be no limit to the number of persons of whom a Hindu joint family consists, or to the remoteness of their descent from the common ancestor, and consequently to the distance of their relationship from each other. But the Hindu coparcenary constitutes a much narrower body. The terms, 'coparcenary' and 'coparceners', though sanctioned by long usage are not happily applied in the Mitakshara law and their use has been rightly criticised by Lord Dunedin *in Baijnath Prasad's* case (*d*). For, coparcenary in the Mitakshara law is not identical with coparcenary as understood in English law. when a member of a joint family dies, "his right accresces to the other members by survivorship, but if a coparcener dies. his or her right does not accresce to the other coparceners, but goes to his or her own heirs". When we speak of a Hindu joint family as constituting a coparcenary, we refer not to the entire number of persons who can trace from a common ancestor, and amongst whom no partition has ever taken place; we include only those persons who, by virtue of relationship, have the right to enjoy and hold the joint property, to restrain the acts of each other in respect of it, to burden it with their debts, and at their pleasure to enforce its partition. Outside this body there is a fringe of persons possessing inferior rights such as that of maintenance. which tends to diminish as the result of reforms in Hindu law by legislation.

§ 265 The Hindu lawyers always treat partition and inheritance as parts of the same subject (*e*). Together, they formed from ancient times, one of the eighteen titles of law. As Narada says, where a division of the paternal estate is instituted by sons, that becomes a topic of litigation, called by the wise, partition of heritage (*f*).

(c^2) *Janakiram* v. *Nagamony* (1926) 49 Mad., 98, 104, 115-6.

(*d*) *Baijnath Prasad* v. *Tej Bali Prasad* (1921) 48 I.A, 195, 211, 43 All., 228, 243.

(*e*) The works of Jimutavahana and Madhava are known by the names Dayabhaga and Daya-vibhaga which mean simply partition of heritage. See Mit., I, 1, 2-3 where '*Daya*' is defined as 'wealth which becomes the property of another, solely by reason of his relation to the owner'.

(*f*) Nar., XIII, 1, Mit., I, 1, 5, Vyav. Mayukha, IV, iii, 1.

do not succeed to each other.

Apart from the recent Hindu Women's Rights to Property Act, 1937, there is in the Mitakshara law no such thing as succession, properly so called, in an undivided Hindu family. A Hindu joint family consists of males and females; daughters born in the family are members of it till their marriage and women married into the family are equally members of the joint family (*g*). The whole body of such a family, consisting of males and females, constitutes a sort of corporation, some of the members of which are coparceners, that is, persons who on partition would be entitled to demand a share, while others are only entitled to maintenance. Each person is simply entitled to reside and be maintained in the family house; when he dies his claims cease, and as others are born their claims arise. But the claims of each spring from the mere fact of their entrance into the family, not from their taking the place of any particular individual. Deaths may enlarge the beneficial interest of the survivors, by diminishing the number who have a claim upon the common fund, just as births may diminish their interests by increasing the number of claimants. The joint family property continues to devolve upon the members of the family for the time being by survivorship and not by succession.

Rights arise by birth

For, according to the principles of Hindu law, there is coparcenership between the different members of a united family and survivorship following upon it. There is community of interest and unity of possession between all the members and upon the death of any one of them, the others take by survivorship that in which they had during the deceased's lifetime a common interest and a common possession (*h*). The right of survivorship rests upon the text of Narada and is recognised in the Mitakshara (*i*).

Survivorship.

(*g*) *Vedathanni* v. *Commr of Incometax* (1933) 56 Mad., 1, 4, 5; *Commr. of Incometax* v. *Lakshminarayan* (1935) 59 Bom., 618, 621, 624, see *Kalyanji Vithaldas* v. *I. T. Commr., Bengal* (1936) 64 I.A., 28, 38, 39, [1937] 1 Cal., 653; *Raghunada* v. *Brozo Kishoro* (1874) 1 Mad, 59, 81 P.C.

(*h*) *Katama Nachiar* v. *Raja of Shivaganga* (1863) 9 M.I.A., 539, 611; *Subramanya Pandian* v. *Sivasubramania Pillai* (1894) 17 Mad., 316, 328 (evidently the reference to coparceners as tenants in common is a slip).

(*i*) Mit., II, 1, 7 quoting Nar. XIII, 25; II, i, 30, II, ix, 4; *Subramanya Pandian* v. *Sivasubramania Pillai* (1894) 17 Mad., 316, 330. The Arthasastra of Kautilya clearly lays down the rule of survivorship. "If a man has no male issue, his own brothers or persons who have been living with him shall take possession of his property, and in their absence, his daughters shall have his property". III, 5, 8 (Dr. Jolly's edn.), Shamasastri, 197; Sarvadhikari, 2nd edn., 655.

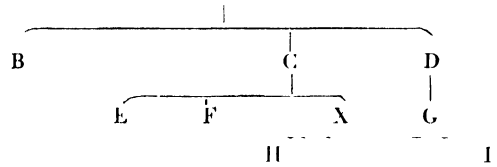
Narada says: "If among several brothers, one childless should die or become a religious ascetic, the others shall divide his property, excepting the stridhana" (*j*). In other words, survivorship consists in the exclusion of the widows and other heirs of the coparcener from succeeding to his undivided interest in the coparcenary property.

Now repealed by Act.

Now, however, the Hindu Women's Rights to Property Act, 1937, makes a serious inroad upon this rule of survivorship: for the interests of male coparceners in a Mitakshara family devolve, on their death, upon their widows as for a Hindu woman's estate which they are entitled to work out by partition. The male issue, if any, of the deceased coparcener, however, continue to remain coparceners with the other male coparceners, governed by the rule of survivorship. But if any of them leaves a widow, she will in her turn intercept the succession of collaterals by survivorship which is possible hereafter only where a coparcener dies leaving neither widow nor male issue (§ 592).

Rights of male members are ascertained by partition.

§ 265 A. The rights of male members, which arise by birth are only ascertained on partition, for, no individual member of a family, whilst it remains undivided, can predicate of the joint undivided property that he has any definite share (*k*). The interest of the member in the undivided property is not individual property but is a fluctuating interest liable to be diminished by births or increased by deaths in the family (*l*). For instance, suppose a family to consist only of A and his sons B and C, on a partition each would take one-third. But if D was born while the family remained joint, each would take one-fourth. Supposing the family



still to remain undivided, on the death of A, the possible shares of the three sons would be enlarged to one-third;

(*j*) Nar., XIII, 25, Viramit., IV, 4 (Setlur, II, 428), Madana Parijata, Setlur's ed., 531.

(*k*) *Appovier* v. *Ramasubba Aiyan* (1866) 11 M.I.A., 75, 89.

(*l*) *Sudarsanam Mastri* v. *Narasimhulu* (1902) 25 Mad., 149, 154, 156, *Gharibullah* v. *Kholak Singh* (1903) 30 I.A., 165, 25 All., 407, 416.

and if B were subsequently to die without issue, they would again be enlarged to one-half. As C and D married, their sons E, F and G would enter into the family and acquire an interest in the property. But that interest again would be a shifting interest, depending on the state of the family. If C were to die, leaving only two sons E and F, and they claimed a partition, each would take one-half of one-half. But if X had previously been born, each would only take one-third of one-half. If they put off their claim for a division till D, G, H and I had all died, they would each take one-third of the whole. The statement that in an undivided family each member transmits to his male issue (*m*) his own share in the joint property, and that such issue take *per capita inter se*, but *per stirpes* as regards the male issue of other members is only a statement of what would be their rights on a partition. But until a partition, their rights consist merely in a common enjoyment of the common property and the right to restrain alienations made by their direct ancestors (*n*). Fluctuating interest.

§ 266. There is a most important distinction between a Mitakshara coparcenary and the general body of the undivided family. Suppose the property to have all descended from one ancestor, who is still alive, with five generations of descendants. It by no means follows that on a partition every one of these five generations will be entitled to a share. And if the common ancestor dies, so that the property descends a step, it by no means follows that it will go by survivorship to all these generations. It may go to the representatives of one or more branches, or even by inheritance to the heirs of the survivor of several branches, to the total exclusion of the representatives of other branches. The question in each case will be, who are the persons who have taken an interest in the property by birth. The answer will be, that they are the three generations next to the owner in unbroken male descent. Therefore, if a man has living sons, grandsons, and great-grandsons, all The coparcenary

(*m*) The term 'male issue' will be used throughout this work unless otherwise indicated as embracing son, grandson and great-grandson.

(*n*) See this subject discussed, *Appovier* v. *Rama Subbayan* (1866) 11 M.I.A., 75, 8 W.R. (P.C.), 1; *Sadabart Prasad* v. *Foolbash Koer* (1869) 3 B.L.R (F B), 31, 14 W R., 340; *Ram Narain* v. *Pertum Singh* (1873) 20 W.R., 189, 11 B.L.R, 397; *Rajnarain* v *Heeralal* (1880) 5 Cal., 142; *Bhimul Doss* v. *Choonee Lall* (1877) 2 Cal., 397; *Dibi Prashad* v. *Thakur Dial* (1875) 1 All, 105, *Rao Gorain* v. *Teza Gorain* (1870) 4 B.L.R., Appx., 90; *Sudarsanam* v. *Narasimhulu* (1902) 25 Mad., 149.

of these constitute a single coparcenary with himself (*o*). Every one of these descendants is entitled to offer the funeral cake to him, and every one of them obtains by birth an interest in his property. But the son of one of the great-grandsons would not offer the cake to him, and also is out of the coparcenary, so long as the common ancestor is alive (*p*). But while fresh links are continually being added to the chain of descendants by birth, so earlier links are being constantly removed from the upper end of the chain by death. As each fresh member takes a share, his descendants to the third generation below him take an interest in that share by birth. So the coparcenary may go on widening and extending, as long as its members include agnates descended from a common ancestor, irrespective of their degrees of agnatic relationship to each other (*q*). But this is always subject to the condition that no person who claims to take a share is more than three steps removed from a direct ascendant who has taken a share Whenever a break of more than three degrees occurs between any holder of property and the

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(*o*) Dr. Jolly (T L L, 170-171) thinks that the Mitakshara and the Madana Parijata intentionally confine the coparcenary to the son and the grandson and exclude the great-grandson In this, he follows Jimutavahana's criticism in the Dayabhaga (XI, 1, 35) that "still there is no separate text concerning the great-grandson" The undoubted right of the great-grandson as a member of the coparcenary, admitted by Manu (IX, 186), Baudhayana (I, 5, 11, 9), and Katyayana (cited in the Smritichandrika, VIII, 6) could not have been negatived by the Mitakshara On the other hand, the Mitakshara on Yajn, II, 50 (Setlur's edn, 403-408) and the elaborate explanation of the Viramitrodaya (III, 1, 11, Setlur, II, 391, 392) are conclusive in favour of the great-grandson's inclusion The Smritichandrika citing a text of Devala, "Sages declare partition of heritable property to be co-ordinate with the gifts of funeral cakes", concludes that partition shall be allowed as far as the great-grandson of the deceased owner VIII, 11-14 The Vyavahara Mayukha also says "strictly speaking, the word 'grandfather' is indicative of a class and not of the grandfather alone" (Mandlik, p 33) The explanation of the Viramitrodaya receives further support from the Arthasastra (III, 5, 3, Dr Jolly's edn, Shamasastri, 197) which says that sons or grandsons till the fourth generation from the first parent shall also have prescribed shares Mr Ameer Ali says "It is beyond question that under the law of the Mitakshara, the great-grandson is as much a member of the joint family as a son or grandson" *Masitullah* v. *Damodar Prasad* (1926) 53 I A, 204, 208, 48 All, 518, 522, *Buddha Singh* v *Laltu Singh* (1915) 42 I A., 208, 221, 37 All, 604

(*p*) This is cited with approval by the Judicial Committee in *Masitullah* v *Damodar Prasad* (1926) 53 I A, 204, 209, 48 All., 518, 523; the expression in Baudhayana is *'avibhaktadaya'* (Baudh, I, 5, II, 9, S.B E, Vol XIV, p 178) which, according to Madhava cited by Mr. Ghose, means 'undivided body' (H L., I, 192); according to Dr Jha, it means 'coparceners' (H L S, II, 510)

(*q*) *Yenumula* v *Ramandora* (1870) 6 M H C R, 94, *Moro Vishvanath* v *Ganesh* (1873) 10 Bom H C., 444, *Tirumal Rao* v. *Rangadam* (1912) 23 M.L J, 79,

person who claims to take next after that holder, the line ceases in that direction, and survivorship enures only to those collaterals and descendants who are within the limit of three degrees (*r*). This was laid down in two cases in Bombay and Madras.

Coparcenary not limited to three degrees from common ancestor.

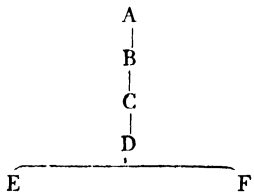
§ 267. In the former case the claim to partition was resisted, on the ground that the plaintiff was beyond the fourth degree from the acquirer of the property in dispute, the defendant being within that degree. It was argued that the analogy of the law of inheritance prevented a lineal descendant, beyond the great-grandsons, from claiming partition from those legally in possession as descendants from the original sole owner of the family property or any part of it (*s*). West, J., said: "The Hindu law does not contemplate a partition as absolutely necessary at any stage of the descent from a common ancestor; yet the result of the construction pressed on us would be to force the great-grandson in every case to divide from his co-parceners, unless he desired his own offspring to be left destitute. Where two great-grandsons lived together as a united family, the son of each would, according to the Mitakshara law, acquire by birth a co-ownership with his father in the ancestral estate; yet if the argument is sound this co-ownership would pass altogether from the son of A or B, as either happened to die before the other. If a coparcener should die, leaving no nearer descendant than a great-great-grandson, then the latter would no doubt be excluded at once from inheritance and from partition by any nearer heirs of the deceased, as, for instance, brothers

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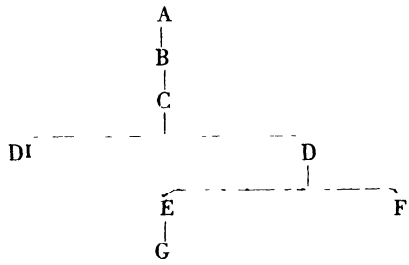
(*r*) This sentence is criticised by Benson and Sundara Aiyar, JJ., in *Tirumal Rao* v. *Rangadani* (1912) 23 M.L.J., 79, 94, on the ground that "as soon as each descendant is born, he takes a share in what is already vested in his father and he has not got to claim it as the share of a person more than three degrees removed from himself. When the son, grandson and great-grandson of a coparcener A die leaving a son of the great-grandson, the shares vested also in them have already been vested in the son of the great-grandson and do not return completely to their ancestor A". This is only a dictum for, admittedly there was no gap of more than three degrees in that case. It overlooks (1) that the right by birth meaning the right to compel a partition is not endless but is in itself limited by the rule of three degrees so as to prevent one from enforcing a partition against his great-great-grandfather and (2) that the passage in the text follows the views of West and Nanabhai Haridas, JJ., in 10 Bom. H.C., 444, and of the Madras High Court in 6 M.H.C.R., 94; see Smritichandrika, VIII, 8 to 16. In the Vyav. Mayukha, IV, 1, 3, the expression "wealth received from the great-grandfather, etc. (*adi*)" is not confined to three dagrees; Mr. Mandlik however thinks that the term '*adi*' is "put in inadvertently" (p. 33).

(*s*) *Moro Vishvanath* v. *Ganesh* (1873) 10 Bom. H.C., 444, 449.

and their sons; but where there has not been such an interval as to cause a break in the course of lineal succession, neither has there been an extinguishment of the right to a partition of the property in which the deceased was a co-sharer in actual possession and enjoyment (*t*). Each descendant in succession becomes co-owner with his father of the latter's share, and there is never such a gap in the series as to prevent the next from fully representing the preceding one in the succession" The same principles were illustrated in detail by Mr. Justice Nanabhai Haridas. He said (*u*). "Take, for instance, the following case A, the original owner of the property in dispute, dies, leaving a son B and a grandson C, both members of an undivided family B dies, leaving C and D, son and grandson respectively; and C dies, leaving a son D and two grandsons by him E and F. No partition of the family property has taken place, and D, E and F are living in a state of union. Can E and F compel D to make



over to them their share of the ancestral property? According to the law prevailing on this side of India they can, sons being equally interested with their father in ancestral property (*v*). In the same way, suppose B and C die, leaving A and D members of an undivided family, and then A dies, whereupon the whole of this property devolves, upon D,



who thereafter has two sons, E and F They, or either of them, can likewise sue their father D for partition of the

(*t*) See per Jagannatha, Dig., II, 256-263, 479.

(*u*) (1873) 10 Bom. H.C., 444, 463.

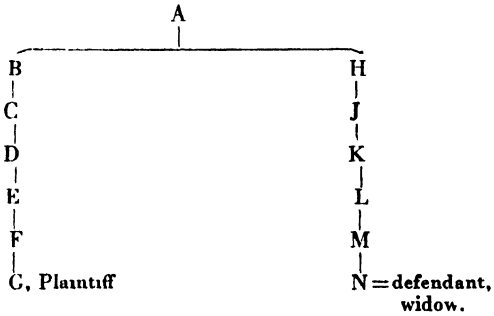
(*v*) 1 Stra. H.L., 177; 2 *ibid.*, 316; Mitakshara, I, i, 27; I, v, 3, 5, 8. 11: V. May., IV, iv, 13.

said property, it being ancestral. Now suppose B and C die, leaving A, D and D^1, members of an undivided family, after which A dies, whereupon the whole of his property devolves upon D and D^1 jointly, and that D thereafter has two sons, E and F, leaving whom D dies. A suit against D^1 for partition of the joint ancestral property of the family would be perfectly open to E and F, or even to G and F, if E died before the suit. It would be a suit against D^1 by a deceased brother's sons or son and grandson (*w*). But E and F are both fifth, and G sixth in descent from the original owner of the property, whereas D and D^1 are only fourth. Suppose, however, that A dies after D leaving a great-grandson, D^1 and the two sons of D, E and F. In this case E and F could not sue D^1 for partition of property descending from A, because it is inherited by D^1 alone, since E and F being sons of a great-grandson, are excluded by D^1, A's surviving great-grandson, the right of representation extending no further (*x*). The rule, then, which I deduce from the authorities on this subject is, not that a partition cannot be demanded by one more than four degrees removed from the acquirer or *original owner* of the property sought to be divided, but that it cannot be demanded by one more than four degrees removed from the last owner, however remote he may be from the original owner thereof."

But limited to three degrees from the last owner.

§ 268. This principle was also affirmed by the Madras High Court, and its application put to a more violent test. The question was as to the right of succession to an impartible zemindary. The original owner and common ancestor of the claimant was A. The zemindary had descended throughout in the line of H, and was last held by N, who died without issue, leaving a widow, the defendant. The

Principle applied to impartible Zemindary.



plaintiff was G, who was admittedly the nearest male of

(*w*) V. May., IV, iv, 21.

(*x*) See Jagannatha's Comment, on text, ccclxx; Dig., II, 479; I Nort. L.C., 292; Stra. Man., 323; 2 Stra. H.L., 327.

kin to N. The family was undivided It was contended that though an undivided coparcener would take before the widow, coparcenership can only exist between kindred who are near sapindas, that is, not beyond the fourth degree and consequently that plaintiff was not a coheir of the deceased. The Court held that the zemindary, though impartible, was still coparcenary property, and that the members of the undivided family acquired the same right to it by birth, as they would have done to any other property, subject only to the limitation of the enjoyment to one. Then as to who were coparceners, they said. "It appears to us equally certain that the limit of the co-heirs must be held to include undivided collateral relations, who are descendants in the male line of one who was a coparcener with an ancestor of the last possessor. For, in the undivided coparcenary interest which vested in such coparcener, his near sapindas were co-heirs, and when on his death, the interest vested in his sons, or son, or other near sapinda in the male line, the near sapindas of such descendants or descendant became in like manner co-heirs with them or him, and so on, the co-heirship became extended through the new sapindas down to the last descendant. Obviously, therefore, as long as the *status* of non-division continues, the members of the family who have, in this way, succeeded to a coparcenary interest, are co-heirs with their kindred who possess the other undivided interests of the entire estate". The court, therefore, held that the plaintiff, as undivided coparcener, would succeed before the widow (*y*), though he, as well as the defendant's husband were sixth in descent from the common ancestor.

Definition of coparceners

§ 269 On the principle that the son, grandson and great-grandson alone have vested rights by birth in the property of the father, grandfather and great-grandfather and not other relations, Vijnanesvara and the writers who follow him divide heritage (*daya*) into two classes known as *Apratibandha* and *Sapratibandha*, terms which have been translated, not very happily, *unobstructed* and *obstructed*, or liable to obstruction The terms are fully explained (*z*) in the Mitakshara· "The wealth of the father or of the paternal grandfather becomes the property of his sons or of his grandsons, in right of their being his sons or his grand-

Obstructed and unobstructed property.

(*y*) *Yenumula* v *Ramandora* (1870) 6 Mad. H.C, 94, 106 See also in Bengal, *Girwurdharee* v *Kulahul* 4 S.D., 9 (12), where property was divided among persons four, five, and six degrees removed from the common ancestor.

(*z*) *Bai Parson* v. *Bai Somli* (1912) 36 Bom., 424.

sons; and that is an inheritance not liable to obstruction. But property devolves on parents or uncles, brothers, or the rest, upon the demise of the owner, if there be no male issue; and thus the actual existence of a son, and the survival of the owner are impediments to the succession; and on their ceasing, the property devolves on the successor in right of his being uncle or brother. This is an inheritance subject to obstruction" (*a*). The unobstructed, or rather the unobstructible, estate is that in which the future heir has already an interest by the mere fact of his existence. If he lives long enough he must necessarily succeed to the inheritance, unless his rights are defeated by alienation or devise, and if he dies, his rights will pass on to his son, unless he is himself in the last rank of near sapindas, in which case his son is out of the line of unobstructed heirs. On the other hand, the person who is next in apparent succession to an obstructed, or rather an obstructible estate, may at any moment find himself cut out by the interposition of a prior heir, as for instance a son, widow or the like. His rights will accrue for the first time at the death of the actual holder, and will be judged of according to the existing state of the family at that time. Any nearer heir who may then be in existence will completely exclude him; and if he should die before the succession opens, even though he would have succeeded, had he survived, his heirs will not take at all, unless they happen themselves to be the next heirs to the deceased. In other words, he cannot transmit to others rights which had not arisen in himself (*b*). Nor can he by any contract bar the rights of those who, after his death, are the actual reversioners when the succession opens (*c*). On the same principles, property which is liable to obstruction (*sapratibandha*) and which once vested in the heir in existence at the time the inheritance opens, is not affected by the subsequent birth of a person who would have taken

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(*a*) Mit., I, 1, § 2, 3, Viramit., I, 5, V. May., IV, 2, § 2 (Setlur, II, 277). See *per curiam*, *Nund Coomar Lall* v. *Ruzzuooddeen* (1873) 10 B.L.R., 191; *Debi Parshad* v. *Thakur Dial* (1875) 1 All., 105 (F.B.), 112 These terms are not used by the writers of the Bengal or Mithila School. V. N. Mandlik, 359; Jolly, T L.L, 176. Explaining the text of Gautama (X, 39), "An owner is by inheritance, purchase, partition, seizure or finding", Vijnanesvara says that "unobstructed heritage is here denominated inheritance (*riktha*); partition (*samvibhaga*) intends heritage subject to obstruction" (Mit. I, 1, 13). See as to this, Viramit., Setlur, II, 280; Vyav. Mayukha, IV, 1, 2 (Gharpure's trans., 44).

(*b*) *Bapu Anaji* v. *Ratnoji* (1897) 21 Bom., 319.

(*c*) *Bahadur Singh* v. *Mohar Singh* (1902) 29 I.A., 1, 24 All., 94.

along with him, or in preference to him, if in existence when the succession opened (*d*).

Women not coparceners.

It is obvious that, on the twin principles of a right vested by birth in the male issue only and of unobstructed heritage, the conception of a Mitakshara coparcenary is a common male ancestor with his lineal descendants in the male line, and female members of the family who have no vested right by birth and come in only as heirs to obstructed heritage (*sapratibandha daya*) cannot be coparceners with the male members, though, along with the males, they are members of the undivided family as a corporate body (*e*).

Their position under the Act.

§ 270. The position however has now become complicated in consequence of rights conferred upon widows of coparceners in a Mitakshara joint family by the recent Hindu Women's Rights to Property Act, 1937 The undivided interest of a coparcener who leaves a widow does not go by survivorship to his male issue or to the other coparceners on his death, but it goes to her as his heir for the limited estate of a Hindu woman. While she cannot be in the strict sense a coparcener with the other members, her position will be analogous to that of a member of an undivided family under the Dayabhaga law with this possible difference that, as she is only to have the 'same interest' as her husband himself had, the share to which she will be entitled at a partition may be liable to the same fluctuation caused by changes in the family as if she occupied the place of her husband or as the share of any member of an undivided Mitakshara family (§ 592) (*f*).

Son's right by birth in father's property.

§ 271. It follows from the conception of unobstructed heritage (*apratibandhadaya*) and of the sons' right vested by birth that an undivided son takes not only the paternal grandfather's property but also the property acquired by his

(*d*) *Narasimha* v. *Virabadra* (1894) 17 Mad, 287 (sister's son) distinguishing *Krishna* v *Sami* (1886) 9 Mad, 64 as relating to unobstructed property

(*e*) *Sudarsana Maistri* v *Narasimhulu* (1902) 25 Mad, 149, 154, *Punna Bibee* v. *Radhakissendas* (1904) 31 Cal, 476, *Hira Singh* v *Mt Manglan* (1928) 9 Lah, 324, 330, *Srimati Sabitri* v *Mrs F A Savi* (1933) 12 Pat, 359, see *ante* § 265 and note (*g*) there

(*f*) *Cf*, *Rangaswami* v *Krishnayyan* (1891) 14 Mad, 408, 418, 419 F B and *Sathapathiar* v. *Sivanarayana* (1933) 56 Mad., 534 on the general principle, though the cases themselves, dealing with the quantum of interest carved out by an alienation for value cannot be regarded on that point as good law in the face of the Full Bench decisions in *Ayyagari Venkataramayya* v. *Ayyagari Ramayya* (1902) 25 Mad, 690 F.B. and in *Chinnu Pillai* v. *Kalimuthu* (1911) 35 Mad., 47, 56, 62 F.B.; see *post* Ch. XIV.

father, not strictly by inheritance but by virtue of his right by birth and only as unobstructed heritage (*apratibandhadaya*).

For, there are only two divisions of inheritance, obstructed and unobstructed. The male issue do not succeed by inheritance to unobstructed property; and the texts relating to obstructed heritage do not refer to sons but only regulate succession to the property of a man who dies sonless. The Mitakshara and the other authorities following it are quite explicit on the matter. The very definition of unobstructed heritage makes no distinction between the property of the father and the property of the grandfather so far as the son's right to take it as unobstructed heritage is concerned (g). That the right vested by birth in the son extends to property acquired by the father is unequivocally stated in the Mitakshara (I, 1, 23-27, 33). "Therefore it is a settled point that property in the *paternal* or the grand-paternal estate is by birth". The distinction between the son's equal right by birth in the grandfather's property and his unequal right by birth in the father's property is fully brought out by Vijnanesvara in I, v, 5, 9 & 10. He states: "Consequently, the difference is this: although he have a right by birth in his father's and his grandfather's property; still, since he is dependent on his father in regard to the paternal estate and since the father has a predominant interest as it was acquired by himself, the son must acquiesce in the father's disposal of his own acquired property; but since both have indiscriminately a right in the grandfather's estate, the son has a power of interdiction". The Smritichandrika is quite precise and definite on the point. "In the case of father's property, the ownership of father and son is unequal . . . . ; in the case of grandfather's property, the ownership (*svamitem*) and also independent power (*svatantrtem*) are both equal in the father and son. Whereas in the case of father's property, while he is alive and free from defect, he (father) alone possesses an independent power (*svatantrtem*) and not the son" (*h*). The Parasara Madhaviya, the Sarasvati Vilasa, the Vyavahara Mayukha and the Viramitrodaya take the same view (*i*).

(*g*) Mit., I, 1, 3; see *ante* §§ 258, 259.

(*h*) Smritichandrika, VIII, 21, p 100 (Krishnaswami Iyer's trans.).

(*i*) Madhaviya, para 4 (pp 5 & 6), Sarasvati Vilasa, paras 459, 460; Vyav. Mayukha, IV, 2, 2; Vtamit., I, 25 (Setlur, II, 285); P. N. Sen, H.J., 131; K. L. Sarkar, Mimamsa, 450.

Equal right in grandfather's property.

§ 272. The result therefore is that while the son has a right by birth both in his father's and in his grandfather's property, a distinction under a special text makes the right of the son and the father equal in the property of the grandfather (*j*). That text is. "the ownership of the father and the son is the same in land, a corrody or wealth received from the grandfather" (*k*). But in the case of father's property the ownership of the son is unequal (*l*), for the father has an independent power over it or a predominant interest (*m*). The son's right by birth does not therefore extend to his enforcing a partition or interdicting an alienation of his father's property. The right however remains a real birth right, though dormant and enables the son to succeed to the property by survivorship or as *apratibandhadaya*

It was accordingly held in *Nana Tawker* v. *Ramachandra* (*n*) (1) that an undivided son takes his father's separate property by survivorship; and (2) that an undivided son takes the self-acquired property of the father to the exclusion of the divided son. Dissenting from the first proposition, a Full Bench of the Madras High Court has decided that an undivided son takes the self-acquired property of his father by inheritance and not by survivorship (*o*), Kumaraswami Sastri, J., expressing the opinion that ancestral property is coextensive with the objects of *apratibandhadaya* or unobstructed heritage (*p*). This view is opposed to the clear statements in the Mitakshara and in the other works bearing on the point which expressly refer to the son's right in the father's wealth as unobstructed heritage. The misconception was evidently due to the view based on the obser-

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(*j*) Mit, I, 1, 33, I, v, 2, 3, 5

(*k*) Yajn., II, 121.

(*l*) Mit, I, 1, 27, Smritichandrika, VIII, 21-24

(*m*) Mit, I, 5, 10

(*n*) *Nana Tawker* v *Ramachandra* (1909) 32 Mad, 377 following *Fakirappa* v. *Yellappa* (1898) 22 Bom., 101.

(*o*) *Vairavan Chettiar* v *Srinivasachariar* (1921) 44 Mad. 499 F B In *Venkateswara Pattar* v *Mankayammal* (1935) 69 M.L.J., 410, A I R 1935 Mad, 775, 778, Varadachariar, J, referring to the three principles of succession obtaining amongst the three groups of heirs under the Mitakshara law observes, "In the first (*i e.*, the succession of sons) it is by survivorship even in respect of the father's self-acquired property according to the scheme of the Mitakshara".

(*p*) (1921) 44 Mad., 499, 507 F B., *supra;* The dictum in *Muddun Gopal* v. *Ram Buksh* (1863) 6 W.R., 71, that the right of the son in the self-acquired property of the father is an imperfect right incapable of being enforced at law was made in connection with the father's power to sell immovable property acquired by him and does not touch the question of succession.

vation in *Sartaj Kuari's* case (*q*) relating to impartible estates that there can be no right by birth where there is no right to partition. But the right by birth in the father's property is expressly stated by all the Sanskrit authorities; and the observation in *Sartaj Kuari's* case has itself no force after the reiterated explanation of it in subsequent cases that the existence of survivorship is quite consistent with the dominant interest possessed by the holder of an impartible estate and with the absence of a right to partition or to interdict an alienation on the part of the junior members. As Sir Dinshaw Mulla puts it in *Shibaprasad* v. *Prayag Kumari*, though the other rights which a coparcener acquires by birth in impartible property no longer exist, the birth right of the senior member to take by survivorship still remains (*r*). So, too, in the case of ordinary partible property acquired by a father, the son's right by birth exists even though the other rights of a coparcener, such as the right to enforce a partition or to interdict an alienation, cannot, owing to the power of control and the dominant interest of the father, coexist (*s*). The right by birth in such property is not a mere *spes successionis* but it can be renounced or surrendered so that, as has been held, a divided son loses his right of inheritance to it (*t*).

§ 273. On principle, the position taken up in the Mitakshara that the son has a right by birth in property acquired by the father is unassailable. The grandson's right by birth in the grandfather's property is only a logical result of the son's right by birth in the father's property. For, if the son has no right by birth in his father's property, his son born before the grandfather's death can have no right by birth in the grandfather's property. How then does he acquire *by birth* a right in the grandfather's property after it has descended to the father? If neither sons nor grandsons born before the grandfather's death have any right by birth in the acquirer's property, they cannot acquire *by birth* any *equal* right once the grandfather's property has

(*q*) *Sartaj Kuari* v. *Deoraj Kuari* (1887) 15 I.A., 51, 10 All., 272.

(*r*) (1932) 59 I.A., 331, 345, 59 Cal., 1399.

(*s*) (1932) 59 I.A., 331, 345 *supra; Collector of Gorakpur* v. *Ram Sunder Mal* (1934) 61 I.A., 286, 303, 304, 56 All., 468. Regarding this matter Varadachariar, J., explains in *Venkateswara Pattar* v. *Mankayammal* 69 M.L.J., 410 how even when there is no right to partition, there can be a right to survivorship.

(*t*) *Narasimhan* v. *Narasimhan* (1932) 55 Mad., 577, following *Nana Tawker* v. *Ramachandra* (1909) 32 Mad., 377 and the opinion of Oldfield, J., in *Vairavan Chettiar* v. *Srinivasachariar* (1921) 44 Mad., 499, 504 F.B.

descended. Again, as Nilakantha says, "This cannot be construed to mean that the cause of the ownership is found in the grandfather's death, and not in the birth of a son. For, in that case, such ownership would be wanting in case of a grandson not born up to the time of his (the grandfather's) death" (t^1). In fact, the very right of representation is bound up with it.

The error lies in overlooking the difference between the son's right by birth and the son's equal ownership with his father in the grandfather's property under a special text (u). The Judicial Committee in *Venkayamma* v. *Venkatramanayamma* (v), pointed out that where the sons succeed to the self-acquired property of the father, their inheritance is unobstructed and they take it by survivorship. In *Md. Husain Khan* v *Babu Kishva*, the Privy Council held that the son acquires by birth an interest jointly with, *and equal to that of the father in the property of the paternal grandfather* and not in that of the maternal grandfather which came to his father. All that it decided, as to which there can be no doubt, was that the father had absolute powers of alienation in such property as against his son (w). It does not touch the question whether the unequal right by birth which a son has in his father's property enables him to take that property if undisposed of, by survivorship, as in the case of an impartible estate. So too, the dictum of Sir George Rankin in *Kalyanji Vithaldas* v. *I T. Commissioner, Bengal* (x) that the income of a man from his self-acquired property cannot be regarded as the joint income of father and son does not affect the question of succession and means only that self-acquired property is not coparcenary property in which the son has equal right.

No coparcenary by agreement.

§ 274. A joint family and its coparcenary with all its incidents are purely a creature of Hindu law and cannot be created by act of parties for the fundamental principle of the joint family is the tie of sapindaship arising by birth, marriage or adoption (y)

(t^1) Mayukha, IV, 1, 3, Mandlik, 33.

(u) See Viramit., II, 1, 23*a*; 'upon the authority of the texts'. Setlur II, 342.

(v) *Venkayamma* v *Venkataramanayyamma* (1902) 29 I.A., 156, 25 Mad., 678, 687; *Madivalappa* v. *Subbappa* [1937] Bom., 906, *Apaji* v. *Ramachandra* (1892) 16 Bom., 29, 56, F.B, *per* Telang, J.

(w) (1937) 64 I.A., 250, [1937] All, 655, A.I.R., 1937, P.C., 233.

(x) (1937) 64 I.A, 28, [1937] 1 Cal., 653.

(y) *Sudarsana Maistri* v *Narasimhulu* (1902) 25 Mad, 149, 154, *Karsondas Dharamsey* v. *Gangabai* (1908) 32 Bom., 479, *Myna Baee* v. *Ootaram* (1861) 8 M.I.A.,400, *Packirisawmy* v. *Doraisawmy* (1931) 9 Rang., 266.

§ 275. The second question is as to the coparcenary property. The first species of coparcenary property is that which is known as ancestral property (*z*). That term, in its technical sense, is applied to property which descends upon one person in such a manner that his issue acquire certain rights in it as against him (*a*). For instance, if a father under Mitakshara law is attempting to dispose of property, we inquire whether it is ancestral property. The answer to this question is that property is ancestral property in the father's hands if it has been inherited by him as unobstructed property, that it is not ancestral if it has been inherited by the father as obstructed property. The reason of this distinction is that, in the former case, the father had an effective vested interest in the property, before the inheritance fell in, and therefore his own issue acquired by birth a similar interest in that interest. Hence, when the property actually devolved upon him, he took it subject to the interest they had already acquired. But in the latter case, the father had no such interest in the property, before the descent took place; therefore, when that event occurred, he received the property free of all claims upon it by his issue, and *á fortiori*, by any other person. Hence all property which a man inherits from a direct male ancestor, not exceeding three degrees higher than himself, is ancestral property, and is at once held by himself in coparcenary with his own male issue. But where he has inherited from a collateral relation, as for instance from a brother, nephew, cousin or uncle, it is not ancestral property in his hands in relation to his male issue (*b*); consequently his sons have no equal rights as coparceners. They cannot restrain him in dealing with it, nor compel him to give them a share of it. On the same principle property, which a man inherits

Ancestral property.

is unobstructed property.

Obstructed inheritance not ancestral.

(*z*) As to the difference between joint property, joint family property, and ancestral property, see *Karsondas* v. *Gangabai* (1908) 32 Bom., 479.

(*a*) Property devised by a man to his widow and his son does not become joint property, with its attributes of survivorship and mutual restraint on alienation. *Jogeswar Narain* v. *Ramchund Dutt* (1896) 23 I.A., 37; 23 Cal., 670, overruling *Vydinada* v. *Nagammal* (1888) 11 Mad., 258. Nor property devised to his two daughters, *Gopi* v. *Musammat Jaldhara* (1911) 33 All., 41. Nor property settled on husband and wife, the interest of which was payable to both jointly, *Kanthu* v. *Vittamma* (1902) 25 Mad., 385.

(*b*) The reference here is to inheritance strictly and not to survivorship. The enlarged share which accrues to the remaining brothers on the death of an undivided brother is ancestral property, and subject to all its incidents, *Gungo Mull* v *Bunseedhur* (1869) 1 N.-W.P., 170, *Karuppai* v. *Sankaranarayanan* (1904) 27 Mad., 300 F.B., *Gurumurthi* v. *Gurammal* (1909) 32 Mad., 88, *Karson Das* v. *Gangabai* (1908) 32 Bom., 479, *Rajkishore* v. *Madan Gopal* (1932) 13 Lah., 491.

from his mother (*c*) or maternal grandfather (*d*) or maternal uncle (*e*) or other collateral relation in the maternal line, is not ancestral property. It is now settled by a recent decision of the Judicial Committee that the term 'ancestral property' must be confined to property descending to the father from his male ancestor in the male line and that it is only in that property that the son acquires by birth an interest jointly with and equal to that of his father (*f*).

Now, under the Hindu Women's Rights to Property Act, 1937, where a man's separate property devolves upon his widow and his male issue, the widow's interest in the property on her death will devolve upon the male issue that survive her as her husband's heirs In that event the property would be none the less ancestral property in the hands of the son or grandson; for, it is inherited only as the father's property and not as the property of the mother. So too, where the undivided interest of a deceased Mitakshara coparcener devolves on his widow, such interest when it goes back to the son or grandson is taken by them as their father's property and not as the mother's property and will consequently be ancestral property (*g*).

(*c*) *Rayadur Nallatambi* v *Mukunda* (1868) 3 Mad H C., 455, *Nund Coomar Lall* v *Ruzzlooddeen* (1873) 10 B L.R., 183, 18 W.R, 477, *Jawahir* v *Guyan* (1868) 3 Agra H C., 78, *Lochun* v *Nemdharee* (1873) 20, W R., 170, *Pitam* v *Ujagar* (1878) 1 All, 651, Jolly, T L.L, 121.

(*d*) W & B, 710 (4th ed, 665-6) approved *per cur*, 10 B.L R, 183, 192, *supra*, *Jamna Prasad* v. *Ram Partab* (1907) 29 All., 667, dissenting from *Vythinath* v *Yeggia* (1901) 27 Mad, 382 The Privy Council and the Allahabad High Court point out that Colebrooke's translation of the Mitakshara, ch. I, sec. 1, sub-section 27, "that property in the paternal or ancestral estate is by birth" is inaccurate and that the correct translation should be "in the paternal or grandpaternal estate" *Md Husain* v. *Babu Kishva* (1937) 64 I A., 250 [1937] All, 655, A I R, 1937, P C, 233 See also *Atar Singh* v. *Thakar Singh* (1908) 35 I A, 206, at p 211, 35 Cal, 1039 as to what is ancestral estate See Mit., I, 1, §§ 3, 5, 21, 24, 27, 33, 1, v, §§ 2, 3, 5, 9—11, per Mitter, J., *Gunga Prasad* v. *Ajudhia Pershad* (1892) 8 Cal, 131, p 134, *per curiam*, *Jasoda Koer* v. *Sheo Pershad* (1890) 17 Cal, p 38, *Nanabhai* v. *Achratbai* (1888) 12 Bom., 122, 133, *Santu* v. *Abbe Singh* A.I.R., 1931, Lah, 708

(*e*) *Karuppai* v *Sankaranarayana* (1904) 27 Mad, 300, *Manibhai* v. *Shankerlal* (1930) 54 Bom., 323; *Bai Parson* v *Bai Somli* (1912) 36 Bom, 424.

(*f*) *Md Husain Khan* v. *Babu Kishva* (1937) 64 I.A., 250, A.I.R., 1937, P.C, 233, [1937] All, 655.

(*g*) See § 591; *Nanabhai* v. *Achratbai* (1888) 12 Bom., 122, *Beni Prasad* v. *Puranchand* (1896) 23 Cal, 262, *Ramprasad* v *Radhaprasad* (1885) 7 All., 402, *Sashi Bhushan* v. *Hari Narain* (1921) 48 Cal., 1059; *Hiralal* v. *Sankar Lal* (1938) 42 C.W.N., 695.

§ 276. That which is ancestral, and therefore coparcenary property, as regards a man's own issue, is not so as regards his collaterals. For they have no interest in it by birth (*h*). On the other hand, property is not the less ancestral because it was the separate or self-acquired property of the ancestor from whom it came (*i*). When it has once made a descent, its origin is immaterial as regards those persons to whom it has descended. It is very material, however, as regards those who have not taken it by descent (*j*).

Accretions to ancestral property.

§ 277. All savings made out of ancestral property, and all purchases or profits made from the income or sale of ancestral property, would form part of the ancestral or coparcenary property, whether such savings or acquisitions were made before or after the birth of a son (*k*). On the same principle accretions to a riparian village are ancestral property, if the village itself was such (*l*). Property which has been conferred on a widow for her maintenance retains its character as ancestral when it reverts to the family on her death (*l*[1]). Similarly where a member of a joint family has assigned his undivided interest to a creditor to satisfy claims which do not exhaust the entire value of the interest, any residue continues to be ancestral property (*m*).

Divided property.

§ 278. Where ancestral property has been divided between several joint owners, there can be no doubt that if any of them have issue living at the time of the partition, the share which falls to him will continue to be ancestral property in his hands, as regards his issue, for their rights

(*h*) *Adjoodhia* v. *Kashee Gir* (1872) 4 N.W.P., 31, *Gopal Singh* v. *Bheekunlal*, S.D. of 1859, 294; *Gopal Dutt* v. *Gopal Lall*, *ibid.*, 1314.

(*i*) *Ram Narain* v. *Pertum Singh* (1873) 20 W.R., 189, 11 B.L.R, 397, *per curiam*, *Chattur Bhooj* v. *Dharamsi* (1885) 9 Bom., 438, 450.

(*j*) *Janki* v. *Nandrum* (1889) 11 All. (F.B.), 194, 198

(*k*) *Lal Bahadur* v. *Kanhaiyalal* (1907) 34 I.A., 65, 29 All., 244; *Umirthnath* v. *Goureenath* (1870) 13 M.I.A., 542; *Kristnappa* v. *Ramaswamy* (1872) 8 Mad. H.C., 25; *Jugmohundas* v. *Mangaldas* (1886) 10 Bom., 528, 580; *Isree Prasad* v. *Nasib Kooer* (1884) 10 Cal., 1017, *Ramanna* v. *Venkata* (1888) 11 Mad., 246. *Semble*, that movable property which has made a descent, and is then converted into land, possesses all the incidents of ancestral immovable property, *Sham Narain* v. *Raghoobur* (1878) 3 Cal., 508. Family property acquired by a coparcener by adverse possession against the family is not his self-acquisition. *Sureshchandra* v. *Bai Ishwari* (1938) 40 Bom. L.R., 127. Income received after disruption for period prior to it would be an accretion. *Shankar* v. *Official Receiver* A.I.R. 1938 Lah., 328.

(*l*) *Ramprasad* v. *Radhaprasad* (1885) 7 All., 402.

(*l*[1]) *Beni Pershad* v. *Puram Chand* (1896) 23 Cal., 262.

(*m*) *Krishnaswami* v. *Rajagopalu* (1895) 18 Mad., 73, p. 83.

had already attached upon it, and the partition only cuts off the claims of the dividing members. The father and his issue still remain joint (*n*). The same rule would apply even where the partition had been made before the birth of issue (*o*), for the share which is taken at a partition by one of the coparceners is taken by him as representing his branch (*p*). Where a man had obtained a share of family property on partition, which was mortgaged to its full value, and which he had subsequently cleared from the mortgage by his own self-acquisitions it was held that the unencumbered property was ancestral property in his hands (*q*).

Self-acquired property of father gifted or bequeathed to son

§ 279 The question whether the self-acquired property of the father which has been the subject of a gift or bequest by him to his son is ancestral property in the latter's hands has given rise to a considerable difference of opinion. In *Muddun Copal* v. *Ram Baksh* (*r*) it was held that "landed property acquired by a grandfather and distributed by him amongst his sons, does not by such gift become the self-acquired property of the sons so as to enable them to dispose of it by gift or sale." Referring to the property in that case, they held that "it cannot be said to have been acquired without detriment to the father's estate because it was not only given out of that estate, but in substitution for the undivided share of that estate to which the father appears to have been entitled" The decision cannot therefore be regarded as an authority for the general proposition that where there is a gift or bequest by a father of his self-acquired property, it is nevertheless ancestral property under all circumstances. In *Hazarimul Babu* v. *Abaninath* (*s*) Mookerjee, J., thought that if the matter were *res integra*, he could give full effect to the texts in the Mitakshara (I, vi,

(*n*) *Lal Bahadur* v. *Kanhaiya Lal* (1907) 34 I A, 65, 29 All, 244, *Lakshmibai* v. *Ganpat Morabo* (1868) 5 Bom. H.C. (O.C J.), 129, *Rajaram* v. *Pertum Singh* (1873) 11 Beng. L.R., 397; *Bajnath* v. *Mahraj* (1933) 8 Luck, 28, A.I.R., 1932, Oudh 158; *Bejai* v. *Bhupindar* (1895) 22 I A., 139, 17 All, 456.

(*o*) *Adurmoni* v. *Chowdhry* (1878) 3 Cal., 1.

(*p*) *Haribaksh* v *Babulal* (1924) 51 I A., 163, 5 Lah, 92.

(*q*) *Visalatchy* v *Annaswami* (1869) 5 M H C., 150; *Krishnaswami* v *Rajagopala* (1895) 18 Mad., 73, 83, *Secus* where the mortgage is foreclosed and the mortgaged property is purchased back by a coparcener with his self acquisition, *Balwantsingh* v *Rani Kishori* (1898) 25 I.A., 54, 20 All, 267.

(*r*) (1863) 6 W R, 71, 73, In *Mohabeer Kooer* v. *Joobha* (1871) 16 W R, 221, a contrary opinion seems to have been expressed by Jackson, J. See also *Adharchandra* v. *Nobinchandra* (1907) 12 C.W.N., 103.

(*s*) (1912) 17 C.W.N., 280.

13-16) and he distinguished the case before him as one where the bequest was, as in *Muddun Gopal's* case, in recognition of the legal rights of younger sons to maintenance. In *Tara Chand* v. *Reeb Ram* (*t*), the Madras High Court questioned the right of a father to make a gift *inter vivos* and *a fortiori* by will, of his self-acquired landed property so as to deprive the sons of their shares in it; it was not settled then that the father had absolute powers of disposition over his self-acquired property (*u*). They thought that the ancestral character of the property is not changed by the son's choosing to accept it under the father's will. In *Nagalingam Pillai* v. *Ramachandra* (*v*), the Madras High Court, referring to the bequest of self-acquired property by a father to his sons, held that it is open to a father to determine whether the property which he bequeaths or gives to his sons shall be ancestral or self-acquired but unless he expresses his wish that it should be deemed to be self-acquired, it is ancestral. The Bombay High Court holds the view that if there is no express intention of the father that it should be taken as ancestral, it must be deemed to be self-acquired (*w*).

Conflicting views.

The Allahabad (*x*) and the Lahore (*y*) High Courts and the Oudh Chief Court (*z*) follow the Bombay view and hold that in the absence of a clearly expressed intention that it should be taken as ancestral, it should be deemed to be self-acquired. In *Lal Ram* v. *Dy. Commissioner, Partabgarh* (*a*)

(*t*) (1866) 3 M.H.C., 50, 55.

(*u*) *Rao Balwant Singh* v. *Rani Kishori* (1898) 25 I.A., 54, 20 All., 267.

(*v*) (1901) 24 Mad., 429; *Kasi Visvesra* v. *Varaha Narasimhan* A.I.R., 1937, Mad., 631; *Krishnaswami Naidu* v. *Seethalakshmi* (1916) 39 Mad., 1029, 18 M.L.T., 542 (where a gift is made to an illegitimate son for his maintenance, the property is not ancestral property in his hands). *Indoji* v. *Ramachandra* (1919) 10 M.L.W., 498, *Rajah of Ramnad* v. *Sundarapandia* (1914) 27 M.L.J., 694; see these cases referred to in *Janakiram Chetti* v. *Nagamony* (1926) 49 Mad., 98.

(*w*) *Jugmohundas* v. *Mangaldas* (1886) 10 Bom., 528; *Nanabhai* v. *Achratbai* (1888) 12 Bom., 122; see on this, the observation of Beaman, J., in *Ahmedbhoy* v. *Sir Dinshaw M. Petit* (1909) 11 Bom. L.R., 545, 594, 595, 599.

(*x*) *Purushottam* v. *Janki* (1907) 29 All., 354; *Jai Prakash* v. *Bhegwandas & Co.* (1937) A.L.J., 356, A.I.R., 1937, All., 453.

(*y*) *Amarnath* v. *Guranditta Mal* A.I.R., 1918, Lah., 394, 43 I.C., 117; *Ramsingh* v. *Ram Nath* A.I.R., 1932, Lah., 533; *Jagtar Singh* v. *Raghbir* (1932) 13 Lah., 165, A.I.R., 1932, Lah., 85; *Kishan Chand* v. *Punjab Sindh Bank, Ltd.*, A.I.R., 1934, Lah., 534.

(*z*) *Mt. Brij Kunwar* v. *Sankata Prasad* (1930) 4 Luck. 300, A.I.R., 1930, Oudh, 39.

(*a*) (1923) 50 I.A., 265, 45 All., 596.

after referring to this difference of opinion, the Judicial Committee left the question open with an intimation however that a decision on the question might turn upon the construction of the texts in the Mitakshara. The view of the Bombay, Allahabad and Lahore High Courts is to be preferred.

Mitakshara on the point.

§ 280 The Mitakshara is reasonably plain on the question. In I, iv, which deals with effects not liable to partition, Vijnanesvara says in para 28, "what is obtained through the father's favour will be subsequently declared exempt from partition." In *Muddun Gopal's* case, it was said that a gift to the son should have been without detriment to the father's estate as if that were the sole criterion of self-acquisition. But Mit., I, iv, 28 is an exception and cannot be read as requiring that the gift should be without detriment to the father's estate; for it would be a contradiction in terms to say that there could be any gift by a father out of his estate without detriment to that estate. The text of Yajnavalkya which is cited in I, vi, 13, says: "The wealth which is given to one by parents belongs to him alone" (*b*). The explanation in the Mitakshara is that what is given by a father to a son, whether before or after separation appertains solely to him (*c*). The Court in *Muddun Gopal's* case considers this as declaring that such a gift is not partible amongst the donee's brothers though it is partible between the donee and his sons But as Sargent, C J, pointed out, I, iv, 28 is equally applicable in all cases of partition including that between a man and his own sons, and not merely between collaterals, for Section IV is admittedly applicable to all cases (*d*). And the language of I, vi, 15-16 makes it conclusive that the gift of the father belongs only to the donee and to none else (*e*).

On principle too, the same result would follow. The grandfather is at liberty to dispose of his property absolutely before his death against both his son and grandson and when

(*b*) Yajn, II, 123, Mandlik, 216

(*c*) Mit, I, vi, 14-15; "It is shared by no other" I, vi, 16.

(*d*) *Jugmohundas* v. *Mangaldas* (1886) 10 Bom, 528, 579

(*e*) Mit, I, vi, 15 The text of the Mitakshara cannot be read as being confined to cases of gifts by a father out of his ancestral property to his son because the whole of Section IV deals not only with acquisitions made without detriment to *father's* estate but I, vi, 13 also deals only with father's goods. The court in *Muddun Gopal's* case rightly understood it so, though the court in *Lakshman* v *Ramachandra* (1876) 1 Bom, 561 thought that I, vi, 13-16 refer to gifts out of ancestral property. The passage in the Viramitrodaya proceeds upon the notion of Hindu writers that even gifts of immovable property by a father should be governed by propriety—not by caprice and refers to gifts out of paternal property Vijnanesvara says nothing about propriety or caprice. (Viramit. Setlur, II, 461,)

he makes a gift or bequest to his son, he ordinarily intends that he should take it as a bounty. Otherwise, when a grandfather makes a gift of his self-acquired property to his son *inter vivos*, if it were ancestral, it should be open to a grandson in existence at the time of the gift to claim a partition of the property at once before the grandfather's death which would be a *reductio ad absurdum*. In the absence of any intention expressed by him that the donee or legatee should take it on behalf of his family, it must be presumed that he intends that it should belong solely to the donee or legatee; for, to hold that he intends it to be taken as ancestral means that he intends to give it not only to his son but to his son and grandson as joint owners. Neither the above texts nor any principle of Hindu law however prevent a father from giving his son property in such a way that it may be taken by him as ancestral property as regards his male issue (*f*).

Property jointly acquired.

§ 281. *Secondly*, property may be joint property without having been ancestral. Where the members of a joint family acquire property by or with the assistance of joint funds (*g*) or by their joint labour or in their joint business or by a gift or a grant made to them as a joint family (*h*), such property is the coparcenary property of the persons who have acquired it, whether it is an increment to ancestral property, or whether it has arisen without any nucleus of descended property. And it makes no difference that the form of the conveyance to them would make them tenants in common and not joint tenants (*i*). For the formation of a coparcenary under Hindu law, a nucleus of property which has come down to the father from his father, grandfather or great-grandfather is not necessary, provided the persons constituting it stand in the relation of father and son or other relation requisite for a coparcenary system (*j*). It is now

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(*f*) See *Seth Jaidial* v. *Seth Sitaram* (1881) 8 I.A., 215, 227, 228.

(*g*) Manu, ix, § 215; Yajnavalkya, ii, 120; Mitakshara, i, 4, § 15; F. MacN, 351, 362, *Ramasheshaiya* v *Bhagavat* (1868) 4 Mad. H.C., 5, *Rampershad* v *Sheochurn* (1866) 10 M I A, 490, *Lal Bahadur* v. *Kanhaiyalal* (1907) 34 I A, 65, 29 All, 244, *Umrithnath* v *Goureenath* (1870) 13 M.I.A, 542, *Sudarsana Maistri* v *Narasimhulu* (1902) 25 Mad., 149, *Radhabai* v. *Nanarav* (1879) 3 Bom, 151.

(*h*) *Yethirajulu* v *Mukunthu* (1905) 28 Mad., 363, *Kunhacha Umma* v. *Kutti Mammi Hajee* (1893) 16 Mad, 201, F B., *Sudarsanam* v. *Narasimhulu* (1902) 25 Mad., 149; *Vengamma* v. *Chelamayya* (1913) 36 Mad., 484; *Chakkra Kannan* v. *Kunhi Pokker* (1916) 39 Mad., 317, F B, *Krishnamurthi* v. *Seetamma* A.I R., 1937, Mad., 29.

(*i*) *In the goods of Pokurmull* (1896) 23 Cal., 980.

(*j*) *Laldas Narandas* v. *Motibai* (1908) 10 Bom. L.R, 175; *Rangbhai* v. *Sitabai* (1918) 20 Bom. L.R., 338, 342; *Parbhu Lal* v. *Bhagwan* A.I.R, 1927, Bom., 412, 414.

settled that when the members of a joint family, by their joint labour or in their joint business, acquire property, that property, in the absence of a clear indication of a contrary intention would be owned by them as joint family property and their male issue would necessarily acquire a right by birth in such property (*k*); for, under the Mitakshara system there can be no joint family property in respect of which the male issue of the joint owners do not take a share by birth (*l*). If there is satisfactory evidence of an intention to treat the property not as joint family property, but as joint property only, *i e.*, as the joint self-acquisition of the acquirers it will be given effect to. But the presumption is in favour of its being regarded as joint family property (l^1).

§ 281 A. So long as a family remains an undivided family two or more members of it, whether they be members of different branches or of one and the same branch of the family, can have no legal existence as a separate independent

(*k*) *Sudarsanam Maistri* v *Narasimhulu* (1902) 25 Mad, 149, 156, *Govind Rao* v *Rajabai* (1930) 58 I A, 106, 110, 35 C W N, 438, A I R, 1931, P.C, 48; *Karuppai* v *Sankaranarayan* (1904) 27 Mad, 300, 313, F B., *Vasudeva Rao* v. *Sakharam Rao* (1928) 54 M L J, 239, A.I.R, 1928, Mad, 412; *Madhavayya Chetty* v *Damodaram* (1912) 12 M L.T, 240, *Ratna* v *Vijiaranga* A I R, 1926, Mad, 762, 23 M L W., 716, *Venkayamma* v *Gangayya*, A I R, 1934, Mad, 16, 65 M.L.J, 703, *Amirdham* v *Valliammai* A I R, 1936, Mad, 19, *Krishnamurthi* v. *Seetamma* A.I R, 1937, Mad., 29, *Haridas Narayandas* v *Devkuvarbai* (1926) 50 Bom, 443, following *Laldas Narandas* v *Motibai* (1908) 10 Bom L R, 175 and *Karsondas* v *Gangabai* (1908) 32 Bom, 479 and dissenting from *Chatturbhooj* v *Dharamsi* (1884) 9 Bom, 438, *Rengu* v *Lakshman* A I R, 1930, Bom, 438, *Sanwal Das* v *Kure Mal* (1928) 9 Lah, 470

(*l*) A difficulty is created by the decisions of the Privy Council in the *Juggumpet* case (25 Mad, 678) and in *Md Hosein* v *Babu Kishva* (64 I A, 250) In the latter case the Judicial Committee explained the earlier case as one where the two brothers took the estate of the maternal grandfather at the same time and by the same title and there was apparently no reason why they should not hold that in the same manner as they held their other joint property This obviously means that their sons also will be coparceners But in the *Juggumpet* case, the Privy Council did not rest their decision upon the conduct of the brothers in treating it as joint family property but they considered it necessary to decide the nature of the ownership acquired by the grandsons Their father was alive when they succeeded to the maternal grandfather's property and that fact would negative any coparcenary But the decision in 64 I A, 250 explains the coparcenary in the earlier case as a presumption of fact The *Juggumpet* case must therefore be confined to its own facts. See § 537

(l^1) *Ganpat* v *Annaji* (1899) 23 Bom, 144 *Rampershad* v *Sheo churn* (1866) 10 M I A, 490 *Sudarsanam Maistri* v *Narasimhulu Maistri* (1902) 25 Mad, 149, *Gopalasami Chetti* v. *Arunachellam Chetti* (1904) 27 Mad, 32, 35, *Karuppai Nachiar* v. *Sankaranarayana Chetty* (1904) 27 Mad., 300 F.B.; *Munisami Chetti* v. *Maruthammal* (1911) 34 Mad., 211; *Kharsandas Dharmsey* v. *Gangabai* (1908) 32 Bom., 479,

unit; but all the members of a branch, or of a sub-branch, can form a distinct and separate corporate unit within the larger corporate family and hold property as such. Such property will be joint family property of the members of the branch *inter se*, but will be separate property of that branch in relation to the larger family (*m*). It would seem that there can be a joint family with a single male member provided there are widows of deceased coparceners (*n*).

Joint tenancy unknown to Hindu law.

§ 282. The principle of joint tenancy is unknown to Hindu law except in the case of the joint property of an undivided Hindu family governed by the Mitakshara law (*o*). The question therefore whether members of a joint family hold property comprised in a gift or bequest to them as tenants in common or as members of a joint family depends on the intention of the donor or the testator as expressed in the grant or the will (*p*).

or thrown into common stock.

§ 283. *Thirdly*, property which was originally self-acquired, may become joint property, if it has been voluntarily thrown by the owner into the joint stock, with the intention of abandoning all separate claims upon it (*q*). This doctrine has been repeatedly recognized by the Privy Council. Perhaps the strongest case was one, where the

(*m*) *Sudarsana Maistri* v *Narasimhulu* (1902) 25 Mad., 149, 155; *Chakkra Kannan* v. *Kunni Pokker* (1916) 39 Mad, 317, 336, F B, *Himmat* v *Bhawani* (1908) 30 All., 352, 359, 360, *Official Assignee, Madras* v *Neelambal* (1933) 65 M L J, 798, *Abdul Kadar* v. *Shridhar* (1937) 20 N.L.J, 229.

(*n*) *Vedathanni* v. *I T Commissioner, Madras* (1933) 56 Mad. 1, *Kalyanji* v. *I T Commissioner, Bengal* (1937) 64 I.A., 28, [1937] 1 Cal, 653. After the recent Act perhaps, even when there are widows only.

(*o*) *Bahu Rani* v. *Rajendra* (1933) 60 I A, 95, 8 Luck., 121.

(*p*) *Jogeswar Narain* v. *Ramchunder Dutt* (1897) 23 I.A., 37, 23 Cal., 670, (1933) 60 I.A, 95, 8 Luck., 121 *supra*, *Venkayamma* v. *Gangayya* (1933) 65 M L J, 703; *Bai Divali* v *Patel Bachandas* (1902) 26 Bom, 445; *Kishori Dubain* v *Mundra* (1911) 33 All, 665; *Muthu Meenakshi* v. *Chandrasekhara* (1904) 27 Mad., 498, 503, see also *Yethirajulu* v. *Mukunthu* (1905) 28 Mad, 363, *Janakiram* v. *Nagamony* (1926) 49 Mad, 98.

(*q*) In *Shiba Prasad* v. *Prayag Kumari* (59 I.A, 331), Sir D. F. Mulla relying on an observation of Sir Lawrence Peel in *Gooroochurn Doss* v. *Goluckmony* 1, Foulton, 165, 172, 1, Ind., Decisions Old series (748) cites Mit, I, iv, 31, as the text on which the whole doctrine of merger of estates with the blending of income is founded. The text runs as follows. "among unseparated brethren, if the common stock be improved or augmented by any one of them, through agriculture, commerce or similar means, an equal distribution nevertheless takes place; and a double share is not allotted to the acquirer." The Sanskrit text as well as the translation, read with the text of Yajn., II, 120 makes it reasonably clear that what is meant is that any coparcener who uses the family stock through trade, agriculture or any other means for the purpose of augmenting it is not entitled to an extra share for his special exertions. As Mr. Mandlik points out,

owner had actually obtained a statutory title to the property under the Oudh Talukdars Act I of 1869. He was held by his conduct to have restored it to the condition of ancestral property (*r*). The question whether he has done so or not, is entirely one of fact, to be decided in the light of all the circumstances of the case (*s*); but a clear intention to waive his separate rights must be established and will not be inferred from acts which may have been done merely from kindness or affection (*t*).

Vijnanesvara refers to this as an exception to Vasishtha's text cited in Mit, I, iv. 29 See also Sulapani's comment extracted in Mandlik, p. 215 It does not appear to have anything to do with blending the income of a distinct self-acquisition with the income of the joint family property and so converting that which was originally a self-acquisition into coparcenary property

(*r*) *Hurpurshad* v *Sheo Dyal* (1876) 3 I A, 259, *Shankar Baksh* v *Hardeo Baksh* (1889) 16 I A, 71, 16 Cal., 397, as to cases in which such a Taluqdar was held to have taken the Statutory estate on trust for the other members of the family, see *Mt Thukrain Sookraj* v *Government* (1871) 11 M I A, 112 *Thakoor Hardeo Bux* v *Jowahir Singh* (1877) 4 I A, 178, 3 Cal, 522, (1879) 6 I A, 161, *Thakuram Ramanund* v *Raghunath Koer* (1882) 9 I A, 41, 8 Cal, 769, *Hasan Jafar* v *Muhammad Asharı* (1899) 26 I A, 229, 26 Cal, 879, *Lal Bahadur* v *Kanhai Lal* (1907) 34 I A, 65, 29 All, 244, *per curiam*, *Rampershad* v *Sheochurn* (1866) 10 M I A, 490, 506, *Chellyamal* v *Muttialamal* 6 Mad, Jur, P C, 108, *Sham Narain* v *Court of Wards* (1873) 20 W R, 197, *per curiam* (1891) 15 Bom, 32, 39, (1884) 10 Cal, 392, 398, 401, *Madhavarav Manohar* v *Atmaram* (1891) 15 Bom, 519, in *Tribovandas* v. *Yorke Smith* (1897) 21 Bom, 349, *reversing* 20 Bom, 316, the same rule was applied to property which, though not self acquired, had descended from a maternal ancestor to daughter's sons They would not be coparceners, but had elected to treat it as joint property, *Gopalasami* v *Chinnasami* (1884) 7 Mad, 458, *Krishnaji* v. *Moro Mahadev* (1891) 15 Bom, 32

(*s*) *Lal Bahadur* v *Kanhaiya Lal* (1907) 34 I A, 65, 29 All, 244, *Suraj Narain* v *Ratan Lal* (1917) 44 I A, 201 40 All 159, *Radha Kant Lal* v *Nazma* (1918) 45 Cal, 733, P C, 22 C W N, 619, 35 M L J, 99

(*t*) *Lala Muddun Gopal* v *Khikhinda Koer* (1891) 18 I A, 9, 18 Cal, 341 This passage is cited in *Naina Pillai* v *Dawanai* A I R, 1936, Mad, 177, where in a series of documents, self-acquired property was described and dealt with as ancestral joint family property The Court held that the mere dealing with self-acquisitions as joint family property was not sufficient but an intention must be shown to waive his claims with full knowledge of his right to it as his separate property *Rajkishore* v *Madan Gopal* (1932) 13 Lah, 491, *Krishnasami Sastri* v *Avayambal* A I R, 1933 Mad, 204, *Asutosh Mukerjee* v *Tarapada* A I R, 1934, Cal, 308, *Maganlal* v *Mt Krishna Bibi* A.I R., 1935, All, 303, *Mayandi* v *Sandanam* A I R, 1925, Mad, 303, *Parvati* v. *Sivarama* A I R, 1927, Mad, 90, *Ahobilachari* v *Thulasi* A I R, 1927, Mad, 830, *Rajanikanta* v. *Bashiram* A I R, 1929 Cal, 636, *Visvasundaru* v *Pallamraju* A I R, 1933, Mad, 565, *Govind Prasad* v. *Shanti Swarup* A I R, 1935, All, 778, *Rajagopala* v *Seshayya Naidu* A I R, 1935, Mad, 368, *Jotising* v *Jangu Singh* A I R, 1933, Oudh, 482, *Pareshchandra* v *Amaresh* A I R, 1931, Cal, 666, *Sandanam* v *Somasundaram* (1937) 1 M L J, 364, *Jagannatha Rao* v. *Ramanna* (1937) 2 M.L J., 386, *Narayanaswami* v. *Ratnasabapathy* (1937) 2 M.L.J., 906, *Mool Raj* v. *Manohar Lal* A.I R., 1938, Lah, 204

In the case of *Periakaruppan Chetty* v. *Arunachalam Chetty* (*u*) where a father built a house of considerable value on a site worth a few rupees and afterwards adopted a son and both lived in the same house, it was held that the superstructure did not become joint family property. Separate property does not cease to be such and become joint family property by any physical act but by the acquirer's own volition and intention to surrender his exclusive rights. Where the manager of a Mitakshara joint family mixes the income of the joint family with the income of his separate property or pays both the incomes into the same account in a bank, it will not be sufficient evidence of an intention to alter the character of the separate property, if he maintains separate accounts of both the incomes. In *Nutbehari Das* v. *Nanilal Das* (*v*) a Dayabhaga case where the rule as to blending is the same as in a Mitakshara family (*w*), the Judicial Committee, approving the judgment of Reilly, J., in *Periakaruppan Chetty's* case observed that even in the case of a Karta mixing his own moneys with family moneys, the mere fact of a common till or common bank account need of itself effect no blending so long as accounts are kept. In *Narayanaswami* v. *Ratnasabapathi* (*x*) the Madras High Court went a step further and held that as the onus is upon the person who claims that the separate property has become joint family property by blending the incomes of the two properties, the fact that no accounts were kept will not raise any presumption in favour of blending; for the reasonable presumption to make in favour of any person having income at his absolute disposal is, that he intended to reserve to himself that power of disposal. The rule as to a trustee mixing his own funds with the funds of a *cestui que trust* does not furnish a true analogy (*y*). It is difficult to see how by mixing the income derived from a separate property such

What amounts to blending.

(*u*) *Periakaruppan Chetty* v. *Arunachalam Chetty* (1927) 50 Mad, 582; see also *Kali Prasad* v. *Chandrika Prasad* A.I.R., 1927, Oudh., 335; *Vithoba* v. *Haribа* (1869) 6 Bom. H C.R., (A.C J) 54.

(*v*) 41 C.W.N., 613; A I.R., 1937, P C., 61, (1937) 2 M.L J. 114, reversing 38 C.W.N., 861.

(*w*) *Rajanikanta Pal* v. *Jaga Mohan Pal* (1923) 50 I.A., 173, 50 Cal., 439.

(*x*) (1937) 2 M.L.J., 906.

(*y*) (1937) 2 M.L.J., 906 *supra,* following *Akkamma* v. *Venkayya* (1902) 25 Mad., 351 and disapproving *Beli Ram* v. *Sardarilal* A.I.R., 1930, Lah., 613 and *Krishnamachari* v. *Chellammal* A.I.R., 1928, Mad., 561; *Venkayamma* v. *Gangayya* A.I R , 1934, Mad , 16, 65 M.L J , 703; *Magan Lal* v. *Mt. Krishna Bibi* A.I.R., 1935, All. 303; *Asutosh Mukherjee* v. *Tarapada Mukherjee* A.I.R., 1934, Cal., 308; *Raj Kishore*

as a house or a landed estate or a specific investment with the income of ancestral property, the corpus of the self-acquisition which is easily distinguishable, becomes incorporated into the joint family property. The intention to benefit the family by spending the income of the separate property for family purposes cannot be converted into an intention to transfer the property itself to the joint family, for that is what it amounts to as was pointed out by the Privy Council in *Hurpershad's* case (*z*). To say that there is a duty to keep an account of the income of his separate property is to say that a man cannot spend his separate income for family purposes except at his peril Where however no accounts are kept of the joint income, the inference may in a proper case be made that what is claimed as self-acquisition was really made at the expense of the joint family.

Income from impartible estate.

§ 284 It is settled that an impartible estate may be ancestral property of a joint family consisting of the holder and the junior members with rights of survivorship though there is neither a right to partition nor a right to forbid an alienation nor a right to maintenance except in the case of the sons of the last holder (*a*). The income received by the holder of an impartible estate is his own absolute and separate property and any purchases made from that income will be equally his exclusive property unless he chooses to incorporate such self-acquisitions with the joint family estate (*b*). The whole subject of impartible estates will be discussed in a separate chapter (Ch XIX)

Coparceners may hold property separately

§ 285. All property which is not held in coparcenary is separate property and Hindu law recognises separate property of individual members of a coparcenary as well as of separated members. (1) Property which comes to a man as obstructed heritage (*sapratibandhadaya*) is his separate

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v *Madan Gopal* (1932) 13 Lah, 491, *Pragada Krishnamoorthi* v *Pragada Seetama* AIR, 1937, Mad, 29, *Alavandar Gramani* v *Danakoti Ammal* A.I.R, 1927, Mad, 383, *Babanna* v *Parawa* (1926) 50 Bom 815

(*z*) *Hurpershad* v *Sheo Dayal* (1876) 3 I A, 259, 277, see also *Ramaswami* v *Raju Padayachi* (1926) 51 M L J, 167

(*a*) *Baijnath Prasad* v. *Tejbali* (1921) 48 I.A, 195, 43 All, 228, *Shibaprasad* v *Prayag Kumari* (1932) 59 I A, 331, 59 Cal, 1399, *Collector of Gorakpur* v *Ram Sunder Mal* (1934) 61 I A, 286, 56 All, 468; *Konammal* v. *Annadana* (1928) 55 I A, 114, 51 Mad, 189, *Rama Rao* v *Raja of Pittapur* (1918) 45 I A, 148, 41 Mad, 778, *Sellappa Chetty* v. *Suppan Chetty* [1937] Mad, 906, *Muttayan Chetty* v. *Sangili* (1878) 3 Mad., 370.

(*b*) *Shibaprasad* v. *Prayag Kumari* (1932) 59 I A., 331, 353, 59 Cal., 1399, 1422; *Jagadamba* v. *Narain* (1923) 50 I.A., 1, 2 Pat., 319.

property. It is not self-acquired property within the meaning of Hindu law, though in their incidents, there may be no difference between the two species. In *Muttayan Chetty* v. *Sangili* (*c*), the Privy Council concurred with the Madras High Court in holding that inherited property was not self-acquired property. (2) Property may be self-acquired; such self-acquisitions may be made by any one while even in a state of union. (3) Property which a man takes at a partition will be his separate property as regards those from whom he has severed but will be ancestral property as regards his own issue. (4) So, too, family property vested in the last surviving male member of a coparcenary will be his separate property subject to its becoming at any moment coparcenary property when he has male issue or when an adoption is made to him or to a predeceased coparcener in the family. For the purpose of Hindu law, a posthumous son of a coparcener is as much a coparcener as a son born before his death. The first and third heads of separate property have already been discussed. (§§ 275, 278).

Self-acquisition.

§ 286. The doctrine of self-acquisition is briefly stated by Yajnavalkya as follows:—"Whatever is acquired by the coparcener himself, without detriment to the father's estate, as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs (*d*). Nor shall he who recovers hereditary property which has been taken away give it up to the coparceners; nor what has been gained by science" (*e*). Upon this the Smriti Chandrika remarks that the estate of the father means the estate of any undivided co-heir (*f*). While the Mitakshara adds that the words "without detriment to the father's estate" must be connected with each member of the sentence. "Consequently what is obtained from a friend as the return of an obligation conferred at the charge of the patrimony; what is received at a marriage concluded in the form Asura or the like (*g*); what is recovered of the heredi-

(*c*) (1883) 9 I.A., 128, 143; 6 Mad., 1, on appeal from 3 Mad., 370, (375, 376, 377): The term self-acquisition should, without including property which a man takes as obstructed heritage, be confined to acquisitions properly so called.

(*d*) See as to presents from relations or friends, Manu, ix, § 206; Narada, xiii, §§ 6, 7; Mitakshara, i, 5, § 9; I, iv 8, 12.

(*e*) Yajn., ii, §§ 118, 119; Mit., i, 4, § 1. See Daya Bhaga, VI, ii; D.K.S., iv, 2, §§ 1-12; V. May., iv, 7, §§ 1-14; Dayatattva, v, 1-12.

(*f*) Smriti Chandrika, vii, § 28.

(*g*) Not in approved marriages. *Sheo Gobind* v. *Sham Narain* (1875) 7 N.-W.P., 75.

tary estate by the expenditure of the father's goods; what is earned by science acquired at the expense of ancestral wealth; all that must be shared with the whole of the brethren and the father" (*h*). The author of the Mitakshara enlarges the text of Yajnavalkya by defining self-acquisition as "that which had been acquired by the coparcener himself without any detriment to the goods of his father *or mother*"(*i*). This extension has not been accepted and it is now settled that property inherited by a man from his mother or mother's father is not ancestral and is only his separate property (*j*). The test of self-acquisition is that it should be "without detriment to the father's estate." Accordingly all acquisitions made by a coparcener or coparceners with the aid of the joint estate become joint family property.

Gains of science

§ 287. The gains of science or valour, which seem to have been the earliest forms of self-acquisition, were held to be joint property, if the learning had been imparted at the expense of the joint family, or if the warrior had used his father's sword.

Katyayana says. "Wealth, gained through science which was acquired from a stranger while receiving a foreign maintenance, is termed acquisition through learning" and is therefore impartible (*k*). Narada says: "He who maintains the family of a brother, while that brother was engaged in study shall get a share from the latter's *vidyadhanam* though

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(*h*) Mit., i, 4, § 6

(*i*) Mit., i, 4, § 2, see Raghunandana, v, 5, *Muttayan Chetty* v. *Sangili* (1883) 9 I A, 128, 6 Mad, 1, reversing (1880) 3 Mad, 370.

(*j*) *Karuppai* v. *Sankaranarayanan* (1904) 27 Mad., 300 F.B., *Manibhai* v *Shanker Lal* (1930) 54 Bom., 323, *Muhammad Husain* v. *Babu Kishva* (1937) 64 I A., 250, [1937] All, 655 the daughter's sons may elect to hold the maternal grandfather's estate as part of the coparcenary property of the family.

(*k*) Katyayana cited in Mit, I, iv, 8 and in Smritichandrika VII, 2 (p. 77), The Vivada Ratnakara says (*a*) If a man who has acquired learning, while maintaining himself with food and clothing supplied out of the joint property, acquires wealth without the help of the joint property—then, he shall not give any share out of it to an unlearned coparcener, (*b*) but if the gain of learning has been obtained with the help of the joint property, then a share in it has to be given to the unlearned coparcener also, (*c*) if the joint property has not been drawn upon during the time of acquisition of learning, then no share need be given to any one else, even though at the time of the acquiring of the property itself, the joint property may have been used, in this case, it belongs to the learned man only. Vivada Ratnakara cited in Jha. H.L.S., Vol. II, 54.

not previously promised" (*l*). While the Mitakshara lays down that gains of learning or science which are acquired at the expense of ancestral wealth are partible, it explains also what is meant by gains of learning. "He need not give up to the coheirs what has been gained by him through science, by reading the scriptures or by expounding their meaning; the acquirer shall retain such gains" (*m*). Katyayana enumerates exhaustively, the gains of learning:

(1) What is gained by proving superior learning after a prize has been offered, must be considered as acquired through science and is not included in a partition among coheirs.

(2) What has been obtained from a pupil or by officiating as priest or for answering a question or for determining a point in dispute or for the display of knowledge or by success in disputation or for reciting the Vedas with transcendent ability, the sages have declared to be the gains of science and not subject to distribution.

(3) What is gained through skill by winning from another a stake at play, Brihaspati ordains as acquired by science and not liable to partition.

(4) What is obtained by the boast of learning, what is received from a pupil or for the performance of a sacrifice, Bhrigu calls the acquisition of science.

(5) The same rule likewise prevails in regard to artists and in regard to what has been gained in excess of the prescribed hire.

(6) What has been gained from superiority in learning and what has been acquired in a sacrifice or from a pupil, sages have declared to be the acquisition of science.

(7) What is otherwise acquired is the joint property (*n*).

The Smritichandrika adds a gloss: What is otherwise acquired, *i.e*, acquired otherwise than by science or acquired with the use of the paternal common wealth is the joint property of the undivided co-heirs and is as such divisible(*o*).

§ 288. According to Katyayana, the Mitakshara, and the Smritichandrika, the gains of learning which are impartible are only those gains which are directly gained by the proof

(*l*) Nar., XIII, 10. Nilakantha does not accept the exposition in the Madana Ratna of '*asruta*' as 'unlearned' but takes it as one who has got no promise thus· "I shall give a share." (Gharpure's trans. 95). The basis would seem to be an implied contract.

(*m*) Mit., I, iv, 5.

(*n*) Katyayana cited in the Smritichandrika VII, 4, p. 78.

(*o*) Smritichandrika, VII, 5 (page 78-80 Krishnaswami Iyer's trans.).

or display of superiority in learning and specified in the texts when the learning itself was not acquired at the expense of the family. Such gains of a man who received either an ordinary or a specialised education, as are the fruits of his own efforts and talents, other than the direct gains enumerated by Katyayana are not the 'gains of learning' according to Katyayana, or the Mitakshara. According to the Mitakshara, all other acquisitions by a coparcener are partible, whether at the expense of the patrimony or not (*p*). It is however difficult to see why a person who has made gains by science, after having been educated or maintained at the family expense, should be in a worse position than any other who has been so educated or maintained and who has afterwards made self-acquisitions. Jimutavahana lays it down, that where it is attempted to reduce a separate acquisition into common property on the ground that it was obtained with the aid of common property, it must be shown that the joint stock was used for the express purpose of gain. "It becomes not common, merely because property may have been used for food or other necessaries, since that is similar to the sucking of the mother's breast" (*q*). This is eminently reasonable

According to the Mitakshara there could be no anomalous distinction between the gains of a trader, a banker, a judge, a karkun, an astrologer or an army contractor, and the gains of a prime minister, a pleader, a dancing girl, a civil servant, an engineer or a surgeon, whether the education imparted at the family expense be ordinary or specialised, for all of them would be equally partible (*r*). According to the equitable rule of Jimutavahana, which has come to prevail, that whatever is gained without detriment to the family estate is self-acquisition, the gains made by a coparcener

(*p*) Mit., I, iv 7, 8, 9 14. Mandlik, p. 214, note (4). This is almost the only question on which Vijnanesvara is neither logical nor progressive

(*q*) Dayabhaga, VI. 1, 44 50, 1, Stra. H L, 214; 2 Stra. H.L., 347.

(*r*) *Metharam* v. *Rewachand* (1918) 45 I.A., 41, 45 Cal., 666 (broker and banker), *Lakshman* v. *Jamnabai* (1882) 6 Bom, 225 (judge), *Krishnaji* v *Moro Mahadev* (1891) 15 Bom., 32 (karkun or clerk); *Durga Dut* v. *Ganesh Dut* (1910) 32 All., 305 (astrologer), *Lachmin Kuar* v *Debi Prasad* (1898) 20 All, 435 (army contractor); *Jugmohandas* v *Mangaldas* (1886) 10 Bom, 528 (mill manager), *Luximon Row* v. *Mullar Row* (1831) 2 Knapp 60 (prime minister); *Bai Mancha* v *Narotamdas* (1869) 6 Bom. H.C.R. (A C J.), 1 (pleader), *Durvasulu* v *Durvasula* (1872) 7 Mad H C R, 47 (vakil), *Chalakonda Alasani* v *Chalakonda Ratnachalam* (1864) 2 M.H C R, 56 (dancing girl), *Gokalchand* v. *Hukumchand* (1921) 48 I A, 162, 2 Lah., 40 (Indian Civil Servant), *Dhanukdaree* v *Ganpat* (1868) 11 Beng. L.R., 201.

who has received either a specialised or an ordinary education at the expense of the family estate would be impartible, if the gains themselves as distinguished from the learning, were made without the aid of family funds. But in *Chalakonda* v. *Ratnachalam* (*s*), the earliest case on the subject, the Madras High Court held that gains of learning imparted at the family expense and acquired while receiving a family maintenance are coparcenary property. The principle of this decision was reiterated in a later case where the gains of a Vakil were held divisible though he had received from his father nothing more than a general education (*s*[1]).

In a Madras case, however, where a Hindu had made a large mercantile fortune, his claim to hold it as self-acquired was allowed, though he had admittedly been maintained in his earlier years, educated and married out of patrimonial means (*t*). In a Bengal case where the defendant was maintained at the family expense but did not use any funds of the joint family and where it was contended that he received his education from the joint estate, Mitter, J., said: "the contention is nowhere sanctioned by the Hindu law, and I see nothing in justice to recommend it" (*u*). The Bombay High Court explained the expression 'gains of science imparted at the family expense' as "the special branch of science which is the immediate source of the gains, and not the elementary education which is the necessary stepping stone to the acquisition of all science" (*v*). It would be seen from the decisions that acquisitions made by a member of a family were partible if he was originally equipped for the calling or career in which the gains were made by a special training at the expense of the patrimony. In *Metharam* v. *Rewachand* (*w*), it was held that the gains which were the result, not of the education received at the expense of the joint family but of the peculiar skill and mental ability of a member educated at the expense of the family were not

(*s*) (1864) 2 M.H.C.R., 56; *Boolokam* v. *Swornam* (1881) 4 Mad., 330 (dancing girl).

(*s*[1]) *Gungadharudu* v. *Narasamma* (1871) 7 M.H.C., 47.

(*t*) *Chellaperoomall* v. *Veeraperumall* 4 Mad. Jur., 54, affirmed on appeal *ib.* 240.

(*u*) *Dhunookdharee* v. *Gunput* (1868) 11 Beng. L.R., 201, 10 W.R., 122. *Paulıem Valoo* v. *Paulıem Soorjah* (1876) 4 I.A., 109, 1 Mad., 252.

(*v*) *Lakshman* v. *Jumnabhai* (1882) 6 Bom., 225, 243; *Krishnaji* v. *Moro Mahadev* (1891) 15 Bom., 32. See also *Lakshman* v. *Debi Prasad* (1898) 20 All., 435.

(*w*) (1918) 45 I.A., 41, 45 Cal., 466 (banker)

partible. In the latest case on the subject, however, the Judicial Committee said: "From maintenance out of family funds during the period of education, the basis of partibility changed to the receipt of the education itself at the family expense, and then education generally was narrowed to specialised education, which is now the basis." They held that there was no valid distinction between a direct use of the joint family funds and a use which qualifies the member to make the gains by his own efforts (*x*). As the above decision left the Hindu law on the subject in a very unsatisfactory state, in order to remove doubts and to amend the law, the Indian Legislature passed the Hindu Gains of Learning Act, 1930.

The Hindu Gains of Learning Act.

§ 289. The Act provides that no gains of learning shall be held not to be the exclusive and separate property of the acquirer, merely by reason of his learning having been imparted to him by any member of his family, or with the aid of the joint funds of the family, or with the aid of the funds of any member. The fact that the acquirer or his family, while undergoing education or training, was maintained by the funds of the joint family or of any member of it, is made wholly immaterial. The definition of 'gains of learning' as well as the wording of Section 3 *viz*, 'shall be held not to be' instead of 'shall not be' and the limited scope of the savings in Section 4 make it clear that the Act has a large retrospective operation and applies to all cases other than those strictly governed by Section 4. The Act expressly applies not only to cases where a man was educated and maintained at family expense before its commencement but also to cases where the acquisitions were made before the Act. The older law can only apply to any transfer of property, partition, agreement for partition made before the Act and to proceedings pending at its commencement in connection with rights

(*x*) *Gokal Chand* v. *Hukumchand* (1921) 48 I A., 162, 2 Lah, 40 (Indian Civil Servant). The Judicial Committee observed in this case. "They conceive it to be of the highest importance that no variations or uncertainties should be introduced into the established and widely recognised laws, which govern an ancient Eastern civilisation, and least of all, in matters affecting family rights and duties connected with ancestral customs and religious convictions." The great advance in Hindu opinion and feeling on the subject during the course of a generation can be measured by remembering that while in 1901, Sir Bhashyam Iyengar's Hindu Gains of Learning Bill, passed by the Madras Legislative Council had to be vetoed by the Governor of Madras, a more drastic measure sponsored by Dr. M. R. Jayakar, now a member of the Federal Court, was passed by the Central Legislature in 1930 without even a word of protest.

or liabilities arising under such transfer, partition or agreement (*y*). (*Ante* § 47).

Government Grants.

§ 290. Estates conferred by Government in the exercise of their sovereign power become the self-acquired property of the donee, whether such gifts are absolutely new grants, or the grant to one member of the family of property previously held by another, but confiscated (*z*), unless some contrary intention appears from the grant (*a*), or the conduct of the donee and the other members of his family shows that they treated it as joint family property (*b*). But where one member of a family forcibly dispossesses another who is in possession of an ancestral zamindari, and there is no legal forfeiture, nor any fresh grant by a person competent to confer a legal title, the new occupant takes, not by self-acquisition, but in continuation of the former title (*c*). And where a confiscation made by Government was subsequently annulled, and no grant to any third person was ever made, it was held that the old title revived, for the benefit of all persons capable of claiming under it (*d*). So a grant made by Government to the holder of an unsettled palayam which merely operates as an ascertainment of the State claim for revenue, and a release of the reversionary right of the Crown, is a mere continuance of the old estate (*e*). But where a

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(*y*) In the following cases, the applicability of the Act was not discussed, *Jai Dayal* v. *Narain Das* A.I.R. 1932 Lah., 127; *Rangachari* v. *Narayana Aiyar* A.I.R. 1936 Mad., 119; *Hanso Pathak* v. *Harmandi* (1934) 56 All., 1026 (purohit).

(*z*) *Katama Natchiar* v. *Rajah of Shivaganga* (1863) 9 M.I.A., 606, 2 W.R. (P.C.), 31, *Beer Pertab* v. *Maharajah Rajender* (1867) 12 M.I.A., 1 *(Hunsapore Case)*; *Venkatarayadu* v. *Venkataramayya* (1892) 15 Mad., 284. As to grants in Oudh after the Confiscation of 1858, and under Act I of 1869 (Oudh Estate Act), see *Thakurain Sookraj* v. *The Government* (1871) 14 M.I.A., 112; *Hurpurshad* v. *Sheo Dyal* (1876) 3 I.A., 259, *Hardeo Bux* v. *Jawahir* (1877) 4 I.A., 178, (1879) 6 I.A., 161; *Brijindur* v. *Janki Koer* (1877) 5 I.A., 1; *Thakur Shere* v. *Thakurain* (1878) 3 Cal., 645; *Gouri Shunker* v. *Maharajah of Bulrampore* (1878) 6 I.A., 1, 4 Cal., 839; *Mulka Johan* v. *Deputy Commissioner of Lucknow, ib.*, 63; *Mirza Jehan* v. *Nawab Afsur Bahu, ib.*, 76, 4 Cal., 727; *Seth Jaidial* v. *Seth Siteeram* (1881) 8 I.A., 215; *Ramanund* v. *Raghunath* (1882) 9 I.A., 41, 8 Cal., 769, *Pirthi Pal* v. *Jewahir Singh* (1886) 14 I.A., 37. A grant of a jaghir is presumably only for life, *Gulabdas* v. *Collector of Surat* (1878) 6 I.A., 54, 3 Bom., 186.

(*a*) *Mahant Govind Rao* v. *Sitaram* (1898) 25 I.A., 195, 21 All., 53; *Bahu Rani* v. *Rajendra Baksh* (1933) 60 I.A., 95, 8 Luck., 121 (gift to two brothers in severalty, not joint family property).

(*b*) *Kedar Nath* v. *Pathan Singh* (1910) 32 All., 415.

(*c*) *Yanumula* v. *Boochia* (1870) 13 M.I.A., 33, 13 W.R., P.C. 21.

(*d*) *Mirza Jehan* v. *Badshoo Bahoo* (1885) 12 I.A., 124, 12 Cal., 1.

(*e*) *Narayana* v. *Chengalamma* (1887) 10 Mad., 1.

kaimam service inam is enfranchised, a quit-rent being imposed in lieu of service and an inam title-deed granted to the last holder of the office, the lands are his separate property and are not subject to any claim to partition by other members of the joint family (*f*).

Recovery of ancestral property.

§ 291. Another mode of self-acquisition, which is not very likely to arise now, is where one coparcener unaided by the others or by the family funds, recovers, with the acquiescence of his co-heirs, ancestral property which had been seized by others, and which his family had been unable to recover (*g*). In order to bring a case within this rule, the property must have passed into the possession of strangers, and be held by them adversely to the family. It is not sufficient that it should be held by a person claiming title to hold it as a member of the family, or by a stranger claiming under the family, as for instance by mortgage. So also the recovery by one co-heir for his own special benefit is only permissible where "the neglect of the coparceners to assert their title had been such as to show that they had no intention to seek to recover the property, or were at least indifferent as to its recovery, and thus tacitly assented to the recoverer using his means and exertions for that purpose, or upon an express understanding with the recoverer's coparceners." "The recovery, if not made with the privity of the co-heirs, must at least have been *bona fide* and not in fraud of their title, or by anticipating them in their intention of recovering the lost property." Finally, it must be an actual recovery of possession, and not merely the obtaining of a decree for possession (*h*).

Result to recoverer.

As to the result of such a recovery, there are two rules in the Mitakshara. At ch. I, 5, § 11, the author, referring to Manu, ix, § 209, makes the property of the grandfather

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(*f*) *Venkata Jagannadha* v. *Veerabhadrayya* (1921) 48 I A., 244, 44 Mad, 643, approving *Venkata* v. *Rama* (1885) 8 Mad., 249, F.B. and overruling *Gunnayan* v. *Kamakshi Ayyar* (1903) 26 Mad., 339, and *Pingala Lakshmipathi* v. *Bommireddipalli Chalamayya* (1907) 30 Mad., 434, F.B.; *Dattatraya* v *Shankar* (1938) 40 Bom. L.R., 118.

(*g*) Manu, ix, § 209, Mitakshara, I, iv, 3, 4, 6, I, v, 11, Daya Bhaga, vi, §§ 31-37; D.K.S, iv, 2, §§ 6-9, Raghunandana, v, 29-31, Vyav. Mayukha, IV, vii, 3.

(*h*) *Visalatchy* v. *Annasamy* (1870) 5 Mad. H.C, 150, *Bajaba* v. *Trimbak Vishvanath* (1910) 34 Bom, 106, *Bisheswar* v *Shitul*, 8 W.R., 13; S C., confirmed on review, *subnomine*, *Bissessur* v *Seetul*, 9 W R, 69, *Bolakee* v. *Court of Wards*, 14 W.R, 34, *Jugmohundas* v. *Mangaldas* (1886) 10 Bom., 528, *Muttu Vaduganadha* v. *Doraisinga* (1881) 8 I.A, 99, 3 Mad, 290, 300; *Naraganti* v. *Venkatachalapati* (1882) 4 Mad, 250, 259, *Shamnaram* v. *Raghubirdayal* (1878) 3 Cal., 508, *Sureschandra* v. *Bai Ishwari* (1938) 40 Bom. L.R., 127.

which has been recovered by the father belong exclusively to him as against his sons. At ch. I, 4, § 3 Vijnanesvara, with reference to the case of a son recovering ancestral property which has not been recovered by his father, cites a text of Sankha as establishing that "if it be land, he takes the fourth part, and the remainder is equally shared among all the brethren". If the property recovered be movable, the son who recovered it takes the whole.

Acquisitions aided by joint funds.

§ 292. An intermediate case between self-acquired and joint property is the case, resting upon a text of Vasishtha, in which property acquired by a single coparcener, at the expense of the patrimony, is said to be subject to partition, the acquirer being entitled to a double share (*i*). The general principles laid down by Vijnanesvara seem to exclude the idea that any special and exclusive benefit can be secured to any co-heir by a use of the family property (*j*). Mr. W. MacNaghten states that under Benares law no such benefit can be obtained, whatever may have been the personal exertions of any individual, but that the rule does exist in Bengal (*k*).

Presumption of jointness.

§ 293. "The normal state of every Hindu family is joint. Presumably every such family is joint in food, worship and estate. In the absence of proof of division, such is the legal presumption. But the members of the family may sever in all or any of these three things"(*l*). Of course there is no presumption, that a family, because it is joint possesses joint property or any property (*m*). The burden of proving that any particular property is joint family property, is in the first instance upon the person who claims it as coparcenary property (*n*). Where the possession of a nucleus of joint family property is either admitted or proved, an acquisition made by a member of the family is presumed

Onus on coparcener to prove nucleus.

(*i*) "And if one of the brothers has gained something by his own effort, he shall receive a double share." Vasishtha, xvii, 51; Mitakshara, i, 4, § 29; Daya Bhaga, vi, 1, §§ 27--29; Raghunandana, i, 20, v, 18.

(*j*) Mit., i, 4 §§ 1—6.

(*k*) 1 W. MacN, 52, 2 W. MacN., 7, n., 158, 160, n., 162 n.

(*l*) *Neelkisto Deb* v. *Beerchunder* (1869) 12 M.I.A., 540; *Naraganty* v. *Vengama* (1861) 9 M.I A., 92; *Rewan Prashad* v. *Radhabai* (1856) 4 M.I.A., 137, 168; *Nageshar* v *Ganesha* (1920) 47 I.A, 57, 70, 42 All., 368; *Raghubar Dayal* v. *Ramdulare* (1928) 6 Rang, 327

(*m*) *Annamalai Chetty* v. *Subramania Chetty* A.I.R., 1929, P.C., 1, 56 M.L.J., 435.

(*n*) *Rai Shadilal* v. *Lal Bahadur* (1933) 64 M.L.J., 298, A.I.R., 1933, P.C., 85, *Maganlal* v. *Krishna Bibi* A.I.R. 1935 All., 303; *Kamala Kant* v. *Madhavji* A.I.R., 1935, Bom., 343; *Mt. Brij Kunvar* v. *Sankata Prasad* (1930) 5 Luck., 400, A.I.R. 1930 Oudh, 639.

to be joint family property. But this is subject to the limitation that the joint family property must be such as with its aid the property in question could have been acquired. And it is only after the possession of an adequate nucleus is shown, the onus shifts on to the person who claims the property as self-acquisition, affirmatively to make out that the property was acquired without any aid from the family estate (*o*).

Possession of joint funds not conclusive.

§ 294. In a case in the Supreme Court of Bengal, Grant, J., said: "Where the property descended is incapable of being considered as the germ whose improvement has constituted the wealth subsequently possessed, this wealth must evidently be deemed acquired. An ancestral cottage never converted, or capable of conversion to an available amount into money, in which the maker of the wealth had the trifling benefit of residing with the rest of the family when he commenced turning his industry to profit,—so of other things of a trifling nature" (*p*). Of course the contrary would be held, if it appeared that the income of the joint property was large enough to leave a surplus, after discharging the necessary expenses of the family, out of which the acquisitions might have been made (*q*). And purchases made with money borrowed on the security of the

(*o*) *Ram Kishan* v *Tunda Mal* (1911) 33 All., 677, *Venkataramayya* v. *Seshamma* [1937] Mad, 1012, following *Sankaranarayana* v. *Tangaratna* A I R., 1930, Mad, 662 and *Satchidanandam* v. *Subbarazu*, 1930, M W N, 1016, *Babubhai Girdhanlal* v. *Ujamlal* [1937] Bom, 708, *Yethirajulu* v *Govindarazulu* (1916) 32 I C, 12, F B, *Vadamalai* v. *Subramania Chettiar* A.I R, 1923, Mad., 262; *Kannammal* v *Ramatilakammal* A.I.R., 1927, Mad., 38; *Narayan Rao* v *Venkatakrishna Rao* (1915) 27 M L.J., 677, *Ramiah* v. *Mahalakshmamma* (1932) 35 M L W., 30, *Sandanam* v *Somasundaram* (1937) 1 M L J, 364, *Surajkumar* v *Jagannath* A I R 1935 All., 67, *Swarath* v. *Ghurki* (1931) 53 All., 603; *Sanival Das* v *Kure Mal* (1928) 9 Lah, 470, *Tulsi Ram* v *Narain Das* A I R 1931 Lah, 113, *Laddha Singh* v. *Mangal Singh* A.I R, 1933 Oudh, 166, *Madho Tewari* v *Mata Din* A.I R., 1934, Oudh, 293; *Mrs Johnstone* v. *Gopal Singh* (1931) 12 Lah, 546, *Mool Raj* v. *Manohar Lal* A.I.R. 1938 Lah., 204, *Vythianatha* v. *Varadaraja* (1938) 1 M.L J., 216; *Sher Mohamed Khan* v *Ram Ratan* A I R. 1938 Nag., 87 In *Lal Bahadur* v. *Kanhayalal* (1907) 34 I A., 65, 29 All., 244, where it was established that there was considerable nucleus, the onus was laid upon the acquirer. So too in *Rajangam* v. *Rajangam* (1923) 50 I A., 134, 141, 46 Mad., 373. In *Dharam Das* v. *Shamasoondari* (1843) 3 M I A, 229, there was apparently sufficient joint family property

(*p*) *Gooroochurn* v. *Goluckmoney*, Fulton, 165, 181, *per curiam*, *Meenatchee* v. *Chetumbra* Mad., Dec. of 1853, 63; *Jadoomonee* v. *Gungadur* 1 Boulu, 600, V. Darp., 521, *Ahmedbhoy* v *Cassumbhoy* (1889) 13 Bom., 534; *Rampershad* v. *Sheochurn* (1866) 10 M I.A., 490, 505.

(*q*) *Sudanund* v. *Soorjoo Monee* (1869) 11 W R., 436; *Tottempudi Venkataratnam* v. *Seshamma* (1904) 27 Mad., 228, 234,

common property will belong to the joint family, the members of which will be jointly liable for the debt (*r*). But it would be otherwise if the loan was made on the sole credit of the borrower, or even if the loan was made out of the common fund, under a special agreement that it was to be at the sole risk of the borrower, and for his sole benefit (*s*).

A house erected by a coparcener with his own separate funds on an ancestral site will be his separate property in the absence of any intention to make the house joint family property and if possible, the portion of the site on which the building stands should be allotted to him at a partition (*t*). As premia paid for insurance policy are presumed to be a man's property, the policy necessarily is his separate property as it certainly is when the premia are paid out of his salary or earnings (*u*). In a case in Madras, the opinion was expressed that where money is given to a member of a family by the manager from the family funds to be spent by him for his own personal use, any profit made by him can hardly be said to be in detriment of the joint family porperty (*v*). The Court relied upon the decision of the Privy Council in *Lachmeswar Singh* v *Manowar Hossein* (*w*) for its view that a profit made by a member of a joint family from the enjoyment of joint property, without detriment to it, is not joint family property. That was a case of co-owners and not of a Mitakshara joint family. It seems however reasonable that a coparcener, who receives a sum of money from the manager for his legitimate expenses and saves a part of it by his thrift, should be allowed to treat it as his exclusive property to be used as he likes, without being under a duty to return it to the family chest. But it would be a different case altogether where he receives family funds, otherwise than as a loan, to enable him to make acquisitions for his own benefit. Where a concern is carried on with coparcenary funds and the share of an individual coparcener is debited with the sums

(*r*) The detriment to the common property is obvious.

(*s*) *Rai Nursingh* v. *Rai Narain* (1871) 3 N.-W.P., 218; *Raccho Kunwar* v. *Dharam Das* (1906) 28 All., 347, 354.

(*t*) *Periakaruppan Chetty* v. *Arunachala* (1927) 50 Mad., 582; *Nutbehary Das* v. *Nanilal Das* A.I.R. 1937 P.C., 61, 41 C.W.N., 613 (a Dayabhaga case).

(*u*) *Mahadeva* v. *Rama Narayana* (1903) 13 M.L.J., 75; *Balamba* v. *Krishnayyan* (1914) 37 Mad., 483; *Rajamma* v. *Ramakrishnayyar* (1906) 29 Mad., 121; *Sugandhabai* v. *Kesarbai* A.I.R. 1932 Nag., 162.

(*v*) *Bengal Insurance & Real Property Co.* v. *Velayammal* [1937] Mad., 990, A.I.R. 1937 Mad., 571.

(*w*) (1892) 19 I.A., 48, 19 Cal., 253.

employed, the intention may be that the concern should belong to the individual member (x).

According to the text of the Mitakshara (I, iv, 6), where a marriage is performed at the family expense, any consideration received from the bridegroom as in the asura marriage will be coparcenary property. In *Ramaswami Chetti* v. *Palaniappa* (*y*), it was held that a coparcener giving away his son in adoption was a detriment to the family and the consideration received by him from the adopter was not his separate property but joint family property. The analogy of the asura marriage relied upon by the Court can have no application, for the Mitakshara makes it plain that unless the marriage was celebrated at the expense of the family, the money received for giving the bride in marriage would not be joint family property. The other ground of decision that the transfer of a son is a detriment to the family would seem to be equally wrong; for the father alone has the power to give away his son in adoption and to say that if the boy had remained in the family and there had been no partition, he would have added to its wealth seems irrelevant. In any case, detriment is too remote.

§ 295. Where the property is admitted to be originally self-acquisition but is alleged to have been thrown into the common stock, the onus of proving such a case is heavily on the party asserting it (*y*[1]). Even where it appears that the family had possession of sufficient ancestral property but, at the same time, some members of the family appeared to have separate funds or acquisitions or dealings of their own, such a state of things shifts the onus on to those who claim as joint family property particular acquisitions which have been allowed to be treated by individual coparceners as their own (*z*). On the other hand, where it is shown that there

Onus of proof.

(*x*) *Manicham Chetty* v *Kamalam* (1937) 1 M L J, 95

(*y*) A.I R, 1924, Mad, 354, 18 M L W, 656 See note (*g*), p 365

(*y*[1]) *Visvasundara Rao* v *Pallam Raju* A I R, 1933, Mad., 565, *Jot Singh* v. *Janga Singh* A I R, 1933, Oudh, 482, *Govind Prasad* v. *Shanti Swarup* A I.R 1935 All, 778. *Mool Raj* v *Manohar Lal* A I.R 1938 Lah, 204, *Vythianatha* v *Varadaraja* (1938) 1 M L J, 216.

(*z*) *Bodh Singh* v *Ganesh*, 12 B L R, 317, *Bissessur Lall* v. *Luchmessur* (1879) 6 I.A, 233, 5 C L R, 477, *Murari* v *Mukund* (189) 15 Bom, 301, *A fortiori*, where there had been admitted self acquisitions and an actual partition, or a partition among some members only was admitted, the onus would lie upon any member who sues subsequently for a share to make out his case. *Banoo* v. *Kashiram* (1878) 3 Cal., 315, P.C.; *Radhachurn* v. *Kripa* (1880) 5 Cal., 474, *Obhoy Churn* v. *Gobind* (1884) 9 Cal., 237; *Upendra* v *Gopanath ib*, 817. *Balakrishna* v. *Chintamani* (1887) 12 Cal. 262; *Dattatraya* v *Shankar* A.I.R 1938 Bom., 250, 40 Bom L.R., 118 As to the presumption in the Punjab, see *Moolraj* v *Manohar Lal* A I.R. 1938 Lah, 204.

was sufficient coparcenary property with the aid of which the acquisition could have been made, the presumption that it is joint property is not rebutted, by showing that it was purchased in the name of one member of the family or that there are receipts in his name respecting it; for all that is perfectly consistent with the notion of its being joint family property (*a*).

Dayabhaga joint family.

§ 296. When we turn to the joint family under the Dayabhaga law, we find that its bases are, in important respects, different from those of a Mitakshara joint family. The Mitakshara conception of the son's right by birth is altogether alien to it. Jimutavahana and his school do not recognise the distinction between unobstructed and obstructed heritage. There is therefore no right of survivorship: on the death of the father the sons take his estate strictly by inheritance (*b*). As a consequence, the sons have no right, during the life of their father, to claim a partition even in respect of the ancestral property (*c*). Where property is held by a father as head of an undivided family, his issue have no legal claim upon him or the property, except for maintenance. The father can dispose of the property whether ancestral or self-acquired as he pleases (*d*); the sons can neither control, nor call for an account of his management. It follows therefore that under the Dayabhaga law, a father and his sons do not form a joint family in the technical sense having coparcenary property. But as soon as it has made a descent, the brothers or other coheirs hold their shares in quasi-severalty. Each coparcener has full powers of disposal over his share which is defined and not fluctuating with births and deaths as in the case of a Mitakshara family and his interest, while still undivided, will on his death pass on to his own heirs, male or female or even to his legatees (*e*).

Differences from Mitakshara family.

(*a*) *Dhurn Das* v. *Mt. Shama Soondari* (1843) 3 M.I.A., 229, 240; *Gopee Kist* v *Gunga Prasad* (1854) 6 M I A., 53; *Prankishan* v *Mathura* (1865) 10 M.I.A., 403, *Umrithnath* v. *Goureenath* (1870) 13 M.I.A., 542; *Rampershad* v. *Sheochurn* (1865) 10 M.I.A., 490; *Johnstone* v. *Gopal Singh* (1931) 12 Lah, 546; *Atar Singh* v. *Thakar Singh* (1908) 35 I.A., 206, 35 Cal., 1039; *Bholanath* v. *Ajoodhia* (1874) 12 B.L.R., 336; *Gajendar* v. *Sardar Singh* (1896) 18 All., 176.

(*b*) Dayabhaga I, 30; Raghunandana I, 5-14; D.K.S. I, 2, 4.

(*c*) Dayabhaga II, 8; Raghunandana I, 34-35.

(*d*) *Debendra* v. *Brojendra* (1890) 17 Cal., 886; *Gouranga Sundar Mitra* v. *Mohendra Narayan* A.I.R. 1927 Cal., 776; *Hemchandra Ganguli* v. *Matilal Ganguli* (1933) 60 Cal., 1253.

(*e*) *Soorjeemoney* v. *Denobundoo* (1857) 6 M.I.A., 523, 553.

Before the Hindu Woman's Rights to Property Act, 1937, the share of a coparcener under the Dayabhaga law devolved, on his death without issue, on his widow. Now, however, under that Act, the share of a coparcener in a Dayabhaga joint family, along with his other separate property, will, on his death intestate, pass to his widow along with his male issue; if he dies without male issue, it will pass to his widow, daughter and daughter's son, as before (§ 591).

§ 297. Where a man dies leaving a son, a grandson whose father is dead and a great-grandson whose father and grandfather are dead, all the three take his property as his heirs and form a coparcenary. But a grandson whose father is alive and a great-grandson whose father and great-grandfather are alive have no rights in the coparcenary property (*f*). A joint Hindu family under the Dayabhaga is, like a Mitakshara family, normally joint in food, worship and estate. In other respects too, there is little or no difference between a joint family under the Dayabhaga law and one under the Mitakshara law. The property of a joint family under the Dayabhaga, as under the Mitakshara law, may consist of ancestral property, of joint acquisitions and of self-acquisitions thrown into the common stock (*g*). The doctrine of self-acquisition in connection with a Dayabhaga family is the same as in a Mitakshara family. The rules as to onus and presumptions applicable to a Mitakshara family and its coparcenary property apply also to the case of a Dayabhaga family and its joint property subject to one apparent exception (*h*). In the case of a family of father and sons which is not a joint family in the technical sense, there is no presumption that the family is joint or that it has any joint property or that any acquisition in the name of a son, even when there is property, is the property of the members of the family (*i*). According to the Bengal authorities, a cosharer who recovers

Similarities to Mitakshara family.

(*f*) Dayabhaga II, 10, III, 1, 1, 8, 19, D K S, I, 1, 3 and 4.

(*g*) *Rajanikanta Pal* v *Jagamohan Pal* (1923) 50 I A, 173, 50 Cal. 439 following the Mitakshara case of *Suraj* v *Ratan Lal* (1917) 44 I A., 201, 40 All. 159 *Gooroochurn* v. *Goluckmoney* (1843) Foulton 164, Ind Decisions (old series) 743.

(*h*) *Himchandra* v *Matilal* (1933) 60 Cal, 1253, 1258 following *Fthirajulu* v *Govindarajulu* (1915) 32 I C., 12, *Haragouri Batabyal* v. *Ashutosh Batabyal* A I R. 1937 Cal., 418. See also *Jasoda Sundari* v *Lal Mohun Basu* A I R 1926 Cal, 361 where the decision in *Sarada* v *Mahananda* (1904) 31 Cal, 448 is explained.

(*i*) *Sarada Prasad Roy* v. *Mahananda* (1904) 31 Cal., 448. (The headnote in *Saradaprasad Roy* v *Mahananda* (1904) 31 Cal., 448, is criticised by Mukherji, J. in A I R 1926 Cal. 361, 362 *supra*, as entirely incorrect.) *Govind Chandra* v *Radha Kristo* (1909) 31 All., 477.

ancestral land, lost to the family, takes a one-fourth share first and then shares the residue equally with the others (*j*), In *Gooroochurn* v. *Goluckmoney* (*k*), it was held (1) that the sole manager of the joint family property is, by reason of his management, entitled to no increased share; (2) that the skill and labour contributed by one joint sharer alone in the augmentation or improvement of the common stock establishes no right to a larger share; (3) that the acquisition of a distinct property without the aid of the joint funds or joint labour gives a separate right, and creates a separate estate; (4) that the acquisition of a distinct property with the aid of joint funds or of joint labour gives the acquirer a right to a double share and (5) that the union with the common stock of that which might otherwise have been held in severalty gives it the character of a joint and not of a separate property. But to entitle the acquirer to a double share, the property acquired must be a distinct one and the assistance derived from the joint funds must be of little consideration. Jimutavahana rests the doctrine of the double share of the acquirer, not upon the text of Vasishtha, which he seems to take as applying to self-acquisition, properly so called, but upon a text of Vyasa. "The brethren participate in that wealth, which one of them gains by valour and the like, using any common property, either a weapon or a vehicle" (*l*). Here the meritorious cause of the acquisition is the brother himself, the assistance derived from the joint funds being insignificant. These views were approved by later decisions of the Bengal High Court (*m*).

Enjoyment of family property.

§ 298. The fourth subject of examination relates to the mode in which the joint family property is to be enjoyed by the coparceners. Lord Westbury in a judgment, which has become a classic, said: "According to the true notion of an undivided family in Hindu law, no individual member of that family, while it remains undivided, can predicate of the joint and undivided property that he, that particular member, has a certain definite share. No individual member of an undivided family could go to the place of the receipt of rent, and claim to take from the collector or receiver of the rents a certain definite share. The proceeds of un-

(*j*) Dayabhaga VI, ii, 36-39; D.K.S., IV, 2, 7, 8, 9.

(*k*) (1843) Fulton 165; 1 Ind. Dec. (old series) 743, approved in *Soorjeemoney* v. *Denobundo* (1856) 6 M.I.A., 539.

(*l*) Dayabhaga VI, ii, 36-39; II, 41; VI, i, 28; the rule is the same in the Mitakshara I, iv, 30-31.

(*m*) *Purtab Bahaudur* v. *Tiluck Daree* 1 S.D., 172 (236); *Sree Narain* v. *Goorooprasad* 6 W.R., 219; *Sheo Dayal* v *Jaddonath* 9 W.R., 61. *Lalchand Shaw* v. *Swarnamoyee Dasi* (1909) 13 C.W.N., 1133.

divided property must be brought, according to the theory of an undivided family, to the common chest or purse, and there dealt with according to the modes of enjoyment by the members of an undivided family" (*n*).

Managing member.

So long as the members of a family remain undivided, as a general rule, the father of a family, if alive, or in his absence the senior member of the family is entitled to manage the joint family property (*o*) With the consent of the others, a junior member of the family may become the manager of the family property or there can be more than one managing member (*p*)

The managing member is entitled to full possession of the joint family property and is absolute in its management (*q*) He has the power and the right to represent the family in all transactions relating to it (*r*) He is entitled to act on behalf of the family without the consent of the other members and even in spite of their dissent; and when his act is within his legal authority and for family purposes, it binds the others. The other members, as long as the family is undivided, have only a right to maintenance and residence. They cannot call for an account, except as incident to their right to a partition, nor can they claim any specific share of the income, nor even require that their maintenance or the family outlay should be in proportion to the income. An absolute discretion in this respect is vested in the manager

Manager's legal position.

§ 299 The position of a karta or manager is sui generis; the relation between him and the other members of the family is not that of principal and agent, or of partners. It is more like that of a trustee and *cestui que trust* (*s*). But the fiduciary relationship does not involve all the duties

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(*n*) *Appovier* v *Rama Subba Aiyan* (1866) 11 M.I.A., 75, 89, 8 W.R (P C.), 1

(*o*) *Thandavaraya* v *Shunmugam* (1909) 32 Mad, 167, *Bhaskari Kasavarayudu* v *Bhaskaran* (1908) 31 Mad., 318; *Lala Surja Prasad* v. *Golabchand* (1900) 27 Cal, 724, 743, *Gajendra Narain* v. *Harihar Narain* (1908) 12 C W.N, 687, *Suraj Bansi* v. *Sheo Prasad* (1880) 6 I A, 88, 5 Cal, 148, 165, *Kishen Prasad* v *Hari Narayan* (1911) 38 I A, 45, 33 Cal, 272, *Venkatanarayan* v. *Somaraju* [1937] Mad, 880 F.B.

(*p*) *Mudit* v *Ranglal* (1902) 29 Cal., 797; *Ramakrishna* v *Manikka* (1937) 1 M.L.J, 587

(*q*) *Bhaskaran Kasavarayudu* v *Bhaskaran* (1908) 31 Mad., 318.

(*r*) *Venkatanarayan* v *Somaraju* [1937] Mad., 880, F B.; *Vithu Dondi* v *Babaji* (1908) 32 Bom., 375; *Harilal* v. *Munmam Kunwar* (1912) 34 All., 549, 554, F.B.

(*s*) *Annamalai Chetty* v. *Murugasa Chetty* (1903) 30 I.A., 220, 26 Mad, 544, 553.

which are imposed upon trustees. In the absence of proof of direct misappropriation, or fraudulent and improper conversion of the moneys to the personal use of the manager, he is liable to account only for what he has received and not for what he ought to or might have received if the moneys had been profitably dealt with (*t*). So long as the manager of the joint family administers the funds for the purposes of the family, he is not under the same obligation to economise or to save, as would be the case with an agent or trustee (*u*). If he spends more on family purposes than what the other members approve of, the only remedy of the latter is to have a partition. The account is then taken upon the footing of what has been spent, and what remains, and not upon the footing of what might have been spent, if frugality and skill had been employed (*v*). Besides the expenses of management, realisation and protection of the family estate, the family purposes are ordinarily maintenance, residence, education, marriage, *sraddha* and religious ceremonies of the coparceners and their families (*w*). The expenses of each coparcener or his branch cannot in law, in the absence of usage, be debited to the particular coparcener (*x*). The manager can spend for family purposes more on one branch of the family than on another and his discretion is final. But, he cannot misappropriate the family property or its income or misapply them to purposes which are not family purposes even on a liberal construction (*y*). As long as he applies the funds at his disposal for family purposes, the head of the family cannot in general be called on to defend the propriety of his past transactions (*z*). A managing

Right to spend.

Not accountable for past transactions.

(*t*) *Perrazu* v. *Subbarayudu* (1921) 48 I.A., 280, 287, 288, 44 Mad., 656; *Kandasami Asari* v. *Somaskanda* (1912) 35 Mad., 177 (he is not an agent), *Srikantlal* v. *Sidheswari* (1937) 16 Pat., 441, *Muhammad* v. *Radheram* (1900) 22 All., 307, 317.

(*u*) *Bhowani* v. *Jagannath* (1909) 13 C.W.N., 309, 313.

(*v*) *Tarachand* v. *Reebram* (1866) 3 M.H.C., 177; *Jugmohandas* v. *Sir Mangaldas* (1886) 10 Bom., 528; *Damodardas* v. *Uttamram* (1893) 17 Bom., 271; *Balakrishna Iyer* v. *Muthusami Iyer* (1908) 32 Mad., 271; *Krishnayya* v. *Guravayya* (1921) 41 M.L.J., 503; *The Official Assignee* v. *Rajabadar* (1924) 46 M.L.J., 145.

(*w*) *Kameswara Sastri* v. *Veeracharlu* (1911) 34 Mad., 422.

(*x*) *Ramnath* v. *Goturam* (1920) 44 Bom., 179; *Abhayachander* v. *Pyari Mohun* (1870) 5 Beng. L.R., 347, 349, F.B.

(*y*) *Narendranath* v. *Abani Kumar* (1937) 42 C.W.N., 77; per Sir Walter Schewabe in *Official Assignee* v. *Rajabadar* (1924) 46 M.L.J., 145, 147, see cases cited in note (*v*) *supra*. For a case where account was ordered, see *Kristnayya* v. *Guravayya* (1921) 41 M.L.J., 503.

(*z*) *Bhowani* v. *Juggernath* (1909) 13 C.W.N., 309, *Official Assignee* v. *Rajabadar* (1924) 46 M.L.J., 145; see *post* § 416.

member, it has been held, is not bound to keep accounts (*a*). Where the properties or the transactions of the family are such as not to make it necessary that accounts should be kept, this would seem to be the right conclusion; for, the manager is not like a trustee or an agent. Where however, the nature of the family business or the family properties and dealings are such that it becomes necessary to keep accounts, as without them it will be impossible to ascertain the assets available for a partition, the rules of justice and equity would cast a duty on the managing member to keep accounts.

The difference in the liability to account between an agent and the managing member of a joint Hindu family was illustrated in a Madras case (*b*) where there was an agreement between three undivided brothers postponing the partition of their joint estate for twelve years but providing that the eldest of them should manage it and it was held, on that agreement, that the manager was an agent for the other brothers accountable for the receipts and expenses.

Manager's position under the Dayabhaga.

§ 300. Under the Dayabhaga law, the powers of a manager, the relations between him and the coparceners and the position of the coparceners *inter se* as to the enjoyment of the property, as long as there is no partition, are not different from what they are under the Mitakshara law (*c*). While a coparcener in a Dayabhaga family has a definite share, he is not entitled to ask for that share of the income or to an account on the footing of his being a tenant in common. It was laid down by the Supreme Court of Bengal in an early case that each of the coparceners has a right to call for a partition, but until such a partition takes place, the whole remains common stock; the co-sharers being equally interested in every part of it (*d*); and this applies

(*a*) *Ramanath* v *Goturam* (1920) 44 Bom, 179, *Official Assignee* v. *Rajabadar* (1924) 46 M L J, 145, but see *Jyotibati* v *Lachmeswar* A.I.R. 1930 Pat., 260, *Gobind Dubey* v. *Parameshwar* A.I.R. 1921 Pat., 487. These two latter decisions place the manager in the position of a trustee which is not his position in law. See *Perrazu's* case, (1921) 48 I.A., 280, 44 Mad., 656. Of course, where he keeps accounts, they must be true and correct.

(*b*) *Raja Setrucherla* v. *Raja Setrucharla* (1899) 26 I.A., 147, 22 Mad., 470.

(*c*) J. C. Ghose, H L., 1, 433; Sarkar, H.L., 7th ed, 398-400, 520.

(*d*) Raghunandana I, 21-29. "By reason of the right being common, the text of Katyayana, which says 'A coparcener is not liable for the use of any article which belongs to all the undivided relatives,' becomes consistent in its literal sense; inasmuch as his own right extends over every article, accordingly there can be no theft in such a case . . . All the coparceners are entitled to the fruits of all acts,

to all those who come in, in the place of the original co-sharers, by inheritance, assignment, or operation of law, for they can take only his rights as they stand, including of course the right to call for a partition (*e*).

In *Abhaychandra* v. *Pyari Mohun* (*f*), which was a case of a Dayabhaga family, Mitter, J., said, "he (the manager) is certainly liable to make good to them their shares of all sums which he has actually misappropriated, or which he has spent for purposes other than those in which the joint family was interested. Of course, no member of a joint Hindu family is liable to his coparceners for anything which might have been actually consumed by him in consequence of his having a larger family to support, or of his being subject to greater expenses than the others; but this is simply because all such expenses are justly considered to be the legitimate expenses of the whole family. Thus, for instance, one member of a joint Hindu family may have a larger number of daughters to marry than the others. The marriage of each of these daughters to a suitable bridegroom is an obligation incumbent upon the whole family, so long as it continues to be joint, and the expenses incurred on account of such marriages must be necessarily borne by all the members, without any reference whatever to respective interests in the family estate". Again in *Nibaran Chandra* v. *Nirupama* (*g*), the same principles which are applied to a Mitakshara family were applied to a Dayabhaga family following the observation of the Judicial Committee in *Shookmoychandra* v. *Mano Harri* (*h*). The principles laid down by the Judicial Committee in *Perrazu's* case (*i*) were applied to a Dayabhaga case recently (*j*). The coparceners

Of ordinary member of family.

either temporal or spiritual, which are performed with the use of the joint property; since their right is common. This is affirmed also by Narada: 'Among undivided brothers, duties continue common, but when partition takes place, their duties also become different' (Dayatattva, I, 24, 26).

(*e*) *Soorjeemoney Dossee* v. *Denobundoo* (1857) 6 M.I.A., 526, 539, reversed by the Privy Council upon the construction of a will but this proposition was not disputed. See too *Chuckun* v. *Poran* 9 W.R., 483.

(*f*) (1870) 5 B.L.R., 347, F.B., 349, a Dayabhaga case. See per Guha and Mitter, J.J., in *Narendra Nath* v. *Abani Kumar Roy* (1937) 42 C.W.N., 77, 80. Dwaraknath Mitter, J., refers to the text of Raghunandana showing that it was a Dayabhaga case.

(*g*) (1921) 26 C.W.N., 517, 528.

(*h*) (1885) 12 I.A., 103, 11 Cal., 684.

(*i*) *Arumilli Perrazu* v. *Subbarayadu* (1921) 48 I.A., 280, 44 Mad., 656.

(*j*) *Narendranath* v. *Abani Kumar* (1937) 42 C.W.N., 77.

in a Dayabhaga family are not entitled to such an account as tenants in common or members of a divided Mitakshara family will be entitled to; in the latter case, the person who, before division, was in possession as managing member is strictly bound to account for all receipts and expenses and can take credit only for such expenses as have been incurred for the necessity or benefit of the estate, and the net income will have to be equally divided between him and the co-sharers (*k*). The difference between a Mitakshara coparcenary and a Dayabhaga coparcenary was explained in a recent case: "Under the Dayabhaga law each coparcener takes a defined share. The essence of a coparcenary under the Mitakshara law is unity of *ownership*, whereas under the Dayabhaga law the essence of a coparcenary is unity of *possession*. So long as there is unity of *possession*, no coparcener can say that a *particular* share of the property belongs to him That he can say only after a partition. Partition then, according to the Dayabhaga law, consists in splitting up joint possession and assigning specific portions of the property to the several coparceners . . If the family remains joint, no charge can be made against any coparcener because, in consequence of his having a larger family, a larger share of the joint income was spent on his family. Such expenditure is considered to be the legitimate expenditure of the whole family" (*l*).

Full Bench decision.

In the Full Bench case of *Abhaychandra* v. *Pyari Mohan* (*m*) already mentioned, two questions were referred for decision:—(1) Whether the managing member of a joint Hindu family can be sued by the other members for an account, and (it appearing that one of the plaintiffs was a minor); (2) Whether such a suit would not lie, even if the parties suing were minors, during the period for which the accounts were asked. Mr. Justice Mitter, in making the reference said: "Suppose, for instance, that one of the members of a joint family, with a view to separate from the others, asks the manager what portion of the family income has been actually saved by him during the period of his managership. If the manager chooses to say that nothing has been saved, but at the same time refuses to give any account of the receipts and disbursements, which were entirely under his control, how is the member, who is desir-

Right to an account.

(*k*) *Sri Ranga* v *Srinivasa* (1927) 50 Mad., 866, 874; see *Yerukola* v. *Yerukola* (1922) 45 Mad, 648 (F.B.); *Sarvothama Pai* v. *Govinda Pai* A I.R., 1937, Mad., 11.

(*l*) *In the matter of Ganga Sagor, Ananda Mohan Shaha* (1929) 33 C.W.N., 1190, 1192.

(*m*) (1870) 5 B.L.R., 347.

ous of separation, to know what funds are actually available for partition? And according to what principle of law and justice can it be said that he is bound to accept the *ipse dixit* of the manager as a correct representation of the actual state of things?" Both questions accordingly were answered in the affirmative. The only difference that may possibly exist as a result of this decision between the Dayabhaga law and the Mitakshara law is that a Dayabhaga coparcener may sue a coparcener for an account even before division (*n*). Otherwise there is no difference between the two systems as regards an undivided coparcener's right to an account as against the manager or the kind of account which the manager is bound to render (*o*).

Managing member represents family in all transactions.

§ 301. A necessary consequence of the corporate character of the family holding is that, wherever any transaction affects that property, all the members must be expressly or impliedly represented by the managing member or must be parties to it; and whatever is done must be done for the benefit of all, and not of any single individual. It is well settled that the managing member of a family business, or the managing members where there are more than one have the power of making contracts, giving receipts, and compromising or discharging claims incidental to the business. They can sue and be sued in all matters affecting that business without joining the other members of the family and in particular in respect of contracts and transactions made in

(*n*) But see the decision of the Supreme Court of Bengal in *Soorjeemoney Dossee's* case (1857) 6 M.I.A., 523, 540: "The right to demand such an account, when it exists, is incident to the right to require a partition, the liability to account can only be enforced upon a partition."

(*o*) *Narendranath* v *Abani Kumar* (1937) 42 C.W.N., 77, *Soorjeemoney Dossee* v *Denobundo* (1857) 6 M.I.A., 523; *Harey Harey Sinha* v. *Hari Chaitanya* (1936) 40 C.W.N., 1237; *In the matter of Ganga Sagar* (1929) 33 C.W.N., 1190, 1192, *Nibaranchandra* v *Nirupama* (1921) 26 C.W.N., 517, 528. The learned Judges in *Balakrishna Iyer* v. *Muthusami Iyer* (1909) 32 Mad., 271, 274 were under a misconception as to the kind of account which a coparcener is entitled to under the Dayabhaga law. *Sri Ranga* v. *Srinivasa* (1927) 50 Mad., 866; *Parmeshwar* v. *Gobind* (1916) 43 Cal., 459; *Tammi Reddi* v. *Gangi Reddi* (1922) 45 Mad., 281, reversed on another point in (1927) 54 I.A., 136, 50 Mad., 421; *Sukh Deo* v. *Basdeo* (1935) 57 All, 949, *Ramnath* v. *Goturam* (1920) 44 Bom., 179; *Balakrishna* v. *Muthuswami* (1909) 32 Mad., 271; *Jyotibati* v. *Lakshmeshwar* (1929) 8 Pat., 818, *Damodardas* v. *Uttamram* (1893) 17 Bom, 271; *Jugmohandas* v. *Mangaldas* (1886) 10 Bom., 528, 562; *Konerrav* v. *Gurrav* (1881) 5 Bom., 589, 595; *Narayan* v. *Nathaji* (1904) 28 Bom., 201.

their own names (*p*). In other words, the managing member has the right to represent the entire family in all transactions relating to the family, whether they are in connection with immovable properties or otherwise (*q*). The managing member represents the family in a suit on mortgage (*r*), as well as in a suit for recovery of possession of immovable property (*s*).

In suits.

Decrees against him binding.

The family is bound by a decree properly passed against the manager of a joint family either in respect of family property or for a debt contracted or a mortgage executed by him on behalf of the family (*t*) The right of the manager to sue on contracts entered into with him does not cease by the mere fact that there are disputes in the family or that

(*p*) *Kishen Parshad* v *Har Narain Singh* (1911) 38 I A., 45, 33 All., 272, *Ramnath* v *Ramrao* (1922) 46 Bom., 358, *Atmaram* v *Banku Mal* (1930) 11 Lah., 598, *Ram Kishen* v. *Ganga Ram* (1931) 12 Lah, 428, *Sheik Ibrahim* v. *Rama Aiyar* (1912) 35 Mad, 685, *Bhola Roy* v *Jung Bahadur* (1914) 19 C.L J., 5, *Gangaram* v. *Bapu Saheb* (1922) 46 Bom, 1022, *Anantram* v. *Channulal* (1903) 25 All., 378, *Gopal Das* v. *Badrinath* (1905) 27 All., 361, *Lalchand* v. *Sheo Gobind* (1929) 8 Pat, 788, *Lalji* v. *Kishorji* (1913) 37 Bom., 340

(*q*) *Venkatanarayana* v *Somaraju* [1937] Mad., 880, F.B.; *Adinarayana* v *Venkata* A.I R 1937 Mad., 869, *Ramanathan* v. *S. Rm M Ct. M. Firm* [1937] Mad., 376.

(*r*) *Sheo Shankar* v *Jaddokunwar* (1914) 41 I A, 216, 36 All., 383, *Hordal* v *Munman Kunwar* (1912) 34 All, 549, F.B ; *Madanlal* v. *Kishen Singh* (1912) 34 All, 572, *Ram Krishna* v. *Vinayak* (1910) 34 Bom., 354, *Raghunandan* v *Parmeshwar* (1917) 2 P L J, 306; *Bungse* v. *Soodist Lal* (1881) 7 Cal, 739, *Arunachela* v *Vaithilinga* (1883) 6 Mad., 27, *Ramayya* v. *Venkataratnam* (1894) 17 Mad, 122, *Pirthi Pal* v *Rameshwar* (1927) 2 Luck, 288, *Madhusudhan* v. *Bhagwan* (1929) 53 Bom, 444 (The decisions to the contrary in *Alagappa* v *Vellian* (1895) 18 Mad., 33, *Angamuthu* v *Kolandavelu* (1900) 23 Mad, 190; *Seshan Patter* v. *Veera Raghavan* (1909) 32 Mad., 284, *Balkrishna* v. *The Municipality of Mahad* (1886) 10 Bom, 32, and *Shamrathi* v. *Kishan Prasad* (1907) 29 All., 311 are no longer law.)

(*s*) *Lingangowda* v. *Basangauda* (1927) 54 I.A., 122, 51 Bom, 450, *Muhammad Sadik* v. *Khedan Lall* (1916) 1 P.L.J, 154, *Tribeni Prasad* v. *Ramasray Prasad* (1931) 10 Pat, 670 F.B., *Rachottappa* v. *Konher Anna Rao* (1935) 59 Bom., 194, 216

(*t*) (1927) 54 I.A, 122 *supra*, *Venkatanarayana* v *Somaraju* [1937] Mad., 880 F.B. The Judicial Committee, in the former, observed that in such cases the court looks to explanation VI of Section 11 of the Code of Civil Procedure to see "whether or not the leading member of the family has been acting either on behalf of minors in their interest, or if they are majors, with the assent of the majors." This does not mean that the assent should be express; it would be implied if they acquiesce in the manager's conduct of the suit or defence. If the other members be not satisfied with the prosecution of the suit or defence, they could apply to be made parties and ordinarily the Court would make them parties; *Mallikarjuna* v. *Venkataratnam* (1938) 1 M.L.J., 526, 47 M.L.W., 511.

the other members affect to revoke his authority to act on their behalf (*u*).

Where the suit relates to joint family property and the person sued or suing is the manager, he need not be described as such in the plaint, though it is advisable to do so. If it appears that in fact he was the manager and the suit related to the joint family property or its rights or liabilities, it must be presumed that he was suing or being sued in his representative capacity; and even the omission to state in the decree that it was passed in his favour or against him in such capacity does not prevent the decree from being for or against the entire family (*v*).

§ 302. It follows, as a result of the necessity for either joint action or action by the accredited representative of the family, that a single coparcener who is not the managing member cannot sue or be sued on behalf of the family. For instance, a single member cannot sue, or proceed by way of execution, (*w*) to recover a particular portion of the family property for himself, whether his claim is preferred against a stranger who is asserted to be wrongfully in possession, or against his coparceners. If the suit is against a stranger, the managing member or all the members must join, and the suit must be brought to recover the whole property for the benefit of all. And this, whether the stranger is in possession without a shadow of title, or by the act of one of the sharers, in excess of his power (*x*), or by the lawful act of the manager. If any of the members refuse to join as plaintiffs, or are colluding with the defendants, they should be made co-defendants, so that the interests of all may be bound (*y*).

Suits by one co-sharer.

(*u*) *Adaikalam Chetty* v. *Subban* (1914) 27 M.L.J., 621.

(*v*) *Madhgouda* v. *Halappa Balappa* (1934) 58 Bom., 348; *Surendranath* v. *Sambhunath* (1928) 55 Cal., 210; *Dharup Raj* v. *Ram Audhesh* A.I.R., 1935, All., 452; *Tulshi* v. *Bishnath Rai* A.I.R., 1923, All., 284; *Mukhram Mahto* v. *Kesho Ram* A.I.R., 1935, Pat., 258, *Chandi Prasad* v. *Balaji Misir* (1931) 53 All., 427; (1938) 1 M.L.J., 526 *supra*.

(*w*) *Banarsi Das* v. *Maharani Kuar* (1883) 5 All., 27; *Gauri Shankar* v. *Kunwar Jung* (1926) 2 Luck., 259; A.I.R. 1926 Oudh, 605.

(*x*) *Sheo Churn* v. *Chukraree* (1871) 15 W.R., 436; *Cheyt Narain* v. *Bunwaree* (1875) 23 W.R., 395; *Rajaram Tewari* v. *Luchman* (1870) 4 B.L.R. (A.C.J.), 118, approved in *Phoolbas Koonwar* v. *Lalla Jogeshur* (1876) 3 I.A., 7, 26, 1 Cal., 226; *Biswanath* v. *Collector of Mymensing* (1871) 7 B.L.R., Appx., 42; affirmed by F.B. *Unnoda* v. *Erskine* (1874) 12 B.L.R., 370; *Teeluk* v. *Ramjus* 5 N.-W.P., 182; *Nathuni* v. *Manraj* (1877) 2 Cal., 149; *Arunachela* v. *Vythialinga* (1883) 6 Mad., 27; *Sheik Ibrahim* v. *Rama Aiyar* (1912) 35 Mad., 685; *Kishan Prasad* v. *Har Narain Singh* (1911) 38 I.A., 45, 33 All., 272.

(*y*) *Rajaram Tewari* v. *Lachman, ub sup; Juggodumba* v. *Haran* (1868) 10 W.R., 108; *Gokool* v. *Etwaree* (1873) 20 W.R., 138.

Rights of coparceners *inter se.*

One or more members can, however, sue persons who infringe the rights of the family, joining the other coparceners as defendants without stating either that they refused or were consulted before the institution of the suit (*z*). If the suit is against the coparceners, it is vicious at its root. The only remedy by one member against his co-sharer for possession is by a suit for partition, as until then he has no right to the exclusive possession of any part of the property (*a*). Suits for injunction in cases of family property, as between members of the family are confined to acts of waste, illegitimate use of the family property, and ouster (*b*) The same rule forbids one of several sharers, not being the manager, to sue alone for the ejectment of a tenant (*c*), unless, perhaps, in a case where by arrangement with his coparceners the plaintiff has been placed in exclusive possession of the whole (*d*), or for enhancement of rent (*e*) or for his share of the rent (*f*), unless where the defendants have paid their rent to him separately, or agreed to do so, in which case

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(*z*) *Pyare Mohan Bose* v *Kedarnath* (1899) 26 Cal, 409 F B. commenting on *Dwarkanath Mitter* v *Tara Prosanna* (1889) 17 Cal, 160; *Periakaruppan* v. *Velayudham* (1906) 29 Mad., 302, *Kunhan* v. *Moorthy* (1911) 34 Mad, 406, *Karattole Edamana* v *Unni Kannan* (1903) 26 Mad., 649 (F.B.) overruling *Savitri* v. *Raman* (1901) 24 Mad., 290, and dissenting from *Parameswaran* v *Shangaran* (1891) 14 Mad, 489, *Biri Singh* v *Nawal Singh* (1902) 24 All, 226; *Kamini Mohun* v *Nibaran Chundra* A I R 1923 Cal, 506, *Pramada Nath* v. *Ramani Kanta* (1908) 35 I A., 73, 35 Cal., 331.

(*a*) *Phoolbas Koonwur* v *Lalla Jogeshur* (1876) 3 I.A, 7, 1 Cal., 226, *Trimbak* v *Narayan* (1874) 11 Bom H.C., 69, *Gobind Chunder* v. *Ram Coomar* (1875) 24 W R, 393, *Ramanuja* v. *Virappa* (1883) 6 Mad, 90. See, however, *Naranbhai* v *Ranchod* (1902) 26 Bom, 141.

(*b*) *Anant Ramrav* v *Gopal Balwant* (1895) 19 Bom., 269, *Ganpat* v. *Annaji* (1899) 23 Bom, 144, *Sheo Pershad* v *Leela Singh* 20 W.R., 160, *Soshi* v. *Ganesh* (1902) 29 Cal, 500. As to the form of the decree to be made where one of the co-sharers has taken exclusive possession for himself of part of the land, see *Jagernath* v. *Janath* (1905) 27 All., 88, *Ramcharan* v *Kanhisher*, *ibid*, 153, *Muhammad Abdul Jalilkhan* v *Muhammad Abdus* (1933) 55 All, 728, *Hanuman Prasad* v. *Mathura* (1928) 51 All, 303 F B

(*c*) *Sree Chand* v *Nim Chand* (1870) 13 W R., 337, 5 B.L.R., Appx. 25, *Alum* v *Ashad* (1871) 16 W.R, 138, *Hulodhur* v *Gooroo* (1873) 20 W R, 126, *Krishnarav* v. *Govind* (1875) 12 Bom. H C, 85; *Balaji* v. *Gopal* (1879) 3 Bom, 23; *Reasut* v. *Chorwar* (1881) 7 Cal., 170 See also *Gopal* v. *MacNaghten* (1881) 7 Cal, 751, *Gopal Ram* v. *Dharkeshwar Pershad* (1908) 35 Cal, 807.

(*d*) *Amir Singh* v. *Moazzim* 7 N.-W.P, 58

(*e*) *Jogendro* v *Nobin Chunder* (1882) 8 Cal., 353; *Kalichundra* v. *Rajkishore* (1885) 11 Cal, 615; *Balkrishna* v. *Morokrishna* (1897) 21 Bom., 154, where the suit was brought by the manager in his own name, with the consent of the co-sharers.

(*f*) *Indromonee* v *Suroop* (1871) 15 W R., 395, *Hur Kishore* v *Joogul* (1871) 16 W R, 281, 12 B L R, 293 (note), *Bhyrub* v. *Gogaram* (1872) 17 W.R., 408; *Annoda* v. *Kally Coomar* (1879) 4 Cal., 89; *Manohar Das* v. *Manzir Ali* (1883) 5 All., 40.

they at all events could not raise the objection (*g*). And so where one member of a joint family has laid out money upon any portion of the joint estate, his outlay is ordinarily a matter to be taken into account on a partition (*h*). But the right and duty of contribution is founded on doctrines of equity; it does not depend on contract (*i*).

On the other hand, where the act of a third party with respect to the joint property has caused any personal and special loss to one of the co-sharers, which does not affect the others, he can sue for it separately, and they need not be joined (*j*). And it would seem that one co-sharer may sue to eject a mere trespasser, when his object is to remove an intruder from the joint property, without at the same time claiming any special portion of it for himself (*k*). Where a mortgage was taken by a coparcener in his own name out of funds belonging to the family but without disclosing that he was acting as an agent of the family, it was held that he was entitled to sue on the mortgage without joining the other members of the family. So too, in the case of a contract (*l*).

Against a mere trespasser.

§ 303. As there is community of interest and unity of possession between all the members of a coparcenary, each coparcener is entitled to joint possession and enjoyment of the common property. A coparcener who is excluded from his joint enjoyment is not bound to break up the joint family and sue for partition. He can enforce his right to joint possession of any property from which he is excluded (*m*). This of course can only refer to the very limited number

Rights of coparceners to joint possession and enjoyment.

(*g*) Of course the co-sharers might agree that the tenant should pay each of them a portion of the rent, and would then be entitled to sue separately for their respective portions, *Guni* v *Moran* (1879) 4 Cal. 96 (F.B.); *Pramodanath* v. *Rajani Kant* (1904) 9 C.W.N., 34; *Raja Simhadri Appa Rao* v *Prathipatti Ramayya* (1906) 29 Mad., 29; *Lootfulhuck* v. *Gopee* (1880) 5 Cal., 941.

(*h*) *Muttuswami* v. *Subbiramaniya* (1863) 1 Mad. H.C., 309.

(*i*) *Kazim Ali* v. *Sadiq Ali* A.I.R. 1938 P.C., 169, 42 C.W.N., 901.

(*j*) *Gopee* v. *Ryland* (1868) 9 W.R., 279, *Chundee* v. *MacNaghten* (1875) 23 W.R., 386.

(*k*) *Radho Proshad* v. *Esuf* (1881) 7 Cal, 414; *Harendra* v *Moran* (1888) 15 Cal., 440; *Currimbhoy* v. *Creet* (1930) 57 Cal., 170.

(*l*) *Adaikalam Chetti* v. *Subban Chetti* (1914) 27 M.L.J., 621; *Adaikkalam Chetti* v. *Marimuthu* (1899) 22 Mad., 326; *Gopal Das* v *Badrinath* (1904) 27 All., 361; *Bungsee* v. *Soodist Lall* (1881) 7 Cal., 739.

(*m*) *Ramchandra* v. *Damodhar* (1896) 20 Bom., 467; *Naranbhai* v. *Ranchod* (1902) 26 Bom, 141; *Soshi* v. *Ganesh* (1902) 29 Cal, 500; *Anant* v. *Gopal* (1895) 19 Bom, 269; *Ganpat* v. *Annaji* (1899) 23 Bom., 144; *Chakrapani Misro* v. *Sadasiva* (1913) 25 M.L.J., 352; *Romesh Chundra* v. *Soojo Coomar* (1866) 5 W.R.C.R., 90.

of subjects which are capable of being jointly possessed by several persons. It cannot affect the right of the manager to allot to the several members, the use of such portions of the property as are necessary for their personal enjoyment (*n*). Still less can it be held to entitle any member to take possession at his own discretion of any portion of the joint funds or joint income. In Bengal, where the members hold rather as tenants in common than as joint tenants, a greater degree of independence is possessed by each (*o*). There, each member is entitled to a full and complete enjoyment of his undivided share, in any proper and reasonable manner, which is not inconsistent with a similar enjoyment by the other members, and which does not infringe upon their right to an equal disposal and management of the property (*p*). And one coparcener may also lease out his share (*q*) The Allahabad High Court has held that he cannot, without permission, do anything which alters the nature of the property; as, for instance, build upon it (*r*). This has been dissented from by the Calcutta High Court (*s*). A distinction is drawn between a case where the other co-sharers seek to prevent a man from erecting a building and a case where they sue after the erection of the building. Where lands are held in common between the parties and one of them is cultivating a part which is not being actually used by the other, it would not be consistent with rules of justice, equity and good conscience to restrain the former from his proper cultivation of it (*s*). This however applies only where the joint property has been used in a way quite consistent with the continuance of the joint ownership and possession and there is neither exclusion nor denial

(*n*) *Raghunadha* v. *Brozo Kishore* (1876) 3 I.A, 154, 191. 1 Mad, 69.

(*o*) See per Phear, J, *Chuckun* v *Poran* (1868) 9 W R, 483.

(*p*) *Eshan Chunder* v. *Nund Coomar* (1867) 8 W.R, 239, *Gopee Kishen* v *Hemchunder* 13 W R, 322, *Nundun* v *Lloyd* 22 W R, 74, *Stalkartt* v *Gopal* 12 B L R, 197, 20 W R, 168, *Watson* v *Ram Chand Dutt* (1891) 17 I A, 110, 120, 18 Cal, 10, 21 This is now subject to the exception as regards dwelling house under s 44 of the Transfer of Property Act *Kshirode* v *Saroda* (1910) 12 C L J, 525; *Girija Kanta* v. *Mohim Chandra* (1915) 20 C W N, 675.

(*q*) *Ramdebul* v *Mitterjeet* 17 W R 420

(*r*) *Paras Ram* v *Sherjit* (1887) 9 All, 661, *Shadi* v *Anup Singh* (1890) 12 All, 436 F B, *Najjukhan* v *Imtiazuddin* (1896) 18 All, 115, *Mohanchand* v. *Isakbhai* (1901) 25 Bom., 248

(*s*) *Joy Chunder* v *Bippro Churn* (1887) 14 Cal, 236, *Shamnugger* v *Ram Narain* (1887) 14 Cal, 189, *Lachmeswar* v *Manowar Hassein* (1891) 19 I.A., 48, 19 Cal, 253; *Watson* v. *Ramchund Dutt* (1891) 17 I.A., 110, 18 Cal, 10, *Fazilatunnissa* v. *Ijaz Hassan* (1903) 30 Cal., 901; *Akshay Kumar* v. *Bhajagobinda* (1930) 57 Cal., 92.

of the other's title (*t*). Where there is ouster or denial of title, the other sharers will be entitled to recover joint possession (*u*).

Coparcener may be tenant.

There is nothing to prevent one co-sharer being the tenant of all the others, and paying rent to them as such. But the mere fact that one member of the family holds exclusive occupation of any part of the property, carries with it no undertaking to pay rent, in the absence of some agreement to that effect, either express or implied (*v*).

Trading families.

§ 304. *Fifthly*, a very important species of joint property among the commercial classes is that of hereditary trading 'partnerships' or firms. These sometimes consist exclusively of members of the joint family. Sometimes they are composed in part of persons of another family. Where one or more joint members trade, by themselves or in partnership with strangers, on capital which is not family property, the profits resulting are, of course, exclusively their own (*w*). When the trade is carried on by members of the joint family alone and no strangers are associated with them, its incidents are regulated by Hindu law and not by the law of partnership as embodied in the Indian Partnership Act (IX of 1932) for the relationship of partners arises from contract and not by status (*x*). The difference between a Hindu undivided family carrying on business and a partnership has received a greater emphasis by the Partnership Act which requires registration of firms for full rights of action (*y*). Under Section 5 of the Act, the members of a Hindu undivided family carrying on a family business as such, are declared not to be partners in

Not partnerships.

(*t*) *Manimohan Pal* v. *Gourchandra* (1933) 60 Cal, 1212.

(*u*) *Surendra Narain Sinha* v. *Harimohan* (1906) 33 Cal., 1201; *Nabadivip Chandra* v. *Bhagaban Chundra* (1926) 31 C.W.N., 496; *Basanta Kumari* v. *Mohesh Chunder* (1913) 18 C.W.N., 328.

(*v*) *Alladinee* v. *Sreenath* (1873) 20 W.R., 258; *Gobind Chunder* v. *Ram Coomar* (1875) 24 W.R, 393.

(*w*) *Vadilal* v. *Shah Kushal* (1903) 27 Bom., 157, 161: "Just as there is no presumption that a loan contracted by a manager of a Hindu family is for a family purpose [as held in *Soiru Padmanabh* v. *Narayanrao* (1893) 18 Bom., 250], so there can be no presumption that a business carried on by a coparcener is a family business"; *Gokalchand* v. *Hukumchand* (1921) 48 I.A., 162, 171, 2 Lah., 40, 49; *Mirzamal* v. *Rameshar* (1929) 51 All., 827; *Mulchand Hemraj* v. *Jairamdas* A.I.R. 1935 Bom., 287, *Anant Ram* v. *Channulal* (1903) 25 All., 378, 381, *Faqirchand* v. *Salig Ram* A.I.R. 1931 Lah., 429; *Chandulal* v. *Molumal* A.I.R. 1933 Lah., 68; *Udaychand* v. *Thansingh* (1935) 62 Cal., 586.

(*x*) *Ramlal* v. *Lakshmi Chand* (1861) 1 Bom. H.C., App., li; *Lalji* v. *Keshowji* (1913) 37 Bom., 340.

(*y*) The Indian Partnership Act, S. 69.

such business. It would seem therefore no longer correct to say that a joint family business has many of the incidents of a partnership (*z*). The death of a coparcener or even of the managing member does not dissolve the joint family firm and the property passes by survivorship like any other joint family property (*a*). As the capital is obtained from the family property, the trade and its assets are also family property. Such a business is descendible and heritable like any other species of joint family property The interest of a minor member in a joint Hindu family business, either existing at the date of his birth or founded during his minority, is acquired by virtue of his belonging to the family and does not depend on any agreement on his part or on his admission by the other members of the family to the benefits of partnership (*b*) Again, unlike a partner, a coparcener severing his connection from the business cannot ask for an account of past profits (*c*). The rights and liabilities *inter se* of the coparceners in respect of the trade or business are governed by Hindu law. In the case of a family trade or business, as in respect of other family properties, it is only the managing member that can ordinarily act on behalf of the family and bind by his acts his coparceners (*d*). But it is not unusual that for the convenience of the trade or business there is not one manager but by arrangement amongst the members, several with equal powers are associated in its conduct In such a case, the act of anyone will bind all the coparceners

It has been held in some cases that the members of a trading family, though not partners *inter se*, stand in the

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(*z*) *The Official Assignee* v *Neelambal* (1933) 65 M L J., 798, 803 The joint family business must be that of a whole family or the whole of a branch of a family Where all the members of a joint family or of a branch are adults, a partnership can be created with its incidents governed by the Partnership Act but in that case it can no longer be regarded as an undivided family but as one become divided in interest

(*a*) *Samalbhai* v *Someshwar* (1881) 5 Bom , 38, *In the matter of Haroon Mahomed* (1890) 14 Bom , 189, 194, *Raghumull* v *Luchmondas* (1916) 20 C W N , 708, *Lala Baijnath* v. *Ram Gopal* [1938] 1 Cal , 369 (The dictum that an undivided family is a partnership is incorrect)

(*b*) *Official Assignee* v *Palaniappa Chetty* (1918) 41 Mad , 824, 830 F.B.

(*c*) (1881) 5 Bom 38 *supra*, *Ganpat* v *Annaji* (1899) 23 Bom , 144; *Ramaswami Chetti* v *Srinivasa Aiyar* (1936) 70 M.L J , 214, 216

(*d*) *Ramaswami Chetti* v *Srinivasa Aiyar* (1936) 70 M L.J . 214, 216; *Ramakrishna* v. *Manikka* A.I.R , 1937, Mad., 375, (1937) 1 M.L.J., 587.

relation of partners as regards persons dealing with them (*e*). This formula, if it refers to more than the personal liability for the debts of the firm, would seem opposed both to Hindu law governing a joint family and to Section 5 of the Indian Partnership Act. Neither Section 251 of the Contract Act nor Section 20 of the Indian Partnership Act will apply. Where several persons take an active part in the conduct of the business, they may well be regarded as managing members or as persons entrusted with the conduct of the business and they can not only bind each other but also other members of the family including minor coparceners. Where a junior member of a joint Hindu family is in charge of the business, he will have all the powers of a managing member to the extent necessary for the proper conduct of the business of which he is in charge (*f*). Accordingly the personal liability, for the debts due by the trading family, of such of the coparceners including the managing member as take an active part in the conduct of the business is well established (*g*).

§ 305. Where a member of an undivided family holds himself out as a partner, no doubt he will be liable on that footing to third parties. But he cannot give himself an authority to bind the other members of the family. The true legal position therefore is that, as between the coparceners, the fact that the family is engaged in trade does not convert it in relation to that trade into a partnership (*h*). Though the interest of the family in the trade passes by survivorship and though every member of the family acquires by birth an interest in the profits and assets of the trade, he does not thereby become a partner in the business. A minor member, therefore, will not on attaining majority be entitled to demand

(*e*) *Ghulam Mohammad* v *Sohna Mal* A.I.R., 1927, Lah, 385, *Debidayal* v. *Baldeo Prasad* (1928) 50 All, 982; *Somasundaram Chettiar* v *Kanoochetti* A.I.R., 1929, Mad., 573; *Benares Bank, Ltd.* v. *Krishna Das* A.I.R., 1932, Pat, 206, *Krishna Aiyer* v. *Pierce Leslie, Ltd.* A.I.R., 1936, Mad., 64; *Sirikant Lal* v. *Sidheswar Prasad* (1937) 16 Pat., 441.

(*f*) A.I.R., 1937, Mad., 375, (1937) 1 M.L.J., 587, 594 *supra;* but see (1936) 70 M.L.J, 214 *supra; Krishna* v. *Krishnaswami* (1900) 23 Mad., 597, 600; *Sheo Pershad Singh* v. *Saheb Lal* (1893) 20 Cal., 453, 461.

(*g*) *The Official Assignee* v. *Palaniappa Chetty* (1918) 41 Mad., 824 F.B.; (1936) 70 M.L.J., 214 *supra; Nachiappa Chetty* v. *Raman Chetty* A.I.R., 1935, Rang., 227; *Punjab National Bank* v. *Jagdish* A.I.R., 1936 Lah., 390; *Shivcharan Das* v. *Hari Ram* (1936) 17 Lah., 395; *Sheo Ram* v. *Luta Ram* A.I.R., 1937, Lah., 6. See the cases cited in note (*f*) *supra.*

(*h*) (1936) 70 M.L.J., 214, 216 *supra.*

to be associated in the management of the family business and can only be so associated with the consent of the members already in management (*i*). The fact that a minor helps in the conduct of the business does not constitute admission to the benefits of the partnership within the meaning of the Act (*j*). The liability of the members of the family who take an active part in the management of the business to account to the other members of the family is regulated by the same principles as are applicable to the management of any other portion of family property (*k*). A creditor dealing with the manager of a joint family does so with the knowledge of the limitations of his powers and is not entitled to any notice of any division between the members of the family for in dealing with a member of a Hindu family he does so at his peril (*l*) Where an undivided family severs in interest and the family business continues to be carried on either by all of them or such of them as have taken the business over for their interest, the business or trade becomes an ordinary partnership, for an agreement to carry on the business will be implied (*m*) But where the division is only partial and no final adjustment is made, it may be that the business is held by them only as tenants in common (*n*)

Power to carry on ancestral business

§ 306 The power of a managing member whether he is a father or other senior coparcener to carry on a family business is ordinarily confined to ancestral business. He cannot start a new trade or business so as to impose upon minor members the risk of such a business nor can he start a new business so as to bind adult coparceners except with their consent, express or implied This limitation upon

(*i*) *Lutchmananchetty* v *Siva Prakasa* (1899) 26 Cal., 349; *Anantram* v *Channulal* (1903) 25 All., 378, *Lalji Nensey* v *Keshowji* (1913) 37 Bom., 340

(*j*) (1918) 41 Mad., 824 F B *supra*, *cf* Indian Partnership Act, S 30

(*k*) *Damodardas* v *Uttam Ram* (1893) 17 Bom., 271, *Ganpat* v. *Annaji* (1899) 23 Bom., 144 In the latter case, it was held, relying upon the law of partnership, that Hindu law does not prevent an injunction being granted if one member of the family is prevented from taking part in the business of the firm, but evidently it was regarded as a case of ouster Ordinarily the managing member alone can manage it in the absence of any arrangement, express or implied. See also (1936) 70 M L J., 214 *supra*

(*l*) *Ramaswami Chetti* v *Srinivasa Aiyar* (1936) 70 M.L J, 214.

(*m*) *Jatti* v. *Banwari Lal* (1923) 50 I A, 192, 4 Lah., 350, 353; *Babu* v. *Official Assignee of Madras* (1934) 61 I A, 257, 57 Mad, 931; *Lala Baijnath* v *Ram Gopal* [1938] 1 Cal., 369.

(*n*) (1936) 70 M L.J., 214 *supra*, *Gundayya* v. *Siddappa* A.I R., 1937, Mad., 599.

the powers of a manager applies whether the family is governed by the Dayabhaga or Mitakshara law (*o*). In *Sanyasi Charan* v. *Krishnadhan* (*p*), a minor and his four adult brothers formed a Dayabhaga joint family which was carrying on an ancestral business. The adult brothers started and carried on a new business. The Privy Council held that the *karta* of a joint family cannot impose upon a minor member the risk and liability of a new business started by himself and the other adult members. In *Benares Bank, Ltd.* v. *Harinarain*, the principle of the above decision was extended to a Mitakshara family and it was further held that the fact that the managing member was the father of the minor coparceners made no difference (*q*). Whether this limitation on the powers of a manager applies to the manager of a trading family or a family whose *kulachara* or hereditary avocation is trade is not free from doubt (*r*).

New business.

§ 307. It is however not unreasonable to distinguish between a family whose hereditary avocation or *kulachara* is trade or commerce and a non-trading family. In the latter

Hereditarily trading families.

(*o*) *Sanyasi Charan* v *Krishnadhan* (1922) 49 I.A., 108, 49 Cal., 560, *Benares Bank, Ltd* v *Harinarain* (1932) 59 I.A., 300, 54 All., 564; *Inspector Singh* v. *Kharak Singh* (1928) 50 All, 776; *Bishwanath* v. *Kayastha Trading Corporation* (1929) 8 Pat., 450, *Vithal* v. *Shivappa* (1923) 47 Bom., 637, *Tammireddi* v *Gangireddi* (1922) 45 Mad., 281, reversed on another point in *Gangi Reddi* v *Tammi Reddi* (1927) 54 I.A, 136, 50 Mad., 421; *Ramnath* v. *Chiranjilal* (1935) 57 All., 605 F.B., *Mahabir* v. *Amla Prasad* (1924) 46 All, 364; *Nataraja* v *Lakshmana* A.I.R., 1937, Mad., 195; *Subbaratna* v *Gunavanthalal* (1937) 1 M L J., 224, *Mulchand Hemraj* v. *Jairamdas* A.I.R., 1935, Bom, 287; *Sabhachand* v. *Sambhoo* A.I.R., 1937, Bom., 182; Nawab v. *Sardarsingh* A.I.R, 1935 Lah., 176; *Gurmukh* v. *Shiv Ram* A I R., 1935, Lah, 482, 17 Lah., 53; *Nachiappan* v. *R. M. P. Chettyar Firm* (1936) 14 Rang., 313; *Ganesh Prasad* v. *Sheogobind Saha* (1937) 16 Pat., 719; *Sambaya Setty* v. *Rudrappa* (1937) 14 Mys.L.J., 491, 42 Mys.H.C.R., 163. The decision in *Venkatasami* v. *Palaniappa* (1929) 52 Mad., 227, 232, rests on the distinction between a trading and a non-trading family but the dicta in *Achutramayya* v. *Ratnajee* (1926) 49 Mad, 211 and in *Annabhat* v. *Shivappa* (1928) 52 Bom., 376, to the effect that a new business started by the father is ancestral are no longer law, though the actual decisions in the last two cases may be justified by the pious obligation of the son.

(*p*) (1922) 49 I A., 108, 49 Cal., 560 Though the family appears to have carried on an ancestral business, it is not stated to have been a trading family.

(*q*) (1932) 59 I.A., 300, 54 All., 564. In this case, it was not a trading family; *Ganpat Rai* v. *Sukhdeo Ram* A.I.R. 1938 Pat., 335 *sed qu* (though the new business was started before the minors were born).

(*r*) *Ramnath* v. *Chiranji Lall* (1935) 57 All., 605 F B., *Achutaramayya* v. *Ratnaji* (1926) 49 Mad., 211; *Venkataswami* v. *Palaniappa* (1929) 52 Mad., 227, *Raghunathji* v *The Bank of Bombay* (1909) 34 Bom., 72, *Sanka Krishnamurthi* v. *Bank of Burma* (1911) 35 Mad., 692.

case, of course, the starting of a new business cannot be within the powers either of a father or other managing member. In the former case, the usage of the family must be held to modify the ordinary rules relating to the joint family so as to empower the managing member to start a new business either in place of the old or in addition to it. Hindu law does certainly recognise the usages of a trading family (*s*). And the distinction in the case of such families between an ancestral and a new business appears, so far as the risk and liability are concerned, to be more formal than substantial. An inherited business may involve quite as much risk as a new business and apparently there is no duty on the part of a manager to close down an ancestral business notwithstanding its evident risk. The element of risk, incident in varying degree to all kinds of trade or business is necessarily assumed by trading families But a speculative business or one attended with unusual risk will be beyond the powers of a managing member to start or continue. There is however nothing to prevent an ordinary non-trading Hindu family consisting only of adults from starting a business with their joint family funds which becomes on their death an ancestral business. Distinguishing the *Benares Bank's* case (*s*[1]), a Full Bench of the Allahabad High Court in *Ram Nath* v *Chiranjilal*, considered that a business may be joint family business of the father and sons and that such a transaction may be justified on the ground of legal necessity or benefit (*t*) In *Nataraja* v *Lakshman*, it was held that when the ancestral character of the business was put aside and the transaction was sought to be justified on the ground of necessity, no difference could turn on the fact that the debts were incurred by the father and not by any other manager and that proof must amount to proof of necessity in the sense ordinarily known to Hindu law, and that the starting of a rice mill by a father with a view to giving his sons more income was not a legal necessity (*u*). Again where the nature of the property owned or acquired by the family is such that it is usual to work it as a business as in the case of quarries, mines, forests, plantations, salt-pans, and boats, the manager would have the right so to work it though it may not, in every case, be an ancestral business.

(*s*) Manu, VIII, 41, Yajn, I, 360-361; *Raghunathji* v. *The Bank of Bombay* (1911) 34 Bom., 72, 77, *per* Chandavarkar, J.

(*s*[1]) (1932) 59 I.A, 300, 54 All, 564 *supra.*

(*t*) (1935) 57 All., 605 F.B ; *Ambalal* v. *Bihar Hosiery Mills Ltd.* (1937) 16 Pat, 545.

(*u*) A.I.R., 1937, Mad., 195.

Another important question is whether a particular business is a continuation or an admissible extension or change of the ancestral business or an altogether new business. Whether it is the one or the other can only be an inference of fact from all the circumstances of each case. Once an exception is made to the strict law of the joint family by admitting the usual risk of a joint family business, it would seem that any *bona fide* extension or reconstruction of the business cannot make it a new business; and this would be so whether the business was exclusively a joint family business or whether it was carried on in partnership with a stranger (*v*). In *Ramkrishna* v. *Ratanchand,* where an ancestral business was carried on in partnership with a stranger and, on the latter's retirement, the partnership was dissolved but the business was continued without the old partner for the benefit of the joint family, though under a new name and with new books, the Privy Council held that the fact that speculative transactions were entered into later on, did not convert the joint family business into a new business (*w*).

Extension of business.

The view taken of the ruling in *Benares Bank Ltd. V. Hari Narain* by the Allahabad and the Patna High Courts appears to be the reasonable and correct interpretation (*w*[1]). The proposition laid down by the Privy Council as to a new business cannot be taken to be a technical or invariable rule admitting of no exceptions. The pious obligation of

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(*v*) In *Damodaram* v. *Bansilal* (1928) 51 Mad., 711, 718, 719, it was laid down that where a family business consisted in the purchase and sale of one commodity, the purchase and sale of another commodity was not outside the scope of that business. "The question to be determined in each case should be whether having regard to the recognised business, profession, means of livelihood or what is called the 'kula-chara' of the family, the particular enterprise or embarking was only within the reasonable limits of the exercise thereof or really having regard to its nature or extent, a new speculative enterprise". *Rajagopala Iyer* v. *Ramanchettyar* A I.R., 1927, Mad., 1190; *Bhagwansingh* v. *Behari Lal* A.I.R., 1937, Nag., 237, *Subramanyamchetty* v. *Ramakrishnammal* (1924) 20 M.L.W., 627; *Ramnath* v. *Chiranji Lal* (1935) 57 All., 605 F.B.; *Hari Shanker* v. *Ram Sarup* (1937) 39 P.L.R., 947.

(*w*) *Ramkrishna* v *Ratanchand* (1931) 58 I A., 173, 183, 184, 53 All., 190. But in *Krishnaswami* v. *Rava Ramanadhan* (1935) 68 M.L.J., 251, where a father started a business in partnership with a stranger and after his death, his elder son continued it with the stranger, it was held that as there was a dissolution of the partnership, it could only be a new business. This is opposed to the above decision of the Privy Council, where also there was a dissolution but the business was continued without the stranger. See *Debi Prasad* v. *Tara Prasanna* A.I.R. 1938 Pat., 377.

(*w*[1]) *Ram Nath* v. *Chiranji Lal* (1934) 57 All., 605 F.B.; *Chotey Lal* v. *Dalip Narain* (1938) 17 Pat., 386; *Ambalal* v. *Bihar Hosiery Mills Ltd.* (1937) 16 Pat., 545.

the son to pay the debts of a new business started by the father would, in any case, remain (w^2).

Partnership with strangers

§ 308. Where a stranger is associated with the members of a joint Hindu family in a business whose capital in whole or in part is derived from the property of the joint family, the position is different. The stranger has allied himself with certain definite persons and cannot without his consent be forced to accept a change in the *personnel* composing the partnership. Where a managing member of a joint family enters into a partnership with a stranger, the other members of the family do not *ipso facto* become partners in the business so as to clothe them with all the rights and obligations of a partner as defined by the Indian Partnership Act. In such a case, the family as a unit does not become a partner, but only such of its members as in fact enter into a contractual relation with the stranger; the partnership will be governed by the Act (x). Accordingly on the death of one member of such a partnership, the whole partnership is *ipso facto* dissolved, and the business will cease, unless reconstituted by the mutual agreement of all those who propose to carry it on (y). Existing contracts with outsiders can only be carried out by means of a novation, which may be either express or inferred from circumstances. In the management of the business the other members of the family have no part, they cannot, for example, sue for a dissolution. Their position cannot be higher than that of subpartners though they will be entitled to call upon their managing member or members who entered into the contract of partnership to account for the profits earned by them

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(w^2) *Benares Bank Ltd* v *Hari Narain* (1932) 59 I.A., 300, 308, 54 All., 564, *Brij Narain* v *Mangla Prasad* (1924) 51 I.A., 129, 46 All., 95; *Subbaratnam* v *Gunavanthalal* (1937) 1 M.L.J., 224

(x) This passage is cited with approval by the Privy Council in *Pichappa Chettiar* v *Chockalingam Pillai* (1934) 67 M.L.J., 366 (P.C.), A.I.R., 1934, P.C., 192, *Gangayya* v *Venkataramiah* (1918) 41 Mad. 454 F.B.; *Ramanathan Chetty* v. *Yegappa Chetty* (1916) 30 M.L.J., 241; *Thazath Soopi* v. *Abdulla* (1924) 47 M.L.J., 554, *Kanhaya Lal* v. *Devi Dayal* A.I.R., 1936, Lah., 514.

(y) *Sokkanadha* v. *Sokkanadha* (1905) 28 Mad., 344; *Kharidar* v. *Dayakishan* (1921) 43 All., 116; *Vadilal* v. *Shah Khushal* (1903) 27 Bom., 157, *Lakshman* v. *Bhik Chand* A.I.R., 1930, Bom., 1; (1916) 30 M.L.J., 241 *supra; Venkata Suryanarayana* v. *Ramayya* (1921) 40 M.L.J., 153; *Daiva Ammal* v. *Selvaramanuja* A.I.R., 1936, Mad., 479; *Sathappa Chetti* v. *Subramanian Chetty* (1927) 53 M.L.J., 245 P.C.

from the partnership and to share in such profits (*z*). In *Pichappa* v. *Chokalingam Pillai* (*a*), where there was a partnership between a trading family of Chetties and one Virappa Pillai who was the managing member of a family which was not a trading family and the business was a new business, it was held that, in the absence of any clear evidence as to the extent of benefit derived by the other members of the family from his drawings, the Chetty partner was not entitled to proceed against the family but only against Virappa Pillai's share. The ground of decision evidently was that Virappa Pillai's family was a non-trading family and the business was a new one. Virappa alone could be the partner and he could not bind the family by entering into a partnership on its behalf. This does not affect the decision in *Gangayya* v. *Venkatramiah* (*b*), where it was held that when a managing member properly enters into a partnership with a stranger, pledging the entire credit of the family, the creditors of the firm can have recourse against the entire assets of the family. But, as members of a joint family, they have the same interest in the assets of the business as they have in the other property of the family and the same remedy against the managing member or members (*z*).

Trading family manager's wider powers.

§ 308 A. The managing member of a trading family has wider powers than those of the manager of a non-trading family. There is no deviation from the fundamental principle that what is done must be for the benefit or necessities of the family, but acts such as the incurring of debts and drawing of negotiable instruments are necessities to a trading family, while they would not be to a non-trading family (*c*). Credit

(*z*) *Gangayya* v. *Venkatramiah* (1918) 41 Mad., 454, 457 F.B. (remedies of the coparceners discussed). The members of a family whose manager becomes a partner with a stranger may properly be regarded as beneficiaries, the managing member in such a case being a trustee for them; in extreme cases, where the manager refuses to sue the partnership, they may themselves sue in his name: *cf. Dance* v. *Goldingham* (1873) 8 Ch. App., 902, *Chidambaranatha* v. *Nallasiva* (1918) 41 Mad., 124, 132. As to the rights of an assignee of a partner, see 24 Hals., 2nd ed., p. 461.

(*a*) (1934) 67 M.L.J., 366, P.C, explained in *Debi Prasad* v. *Tara Prasanna* A.I.R. 1938 Pat., 377. The decision in *Krishnaswami* v. *Rava Ramanadhan* (68 M L.J., 251) would appear to interpret *Pichappa Chetty's* case differently but the judgments in that case and in *Ramkrishna* v. *Ratanchand* (1931) 58 I.A., 173, 53 All., 191, were both delivered by Sir Lancelot Sanderson and there is no inconsistency between the two.

(*b*) (1918) 41 Mad., 454, *supra; Bhagwan Singh* v. *Bihari Lal* A.I.R. 1937 Nag., 237.

(*c*) *Niamat Rai* v. *Din Dayal* (1927) 54 I.A., 211, 8 Lah., 597, 600: "It is within the powers of the managing member in a proper case to sell immovable as well as the movable property for the purpose of discharging such debts or enabling the business to be carried on."

is the very essence of trade and the existence of business creates the necessity for borrowing and purchasing on credit (*d*). The power of a manager therefore to carry on the family trade necessarily implies a power to pledge the property and credit of the family for the ordinary purposes of that trade (*d*[1]). And money borrowed for the purposes of an ancestral business is *per se* a good justification for alienation of family property (*d*[2]) Even where the debts are in fact incurred merely for the personal purposes of the manager, they will bind the family if they are within the ostensible authority of the manager as conducting the family business So it is that those who deal with him and to whom he incurs debts are not put upon enquiry as to whether the debts were incurred for the benefit or necessities of the family, so long as they are incidental to the family business; for the karta of a Hindu joint family which carries on a family business has implied authority to borrow money for its purposes (*e*).

But, with a stranger partner, the members of the family who are not actively engaged in the business have no contractual relation and they can ordinarily seek no direct relief against him.

Family or trade assets

To the creditors of the business they will be liable to the extent of their share of the family property embarked in the business. In the case of families whose hereditary occupation is trade, there is ordinarily no distinction between their

Ramkrishna v *Ratanchand* (1931) 58 I.A, 173, 53 All, 190, *Morrison* v. *Verschoyle* (1901) 6 C W N, 429, *Kishen Prasad* v. *Harinarain* (1911) 38 I.A., 45, 33 All, 272, *Mt. Champa* v. *Official Receiver, Karachi,* (1934) 15 Lah, 9, *Kesarsingh* v *Santokh* (1936) 17 Lah., 824, *Visvanadhan Chetty* v *Ramanadhan* (1937) 2 M L J., 559, *Mt. Bhishni* v. *Uttamchand* A.I.R., 1935, Lah., 533, *Ram Prasad* v. *Bishambar Nath* A I R, 1936, All., 607, *Ramakrishna* v. *Manikka* A.I.R., 1937, Mad., 375, As to the powers of a widow in carrying on such a business, see *Sakrabhai* v. *Maganlal* (1902) 26 Bom., 206, *Pahalwansingh* v. *Jiwandas* (1920) 42 All, 109, *Barada Prasad* v. *Krishna Chandra* (1933) 38 C.W N, 33, A.I.R, 1934, Cal, 414, *Subrahmanya Chetty* v *Ramakrishnammal* (1924) 20 M.L W., 627. *South Indian Export Co* v *Subbier* (1915) 28 M.L J., 696, *South Indian Export Co.* v. *Visvanadha* (1914) 15 M.L.T., 323

(*d*) (1924) 20 M.L.W., 627 *supra*, *Raghunathji* v. *The Bank of Bombay* (1911) 34 Bom., 72.

(*d*[1]) *Sanka Krishnamurthi* v. *The Bank of Burma* (1912) 35 Mad., 692, 695.

(*d*[2]) *Ramnath* v. *Chiranji Lal* (1935) 57 All., 605, 613 F B.

(*e*) *Abdul Majid Khan* v. *Saraswati Bai* (1933) 61 I A, 90; (1926) 54 I.A., 211; 8 Lah., 597, *supra*, *Raghunathji* v. *Bank of Bombay* (1910) 34 Bom, 72, *Sanka Krishnamurthi* v *The Bank of Burma* (1913) 35 Mad, 692; *Visvanathan Chetty* v. *Ramanathan* (1937) 2 M.L.J., 559, A.I.R., 1937, Mad., 816, *Ram Gopal* v. *Baijnath* A.I.R., 1937, Cal., 396, on appeal [1938] 1 Cal., 369.

family properties and their trade assets and the whole of their joint family property will therefore be assets of the business, in the absence of any special arrangement to the contrary by which particular properties are validly set apart (*f*). For, the business is conducted on the credit of the whole family property, and that property is swelled by the profits of the business and it would be impossible to say that any particular portion of the family property, less than the whole, is to be regarded as specifically allotted to the business.

Infant member.

§ 309. An infant may partake in the benefits of a partnership, but is not personally liable for the debts of such a partnership incurred during his minority, even though he continues to take an active part in the conduct of the business after attaining majority. So he cannot, for such debts, be adjudicated an insolvent, though he can be in respect of partnership debts incurred after he attained majority and continued to take an active part in the business (*g*). The share of an infant, who is a member of a trading family, in such of the property of a trading family as is invested in the business carried on by it will be liable for the debts of the partnership, and this, as already pointed out, will ordinarily mean his share in the family property as a whole (*h*).

(*f*) *Arunachalam Chetty* v *Velliappa* (1914) 27 M.L.J., 654 (Nattukottai Chetties), *Chidambaram Chettyar* v *Ramaswami Chettyar* (1914) 27 M.L.J., 631, *Bank of Bengal* v. *Ramanadha* (1915) M W N., 180, *Muttaya Pillai* v. *Tinnevelly South Indian Bank* (1917) 5 M L.W., 341, *Malaiperumal* v. *Arunachala* (1917) 6 M.L.W., 417; *Thammanna* v. *Akrapu* (1920) 38 M.L J., 55, *Subboroya Pillai* v *Thangavelu* (1923) 45 M.L.J., 44; *Ghasiram* v *Otla Gaurai* A.I.R., 1936, Pat., 485; *Sheo Ram* v *Luta Ram* A.I.R., 1937, Lah., 6, *Sitikant Lal* v. *Sidheswari* (1937) 16 Pat, 441.

(*g*) *Sanyasi Charan Mandal* v *Asutosh Ghose* (1915) 42 Cal., 225, *Sanyasi Charan Mandal* v. *Krishnadhran Banerji* (1922) 49 I A., 108, 49 Cal, 560 *supra*, (1918) 41 Mad., 824 *supra*, *Jawala Prasad* v. *Bhindaram* (1931) 10 Pat, 503 F.B.; *Bhola Prasad* v *Ramkumar* (1932) 11 Pat., 399; *Nagasubramania* v. *Krishnamachari* (1927) 50 Mad., 981, *Purnayya* v *Basava Kotayya* (1931) 61 M.L.J., 518, *Ramalinga* v *Vellore Mercantile Bank* (1929) 57 M.L.J., 822. As the manager of a joint Hindu family cannot by any act of his impose a personal liability upon the other coparceners, the members of a joint family can only be adjudicated insolvents if they are liable on a joint debt and are guilty of a joint act or acts of insolvency. *Mahabir Prasad Poddar* v. *Ram Tahal* (1937) 16 Pat, 724, following *B. Mamayya* v. *K. R. Rice Mill Co.* (1921) 44 Mad., 810; *Punniah* v. *Kesarmal* (1926) 50 Mad., 256, *Brojendra* v. *Nilkunja* (1934) 39 C.W.N., 104.

(*h*) *Bishambar* v. *Fateh Lal* (1907) 29 All., 176 (separate property not liable) following *Chalamayya* v. *Varadayya* (1898) 22 Mad., 167; *Bhambhar* v. *Sheo Narain* (1907) 29 All., 166.

Manager's authority in other matters.

Reference to arbitration.

Power to compromise

§ 310 A managing member has power to refer to arbitration any dispute relating to the family property provided that such a course is for the benefit of the family (*i*). The other members of the family including minors are bound by the reference and the award thereon if valid in other respects (*j*). So also where the dispute is amongst the members of the family themselves, a father can bind his branch by referring the dispute to arbitration (*k*). Similarly the father or other manager of the family can bind the joint family by a compromise made *bona fide* for the benefit of the estate and not for his personal advantage (*l*). So also he can bind minor members by a family settlement (*l*[1]). In *Ganesh Row* v *Tulja Ram Row*, the Judicial Committee observed "No doubt a father or managing member of a joint Hindu family may, under certain circumstances and subject to certain conditions, enter into agreements which may be binding on the minor members of the family. But where a minor is a party to a suit and a next friend or guardian has been appointed to look after the rights and interests of the infant in and concerning the suit the acts of such next friend or guardian are subject to the control of the Court" (*m*) Accordingly where the father or the managing member is the next friend or guardian of the minor, the sanction of the

(*i*) *Jagannath* v *Mannulal* (1894) 16 All., 231, *Gurran Ditta* v *Pokhar Ram* (1927) 8 Lah., 693, *Nanakchand* v *Banarsi Das* (1931) 12 Lah., 65, *Ramji Ram* v. *Salig Ram* (1911) 14 C.L.J., 188, *Shantilal Mewa Ram* v *Munshilal Kewal Ram* (1932) 56 Bom., 595.

(*j*) *Balaji Narayan* v *Nana* (1903) 27 Bom., 287, *Dwarka Das* v *Krishan Kishore* (1921) 2 Lah., 114, *Chinna Poochi Ammal* v *Ganga Naicker* (1899) 9 M.L.J., 34, *Nawal Kishore* v *Sardar Singh* A.I.R., 1935, Lah., 667, *Ganpat Rai* v *Bhagwat Dayal* 1937 A.W.R., 805, 1937 A.L.J., 1141

(*k*) *Jagannath* v *Mannu Lal* (1894) 16 All., 231

(*l*) *Pitam Singh* v *Ujagar Singh* (1879) 1 All., 651, *Ram Kuber* v *Ram Dast* (1913) 35 All., 428, *Tulshi* v *Bishnath Rai* A.I.R., 1923, All 284, *Dwarka Das* v *Krishan Kishore* (1921) 2 Lah., 114, *Dangal* v *Jamangal* (1926) 5 Pat., 480, *Pathal Singh* v *Sheobachan* A.I.R., 1931, Pat., 283, *Kalicharan* v *Hudai Narain* A.I.R. 1935, Pat., 24, *Sant Ram* v *Hira Nand* A.I.R., 1930, Lah., 719, *Bhagwan Singh* v *Behari Lal* A.I.R., 1937 Nag., 237, see *Venkata Row* v *Tulja Ram Row* (1922) 49 I.A., 91, 98, 45 Mad., 298 (Where the compromise on behalf of a father and his infant sons failed as a compromise binding the family, it would not be treated as a valid alienation by the father *quoad* his interest) See *Mohendra Nath Biswas* v. *Shamsunnessa Khatun* (1915) 21 C.L.J., 157 and *Ramsumran Prasad* v. *Shyam Kumari* (1922) 49 I.A., 342, 348, 1 Pat., 741 (both cases of compromise by widows).

(*l*[1]) *Partab Singh* v *Sant Kuer* (1938) 42 C.W.N., 817 P.C., A.I.R. 1938 P.C., 181

(*m*) *Ganesha Row* v. *Tulja Ram Row* (1913) 40 I.A., 132, 36 Mad., 295, 302-3, *Venkata Row* v. *Tulja Ram Row* (1921) 49 I.A., 91, 45 Mad., 298.

court under Order 32 Rule 7 of the Civil Procedure Code is necessary for his entering into a compromise on behalf of the minor.

The manager of a joint family has no right to waive or give up a substantial portion of a debt due to the family, merely out of charity to or sympathy with the debtors (*n*).

He is entitled to settle accounts with the debtors and in the course of the settlement, he will have the right in the interests of the family to make a *bona fide* remission or reasonable reduction either towards interest or principal, having regard to the particular circumstances of the case (*o*). The powers of a Mitakshara father who is the karta of the family with regard to the management of the family properties are said to be wider than those of other kartas (o^1). But except in the matter of debts and alienations for the discharge of debts, this goes too far.

To acknowledge.

§ 310 A. The managing member of a family has authority to acknowledge on behalf of the family a debt due by the family as well as to pay interest on it or to make part payment of the principal so as to enable a fresh period of limitation to be computed (*p*) Now, sub-section 3 (b) of Section 21 of the Indian Limitation Act provides: "where a liability has been incurred by, or on behalf of, a Hindu undivided family as such, an acknowledgment or payment made by, or by the duly authorised agent of, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family" This would apply not only to a liability created by a transaction to which all the members of the family are parties but also to a liability arising under a transaction which was entered into by the managing member alone on behalf of the whole family (*q*).

(*n*) *Konduru Dasaratharama* v. *Indoor Narasa* (1928) 51 Mad, 481, see also *Venkata Row* v. *Tulja Ram Row* (1921) 49 I.A., 91, 98, 15 Mad., 298, 306.

(*o*) *Vaikuntam Pillai* v. *Avudiappa Pillai*, A I.R, 1937, Mad, 127.

(o^1) *Surendranath* v. *Sambunath* (1927) 55 Cal, 210, 218.

(*p*) *Chinnaya Nayudu* v. *Gurunatham Chetti* (1882) 5 Mad., 169 F.B., *Ambulavana* v. *Gowri* A I.R., 1936, Mad., 871, *Bhaskar Tatya* v. *Vijalal Nathu* (1893) 17 Bom, 512, *Sarada Charan* v. *Durgaram* (1910) 37 Cal, 461, *Har Prosad Das* v *Harihar Prosad* (1915) 19 C.W.N., 360, *Hari Mohun* v *Sourendra Mohun* A.I.R, 1925, Cal., 1153; *Ananda Charan* v. *Jhatee Charn* A.I.R., 1935, Cal., 648; *Ram Antar* v. *Beni Singh* A.I.R., 1922, Oudh, 135.

(*q*) *Ambalavana* v. *Gowri* A I R., 1936, Mad, 871, 875. A part-payment by the manager after partition will not keep it alive. *Pangudaya* v. *Uthandeya* (1938) 2 M.L.J., 33.

The managing member, as such, cannot revive a time-barred debt under Section 25 (3) of the Indian Contract Act (*r*). He has power to give a valid discharge for a debt due to the family and the mere fact that one of the members of the family is a minor will not prevent time running against all the members of the family (*s*); and a discharge given by a member other than the manager is not a valid discharge binding on the others (*t*).

§ 311 Where a managing member, without the consent of the other coparceners and for purposes not binding upon them agrees to convey specific items of joint family property, the vendee cannot obtain specific performance of the entire contract but only a conveyance of the share which his vendor had at the date of the contract, if the purchaser elects to pay the entire consideration (*u*).

Where a trading family consisting of majors and minors purchased some lands from a customer for balance due from him at some loss and agreed to sell them again to reduce the loss in the business, it was held that specific performance could be obtained against the minor members also on the ground of benefit (*v*).

Where the contract is by the manager for the benefit of the family and the manager dies, it can be enforced against the survivors, whether majors or minors (*w*).

(*r*) (1882) 5 Mad., 169 F.B. *supra*, *Dinkar* v *Appaji* (1896) 20 Bom, 155, *Thakar Das* v *Mt Putli* (1921) 5 Lah, 317, *Jhabbu Ram* v *Bahoran Singh* A I R, 1926, All, 243, *Gunni* v *Dalchand* (1931) 53 All, 923 But a father can *Narayanasami* v *Samidas* (1883) 6 Mad., 293, *Gajadhar* v *Jagannath* (1924) 46 All, 775, 783 F B. See *post* § 328.

(*s*) *Bapu Tatya* v *Bala Ravji* (1920) 15 Bom, 146, *Sripdu Datlat Singh* v *Sakharam Ramji* (1928) 52 Bom, 441, *Rati Ram* v *Nadar* (1919) 41 All, 435, *Bavnath* v *Ram Bilas* A I R, 1924, All, 738

(*t*) *Ankalamma* v *Chenchayya* (1917) 41 Mad, 637, *Umakant Balkrishna* v. *Martand Keshav* A.I.R, 1933, Bom., 245, 35 Bom. L.R, 388.

(*u*) *Baluswami Aiyar* v. *Lakshmana Aiyar* (1921) 44 Mad., 605 F.B.

(*v*) *Narayanan Chetty* v. *Muthiah Chetty* (1924) 47 Mad, 692. In *Dhapo* v *Ramachandra* (1935) 57 All, 375, *Adinarayana* v *Venkata* (1937) 2 M L.J, 653, and *Tribeni* v. *Jainarain* A I R, 1937, Pat., 425 contracts for sale were specifically enforced by or against joint families, including minors.

(*w*) *Venkateswara Aiyar* v *Raman Nambudri* (1916) 3 M L W., 435; *Narayana Chetty* v. *Muthiah Chetty* (1924) 47 Mad., 692.

CHAPTER IX.

LIABILITY FOR DEBTS.

Three sources liability.

§ 312. The Law of Debts illustrates a principle which is constantly recurring in Hindu law, *viz.*, that moral obligations take precedence of legal rights; or, to put the same idea in different words, that legal rights are taken subject to the discharge of moral obligations (*a*).

The liability of one person to pay debts contracted by another arises from three different sources. These are: *first*, the religious duty of discharging the debtor from the sin of his debts; *secondly*, the moral duty of paying a debt contracted by one whose assets have passed into the possession of another; *thirdly*, the legal duty of paying a debt contracted by one person as the agent, express or implied, of another, or as having an authority conferred by Hindu law to act on behalf of another. Cases may often occur in which more than one of these grounds of liability are found co-existing; but any one is sufficient.

Debts of father

§ 313. The first ground of liability only arises in the case of a debtor and his own sons and grandsons. In the view of Hindu lawyers, a debt is not merely an obligation but a sin, the consequences of which follow the debtor into the next world. Brihaspati says: "He who, having received a sum lent or the like, does not repay it to the owner, will be born hereafter in his creditor's house, a slave, a servant, a woman, or a quadruped" (*b*). And Narada says: "When a devotee, or a man who maintained a sacrificial fire, dies without having discharged his debt, the whole merit of his devotions, or of his perpetual fire belongs to his creditors"(*c*). The duty of relieving the debtor from these evil consequences

Liability of son independent of assets.

(*a*) The recovery of debts is the first of the eighteen titles of law Dr. Jolly refers to the high antiquity of the law of debts. L & C 212. A striking illustration of the paramount obligation implied by the word *Rina* or debt is seen in the theory of the three-fold debt, *i.e.*, the study of the Vedas, begetting a son and performance of sacrifices. Manu, XI, 66 (see also VI, 36, 37, IX, 106); Vas, XI, 47, 48; Vishnu, XV, 45. And also in the *Acharita* modes of realising adopted by the creditor. L & C, 244, 318 See *Chatar Sen* v. *Raja Ram* [1938] All., 58, 61.

(*b*) Dig., I, 228. The text is not found in Brihaspati S.B.E., Vol. XXXIII. Nilakantha attributes the text to Katyayana in Vyav. Mayukha, V, iv, 11. See Narada, I, 7-8; Vyasa cit., V. May., V, iv, 11.

(*c*) Narada, I, 9 (S.B.E., Vol. XXXIII, page 44).

falls on his male descendants. to the second generation, and was originally quite independent of the receipt of assets. Narada says: "The grandsons shall pay the debt of their grandfather, which having been legitimately inherited by the sons has not been paid by them, the obligation ceases with the fourth descendant" (*d*) "Fathers wish to have sons on their own account, thinking in their minds, 'He will release me from all obligations towards superior and inferior beings.' Three deceased ancestors must be worshipped, three must be reverenced before the rest These three ancestors of a man may claim the discharge of their twofold debt from the fourth in descent" (*e*) Brihaspati states a further distinction as to the degrees of liability which attach to the descendants "The father's debt must be first paid, and next a debt contracted by the man himself, but the debt of the paternal grandfather must even be paid before either of these The sons must pay the debt of their father, when proved, as if it were their own, or with interest, the son's son must pay the debt of his grandfather. but without interest; and his son shall not be compelled to discharge it", to which the gloss is added "unless he be heir and have assets" (*f*) Finally Yajnavalkya says, "He who has received the estate or the wife of the deceased should be made to pay his debts or failing either, the son who has not received an inheritance In the case of a sonless deceased, those who take the heritage must be

(*d*) Nar, I, 4 This is counted inclusive of the debtor, Dig, I, 208 (Verse cxcix) This translation by Mr Colebrooke is in accordance with the commentary of Asahaya on Narada and the express text of Narada I, 6 Dr Jolly would however read the last clause in Nar, I, 4, thus "the liability for it does not include the fourth in descent" S B E, Vol XXXIII, page 42, Yajn, II, 90

(*e*) Nar, I, 56 Asahaya, in his commentary on the Narada Smriti, cites as a precedent for the liability of the fourth in descent to pay the debt of his great grandfather the history of an action, *Sridhara* v *Mahidhara*, which was brought before the Court in Patna (Pataliputra) Mahidhara was the great-grandson of Devadhara, the original debtor The defence which was on the advice of Smarta Durdhara that the obligation to pay does not extend to the great-grandson was negatived (Ghose, H L, Vol II, 36-37, S B E, Vol XXXIII, p 43) Dr Jolly considers that the commentator Asahaya's view is opposed to that of *Vijnaneswara* who considers that, while the great-grandson would not be liable to pay the debt if he had not received assets, he would be liable if he had assets (Mit on Yajn, II, 50, Setlur's ed, 108) But Asahaya's comment refers to assets in the hands of Mahidhara

(*f*) Brih, XI, 48, 49, Dig I, 184, Katyayana Dig, I 207, Vyav Mayukha, V, iv, 17, where the great grandson, the wife, the daughter and the heirs who take the estate are placed on the same footing.

made to pay" (*g*). Therefore the Hindu lawyers recognise a difference in the obligations resting upon sons, grandsons and great-grandsons. The son was bound to discharge the ancestral debt as his own, principal and interest, whether he received any assets or not from the ancestor. The grandson had to discharge the debt without interest and the great-grandson's liability arose only if he received any assets from the ancestor (*h*).

Obligation is religious.

§ 314. The liability to pay the father's debt arises from the moral and religious obligation to rescue him from the penalties arising from the non-payment of his debts. And this obligation equally compels the son to carry out what the ancestor has promised for religious purposes (*i*). It follows, then, that when the debt creates no such religious obligation, the son is not bound to repay it, whether he possesses assets or not; and there can certainly be no religious obligation where the debt is of an illegal or immoral character.

Cases in which it does not arise

§ 315. The general rule is that the son is liable to pay the debts of the father except when they are of such a character as to fall within one or other of the exceptions recognised by the ancient Smritis (*j*). Such exceptions may be classified as follows:—

(1) debts due for spirituous liquors;

(2) debts due for lustful pleasures;

(3) debts due for losses at play;

(4) unpaid fines,

(5) unpaid tolls,

(*g*) Yajn., II, 51. V May., V, 4, § 16, Katyayana, Dig., I, 193. It has been held that this principle of Hindu law does not apply to the Nambudri Brahmans of Malabar *Nilakandan* v *Madhavan* (1887) 10 Mad., 9, *Govinda* v *Krishnan* (1892) 15 Mad., 333, *Kunhu Kutti Ammah* v *Mallapratu* (1915) 38 Mad., 527, *Paramal* v. *Narayanan* A.I.R., 1932, Mad., 701, 35 M.L.W., 452; *Narayana Ayyar* v. *Moorthi Kendan* (1938) 1 M.L.J., 467. See as to their usages, *Vishnu* v *Krishna* (1884) 7 Mad., 15 F.B., *Vasudevan* v. *Secretary of State* (1888) 11 Mad., 157

(*h*) *Masitullah* v. *Damodar* (1926) 53 I.A., 204, 211, 212, 48 All., 518, 526

(*i*) Katyayana, Dig., I, 206

(*j*) Manu, VIII, 158-164, Yajn., II, 47, 53, 54, Brih., XI, 39, 47-49, 51; Usanas *apud* Mit. on Yajn., II, 47; Gaut., XII, 41, Vyasa *apud* Jagannatha, I, 5, 203 (Dig., I, 211), Katyayana *apud* Jagannatha Dig., I, 5, 196, 197 (Dig., I, 207), Vas., XVI, 31; Vishnu, VI, 41, 27-39. See the learned and exhaustive judgment of Mookerjee J. in *Chhakauri Mahton* v. *Ganga Prasad* (1912) 39 Cal., 862, *Raghunandan Sahu* v. *Badri Teli* [1938] All., 330, 333.

(6) debts due for anything idly promised or promises without consideration or anything promised under the influence of wrath (*k*);

(7) suretyship debts due as surety for appearance, or for confidence or honesty of another (*k*[1]);

(8) commercial debts and

(9) debts that are not "*vyavaharika*".

The last category is to be found in the enumeration of Usanas and Vyasa only and the term has been rendered in different ways. The text ascribed to Usanas runs thus: "The son need not pay the fine or the balance of a fine, a toll or the balance of a toll, or any debt of the father which is not proper" (*l*).

'*Avyavaharika*' Mr Colebrooke translates the expression '*avyavaharika*' as 'any debt for a cause repugnant to good morals' (*m*). Mookerjee, J, following Bohtling and Roth, Wilson and Monier Williams, renders *vyavaharika* as lawful, usual or customary' (*m*[1]) This is in accordance with Jagannatha's explanation "The expression in the text of Vyasa (*na vyavaharikam*), is explained by Misra, 'excluded from usual causes'. Consequently that debt which is contracted for some civil purpose consistent with the prescriptive usage of good men, must be paid by sons and the rest, but if it be the reverse, it need not be discharged" (*n*) The interpretation of the term by V N. Mandlik and Jogendranath Bhattacharyya as 'proper' is in accordance with the opinion of Apararka (*o*) and there is no material difference between the three

(*k*) 'Idly promised' means according to the Mitakshara 'promised to impostors, bards or wrestlers'. The Mitakshara cites a Smriti "Fruitless is a present given to an impostor, a bard, a wrestler, a quack, a flatterer, a knave, a fortune-teller, a spy or a robber and the like". (Mit Setlur ed, p 399, Digest, I, 214)

(*k*[1]) Brih, XI, 39

(*l*) The text is ascribed to Usanas in the Mitakshara, the Smritichandrika and the Vyav Mayukha and to Vyasa in the Vivada Ratnakara. Mit on Yajn, II, 47 (Setlur ed, 399), Smritichandrika, Vyav Kanda, p 397 (Mysore ed), Mandlik, 113 (Mayukha, V, iv, 15)

(*m*) Dig, I, 211.

(*m*[1]) *Chhakauri Mahton* v *Ganga Prasad* (1912) 39 Cal., 862, 868.

(*n*) Dig, I, 211.

(*o*) Mandlik, page 113, Bhattacharya H L, 2nd ed, 247 Knight J defines *avyavaharika* in *Durbar* v *Khachar* (1908) 32 Bom, 348 as "debts attributable to his (father's) failings, follies or caprices". This is not accepted in later cases in Bombay and elsewhere *Sumer Singh* v *Liladhar* (1911) 33 All 472, *Chhakauri* v *Ganga Prasad* (1912) 39 Cal, 862, *Venugopala* v *Ramanadhun* (1914) 37 Mad, 458, *Ram krishna* v. *Narayan* (1916) 40 Bom, 126, *Hanmant* v *Ganesh* (1919)

renderings. The last category of *avyavaharika* debts is not an independent category but only a residuary one comprising debts which are *ejusdem generis* with those that have been enumerated.

The term commonly used in decisions and textbooks to describe those debts of the father for which the son is not liable is "illegal or immoral". The expression was doubtless originally meant to render '*avyavaharika*' but it has come to be used as a compendious term to cover all the cases enumerated in the Smritis.

Commercial debts.

§ 316. When Gautama says that a father's commercial debts need not be repaid by the son, he is certainly not referring to the debts incurred in the usual course of carrying on a business or trade but evidently to sums borrowed for speculative and hazardous ventures, involving something like gambling (*p*). For, Gautama himself recognises traders and their usages or laws and almost every Smriti does the same. Partnership in trade was one of the specific titles of law and Gautama refers to trade as an additional occupation for the Vaisya community (*p*[1]). It is impossible therefore to believe that commercial debts in the ordinary sense were regarded by Gautama as improper and no other Smriti refers to it (*q*). Interpreting the term as a commercial debt, the courts have however held the rule to be obsolete (*r*).

43 Bom., 612, *Bai Mani* v *Yusuf Ali* A I R, 1931, Bom., 229; *Bal Rajaram* v *Manekla!* (1932) 56 Bom, 36, 53. Sadasiva Iyer, J., has paraphrased it as 'a debt which is not supportable as valid by legal arguments and on which no right could be established in a creditor's favour in a Court of Justice' (37 Mad, 458, 460) That definition is not particularly helpful and has been dissented from in *Sanyasayya* v. *Murthenna* (1918) 35 M I J, 661; see also *Ramasubramania* v *Sivakami* A I R. 1925 Mad, 841

(*p*) Gaut, XII, 41 *(vanik sulka)*, Jha, H.L S, I, 207. Whether Gautama's language means commercial debts or merchant's tolls is not clear.

(*p*[1]) Gaut. X 49 "The additional occupations of a Vaisya are agriculture. trade, tending cattle and lending money at interest."

(*q*) *Rajagopal* v *Veeraperumal* (1927) 53 M L J., 232, 239, 240, Haradatta, the commentator of Gautama, explains the term commercial debt thus :-"If a person has borrowed money from somebody on the condition that he is to repay the principal together with the gain thereon, and if he dies in a foreign country, while travelling in order to trade, then that money shall not be repaid by the son" (S B.E Vol. II, p. 244) Jagannatha takes '*vanik sulka* as a single expression meaning commercial tolls and duties payable at wharfs and the like. According to him, the term *sulka* may include nuptial presents. Dig I, 211.

(*r*) *Achutaramayya* v *Ratnaji* (1926) 49 Mad., 211; *Rajagopal* v. *Veeraperumal* A.I R 1927 Mad., 792, 53 M.L.J., 232; *Bal Rajaram* v *Manek Lal* (1932) 56 Bom., 36, 52. *Mulchand* v. *Jairamdas* A.I R.

Sulka.

§ 317 The expression 'Sulka' in the Smritis is ambiguous. It is sometimes translated as a toll or a tax (r^1). Another meaning of the word 'Sulka' is a nuptial present, given as the price of a bride and this has been determined not to be repayable by the son, evidently on the ground that it constitutes the essence of one of the unlawful forms of marriage (s). But the Allahabad High Court has dissented from this view and held that as the Asura form of marriage is common, the expenses thereby incurred are as binding as in the case of other marriages (t). This view is erroneous Haradatta, the commentator of Gautama assigns the meaning of brideprice to sulka and is supported by Sarvajna Narayana in his gloss on the text in Manu (u) This stands to reason For, a promise of brideprice in the Asura form of marriage is not enforceable even according to modern decisions and being an unapproved marriage, neither the liability to pay the brideprice nor a debt incurred for the purpose of paying it can be lawful or proper *(vyavahārika)* (u^1).

Suretyship Debts

§ 318 According to Brihaspati, there are four different classes of sureties: (1) for appearance, (2) for confidence or honesty, (3) for payment of money lent and (4) for

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1935 Bom., 287, *Parthisingh* v *Manichand* (1935) 16 Lah., 1077 (badni transactions in trade not *avyavahārika*), see also *Raghunandan Sahu* v *Badri Teli* [1938] All., 330 333

(r^1) Mr J C Ghose takes the word *'vanik sulka'* as one word meaning the merchant's toll which is payable on the spot (Vol I, 532) The son's non-liability for such a debt is intelligible as it is payable on the spot and as the obligation arises as a result of an evasion for which he can be convicted and fined Apparently the obligation is *ex delicto* and not *ex contractu* In other words, it stands on the same footing as a fine for an offence Compare Sir T Strange (2 Stra H L, 167) who says that debts due for tolls and fines are regarded as 'ready money payments for which credit will have been given at the risk of him by whom they ought to have been received'.

(s) *Keshow Rao* v *Naro* 2 Boro, 194 (215)

(t) *Bhagirathi* v *Jokhuram* (1910) 32 All, 575 where the passage in the text is cited The All High Court adds "We have been unable to find any authority for the above proposition" The authority is the gloss of Haradatta, see the next note

(u) Haradatta says "The instance explaining the term 'fee' (sulka) is as follows 'If a person has promised a fee to the parents of a woman and dies after the wedding then that fee does not involve his son *i e*, need not be paid by him", S B E, Vol II, p 241, Sarvajna Narayana on Manu VIII, 159

(u^1) *Venkatakrishnayya* v *Lakshmi Narayana* (1909) 32 Mad, 185 F.B., *Onkar* v *Kisan Singh* A.I R, 1930 Nag, 282.

delivery of goods or articles of the debtor (*v*). Yajnavalkya recognises the first three classes alone (*w*). It is now settled that the obligation in regard to the first two classes is purely personal to the sureties and that the sons are not liable (*x*). But in the case of sureties for payment of money or for delivery of the debtor's assets or goods, the sons are also liable (*y*). A further distinction is recognised that while a son is liable to pay a debt contracted by his father as a surety for payment of money, a grandson is not liable to pay unless his grandfather, in accepting his liability of

(*v*) Manu VIII, 159, 160, Brih. XI, 39, 40, "For appearance, for confidence, for payment, and for delivering the assets of the debtor, it is for these four different purposes that sureties have been ordained by the sages in the system of law. The first says, 'I will produce that man', the second says, 'He is a respectable man', the third says, 'I will pay the debt', the fourth says, 'I will deliver his assets.'" As regards fines, the reason is given "that a son is not liable for a penalty incurred by his father in expiation of an offence, for neither sins nor the expiation of them are hereditary", *Nhanee* v *Hureeram* (1814) 1 Bor. 90 (101), analogous to the principle of English law that an action for a tort does not survive

(*w*) Yajn. II, 53, 54.

(*x*) *Lakshminarayana* v *Hanumantha* (1935) 58 Mad, 375, affirming (1933) 65 M.L.J, 609 (surety bond that a debtor would file an insolvency petition within a stated time); *Choudhuri Govinda* v *Hayagriba* (1931) 10 Pat. 94 (guaranteeing loss that may be caused to a minor's estate by a guardian's waste or misappropriation), *Dhir Narain* v *Shiva* A I R 1935, Pat, 127, *Satyacharan* v *Satpir Mahanty* (1919) 4 P L J, 309 (standing surety against embezzlement by a Tahsildar), *Mahabir Prasad* v *Siri Narayan* (1918) 3 P L J., 396 (Vendor's contract to indemnify a purchaser where the representation as to rent is false) but see *Raghunandass* v *Chedram* 27 I C, 89, *Hiralal Marwari* v *Chandrabali* (1908) 13 C W N. 9 But if a surety for appearance or for confidence had bound himself after taking some property in pledge, then his sons also must pay the suretyship debt from the property taken in pledge, *Dwarakadas* v. *Kishendas* (1933) 55 All., 675.

(*y*) *Tukaram* v *Gangaram* (1899) 23 Bom, 454, *Sitaramayya* v *Venkataramanna* (1888) 11 Mad., 373; *Chettikulam* v. *Chettikulam* (1905) 28 Mad, 377, *Thangathammal* v. *Arunachala* (1918) 41 Mad, 1071; *Achutaramayya* v *Ratnaji* (1926) 49 Mad., 211, 215, *Rasiklal* v *Singheswar* (1912) 39 Cal, 843, *Maharaja of Benares* v. *Ramkumar* (1904) 26 All, 611, *Mata Din* v *Ram Lakhan* (1930) 52 All., 153 (guaranteeing payment of money that may be decreed against a defendant), *Tulshi Prasad* v *Dip Prakash* (1931) 53 All, 695, *Chakhanlal* v *Kanhaiyalal* A I R, 1929, All, 72; *Kamesvaramma* v. *Venkatasubba* (1915) 38 Mad, 1120, *Sham Rao* v. *Shanta Ram* A I R., 1935, Bom, 174, *Malak Chand* v *Hiralal* A I R, 1935, Oudh, 510, a mere hypothecation without personal liability for securing payment of money by a third person is invalid as there is no antecedent debt, *Satrohan* v, *Umadutt* A I R, 1935, Oudh, 456,

surety receives some consideration for it (*z*); *a fortiori* a great-grandson is not liable otherwise.

Decisions on *Avyavaharika* debts

§ 319. The decisions on the question as to what debts are *avyavaharika* or debts for a cause repugnant to good morals have not been uniform. It is however settled that the son is liable for the father's debts *ex contractu* or *quasi ex contractu* subject however to the exceptions specified in the texts already referred to. It is equally settled that a son is not liable for his father's liabilities arising out of his criminal acts. Accordingly where a father obtains moneys or goods by the commission of an offence (*a*) or where he criminally misappropriates moneys or goods that come to his hands as an agent or trustee, guardian or receiver, manager or other employee, his sons are not liable (*b*). It is also well-settled that a son is liable in respect of his father's liability to account for moneys received by him where his failure to account is not due to a criminal act In these cases there was no evidence or finding of criminal breach of trust or misappropriation though there are dicta in some of them that it would not make any difference (*c*).

On the question of the son's liability for the father's misappropriation of moneys, a distinction has been drawn in some of the cases. In *Chhakauri Mahton* v. *Ganga Prasad*. Mookerjee, J., said. "Where the taking of the money itself is not a criminal offence, a subsequent misappropriation by the

(*z*) *Narayan* v *Venkatacharya* (1904) 28 Bom, 408, (1933) 55 All, 675 *supra*, *Lyallpur Bank Ltd* v *Mehrchand* A I R, 1934, Pesh 132, Mit on Yajn II, 53, 54, Vyav Mayukha, Mandlik pp 107-108. The ruling in 28 Bom, 408 is good law, the suggestion in 55 All, 675, 681 that there is some difference between the Mayukha and the Mitakshara does not seem to be justified

(*a*) *Pareman Dass* v *Bhattu Mahton* (1897) 24 Cal, 672.

(*b*) *Mahabir Prasad* v *Basdeo Singh* (1884) 6 All, 234 (agent), *Bai Mani* v *Usufali* (1931) 33 Bom L R, 130, A I R 1931 Bom, 229 (guardian), *Jagannath* v *Jugal Kishore* (1926) 48 All, 9 (receiver); *McDowell & Co* v *Raghava Chetty* (1904) 27 Mad, 71 (cashier), *Srimati Widyavanti* v. *Jai Dayal* (1932) 13 Lah, 356 (employee), *Satyacharan* v *Satpir* (1921) 4 P L J, 309 (surety for Tahsildar's embezzlement), *Narayan* v *Cooperative Central Bank of Malkapur* (1938) N L J, 82, *Brij Bihari* v *Punni Lal* A I R 1938 All, 377

(*c*) *Mohant Gadadhar* v *Ghana Shyam Das* (1918) 3 P L J, 533 (agent), *Natasayyan* v *Ponnusami* (1893) 16 Mad., 99 (agent), *Kanemar Venkappayya* v *Krishnacharya* (1908) 31 Mad, 161 (manager of a *kuri* or chit-fund); *Gurunatham* v *Raghavalu Chetty* (1908) 31 Mad, 472 (administrator), *Krishnacharan* v. *Radha Kanto* (1912) 16 I C, 410; *Niddha Lal* v *The Collector of Bulandshahr* (1916) 14 A L J, 610 (agent), *Gursarn Das* v. *Mohun Lal* (1923) 4 Lah, 93, 98 (manager), *Mahanth* v *Pandey* A.I.R. 1937 Pat, 220 (agent); *Hanmant* v *Ganesh* (1919) 43 Bom, 612 (trustee); *Brijnath* v. *Lakshmi Narain* (1932) 8 Luck, 35, A.I.R. 1932 Oudh., 165.

father cannot discharge the son from his liability to satisfy the debt; but the position is different if the money has been taken by the father and misappropriated under circumstances which render the taking itself a criminal offence" (*d*). The distinction however would seem to be an artificial one and derives no support from the texts of Hindu law declaring the son's liability. In *Ramasubramania* v. *Sivakami Ammal*, Venkatasubba Rao, J., would formulate the rules on the subject thus: "(1) If the debt is in its inception not immoral, subsequent dishonesty of the father does not exempt the son. (2) It is not every impropriety or every lapse from right conduct that stamps the debt as immoral. The son can claim immunity only when the father's conduct is utterly repugnant to good morals, or is grossly unjust or flagrantly dishonest" (*e*). Probably all that is meant is that it should be clear that it is repugnant to good morals or unjust or dishonest. If it means anything more, it would be opposed to the texts of Hindu law and to the preponderance of authority. Venkatasubba Rao J. objects to the distinction between a crime and a breach of a civil duty as one not recognised by Hindu law (*f*). The illustrations of fines, tolls, gambling and suretyship debts support that distinction apart from the fact that it is implicit in the rule as to *avyavaharika* debts. So far as the son is concerned, the liability to pay the amount misappropriated arises by reason of the father's misappropriation, and not by reason of an antecedent relation which might or might not result in such liability. The extent of the liability itself might be different in the two cases. A crime or tort is none the less a crime or tort even where the relationship out of which the criminal or tortious act arises results from a contract (*f*[1]). If the liability, notwithstanding a subsequent misappropriation is regarded as a civil liability, it is clearly tainted with immorality and cannot be treated as proper, customary or for a cause not repugnant to good morals. And the son's exemption extends not only to a case where the debt is of a criminal nature but also to one where it is due to his father's misconduct; the latter ground it is that underlies

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(*d*) (1912) 39 Cal., 862, *Tirumalayappa Mudaliar* v. *Veerabadra* (1909) 19 M.L.J., 759, *Venugopala Naidu* v. *Ramanadhan Chetty* (1914) 37 Mad., 458; *Garuda Sanyasayya* v. *Narella Murthenna* (1918) 35 M.L.J., 661, *Venkatacharyulu* v. *Mohana Panda* (1921) 44 Mad., 214, *Nori Venkatakrishnayya* v. *Kundurthi Byragi* (1926) 50 M.L.J., 353; *Ratna Mudaliar* v. *Ellammal* A.I.R. 1929 Mad., 792; *Jaikumar* v. *Gauri Nath* (1906) 28 All., 718.

(*e*) A.I.R. 1925 Mad., 841, 845.

(*f*) *Ib.*, 844.

(*f*[1]) See *Defries* v. *Milne* [1913] 1 Ch., 98, C.A.

the exceptions as to debts contracted for the father's vicious indulgences. In any case, the creditor cannot elect to treat it as a civil liability as against the son.

This question which has been the subject of conflicting decisions in the Courts in India was raised before the Privy Council in the recent case of *Toshanpal Singh* v. *District Judge of Agra*. There, the secretary of a school committee was in charge of a fund deposited in a bank and was authorised to draw upon it only for specific purposes. After his death the committee sued his sons to recover from them the amount of the deficiency in the fund. The sons were held not liable for the amount of drawings by the secretary for unauthorised purposes as they amounted to criminal breach of trust within s. 405 of the Indian Penal Code. The Judicial Committee observed: "A father, it was said, who accepts a sum of money to be held for another, or to be applied in a certain way, comes at once under a liability *ex contractu* or *quasi ex contractu*, although there may be no right of action against him until he has been guilty of some breach of duty and this right of action may be enforced against his sons, although it appears that ultimately the father has criminally made away with the fund. This contention was supported by elaborate citation of authority. On the other hand, it was contended by the appellants, in an argument supported also by a great array of cases, that there were debts of a father with a stigma far short of criminality attached, for which his sons are not liable" (*g*). The former contention was characterised as "a difficult and doubtful question of law" which did not call for a decision in that case. The decision of the Privy Council however materially affects the Indian decisions to this extent: if up to the moment of misappropriation, the duty of the agent, guardian, trustee or manager or other employee was fulfilled, his sons would not be liable for the moneys misappropriated even though they came into his hands originally in virtue of a legal relation. And in most of the cases where the misappropriation was held to be a subsequent act, there was no right of action accrued against the father prior to the criminal misappropriation (*h*).

Cases in which sons are not liable.

§ 319-A. Where a father brought a suit *in forma pauperis* and was ordered to pay the costs due to Government on the ground that the claim was false to his knowledge, it was held

(*g*) *Toshanpal Singh* v. *District Judge of Agra* (1934) 61 I.A., 350, 360, 56 All., 548, 559.

(*h*) See *Mahanth* v. *Pandey* A.I.R. 1937 Pat., 220, 221.

that the debt was tainted with immorality and that the sons were not liable (*i*). So too, where a father bribed a widow to induce her to adopt his son, it was held that it was an immoral debt, not binding on the son (*j*). And where a father conducts an illegal lottery, his liability to refund the subscriptions collected by him is not one which would attach to his sons (*k*). So also a debt incurred by the father to pay a fine inflicted for a criminal offence is not binding upon the son (*l*).

Cases in which sons are liable.

§ 320. The exception of "illegal or immoral purposes" does not extend to transactions which are imprudent, "unconscientiously imprudent" or "unreasonable" (*m*). So debts contracted for needless and wasteful litigation might attract the pious obligation of the sons (*m*). Costs awarded by the Court against the father where he was not successful are recoverable against the sons (*n*). So too, debts contracted by the father for the expenses of defending himself in suits or proceedings are repayable by the sons (*o*). The liability of the father for mesne profits is one for which the sons cannot claim exemption (*p*). So too, it has been held that the father's liability for damages for a tort committed by him in relation to property involves his sons also (*q*), for liabilities for ordinary wrongs to immovable property cannot be said to be immoral debts. It would however be different in the case of wrongs to

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(*i*) *Rama Iyengar* v *Secretary of State* (1910) 20 M L J, 89

(*j*) *Sitaram Pandit* v *Harihar* (1911) 35 Bom, 169.

(*k*) *Muthusami* v. *Mytheen Pichai* (1937) 1 M.L.J., 231.

(*l*) *Savumian* v *Narayanan Chetty* (1914) 15 M L.T., 372, *Said Ahmad* v. *Raja Barkhandi* A I R. 1932 Oudh, 255, 8 Luck., 40.

(*m*) *Khalilul Rahman* v. *Gobind Pershad* (1893) 20 Cal, 328, *Ramchandra* v. *Jung Bahadur* (1926) 5 Pat., 198 was not a case where the question of son's pious obligation arose but it was a case of managing member's right to alienate family property for expenses of litigation; *Nand Kishore* v *Kunj Bihari* A I R 1933 All, 303

(*n*) *Prayag Sahu* v. *Kasi Sahu* (1910) 14 C.W.N., 659, 11 C.L.J., 599.

(*o*) *Sumer Singh* v *Liladhar* (1911) 33 All, 472 (defamation). *Hanumant* v. *Sonadhari* (1919) 4 P.L J., 653 (charge under the Cattle Trespass Act, 1871).

(*p*) *Peary Lal* v. *Chandicharam* (1906) 11 C.W.N., 163, *Ram Deo Prashad* v *Mt. Gopi* (1911) 16 C.W.N., 383; *Yanamandra Papiah* v. *Lanka Subbasastrulu* (1914) 27 M.L.J., 276; *Ramasubramania* v. *Sivakami Ammal* A.I.R. 1925 Mad., 841.

(*q*) *Chhakauri Mahton* v. *Ganga Prasad* (1912) 39 Cal., 862 (obstruction of an easement); but see *Durbar Khachar* v. *Khachar Hassur* (1908) 32 Bom., 348; *Chandrika* v. *Narain* (1924) 46 All., 617 (wrongfully cutting trees), see also *Ambalal* v. *Bihar Hosiery Mills Ltd.* (1937) 16 Pat., 545.

person, as for instance, where a decree for damages is obtained against the father for defamation, assault, false imprisonment or malicious prosecution (*r*) According to the custom of agriculturists in the Punjab, a just debt for which a father is competent to alienate family lands as against his son means a debt which is actually due, which is not immoral, illegal or opposed to public policy and which has not been contracted as an act of reckless extravagance or wanton waste or with the intention of destroying the interests of the reversioners (*s*).

Debt need not be beneficial.

§ 321. It follows from the texts bearing on the subject that the obligation of the son to pay the debt is not founded on any assumed benefit to himself, or to the estate, arising from the origin of the debt, still less is that obligation affected by the nature of the estate which has descended to the son, as being ancestral, or self-acquired "Unless the debt was of such a nature that it was not the duty of the son to pay it, the discharge of it, even though it affected ancestral estate, would still be an act of pious duty in the son By the Hindu law, the freedom of the son from the obligation to discharge the father's debt has respect to the nature of the debt, and not to the nature of the estate, whether ancestral or acquired by the creator of the debt" (*t*).

Ancestral estate equally liable.

Liability of male issue

§ 322. Under the Mitakshara law as administered in all the provinces, the liability of the son, grandson and great-grandson to pay the debts of their ancestor is no longer a personal liability. They are not liable for such debts unless they receive assets (*u*), and the obligations of the

(*r*) *Sunder Lal* v *Raghunandan* (1924) 3 Pat, 250, *Raghunandan Sahu* v *Badri Teli* [1938] All, 330.

(*s*) *Kirpal Singh* v *Balwant Singh* (1913) 40 Cal, 288 (P C) approving *Devi Ditta* v *Saudagar Singh* (1900) P R, 65

(*t*) *Hunoomanpersaud* v *Mt Babooee* (1856) 6 M I A, 393, 421, *Girdhare Lall* v *Kantoo Lall* (1874) 1 I A, 321, *Suraj Bunsi Koer* v *Sheo Proshad* (1879) 6 I A, 88, 5 Cal, 148, *Muttayan Chetty* v *Sangili* (1883) 9 I A, 128, 6 Mad, 1; *Narayanasami* v *Samidas* (1883) 6 Mad, 293, *Bhagbut Pershad* v *Girja Koer* (1889) 15 I A., 99, 15 Cal, 717

(*u*) *Karpan* v *Veriyal* (1868) 4 M H C, 1, *Aga Hajee* v *Juggut* Mont., 272, *Jamoonah* v *Mudden ib*, 227, *Ponnappa* v *Pappuvayyangar* (1882) 4 Mad, 1 F B, *Peda Venkanna* v. *Sreenivasa* (1918) 41 Mad, 136 F B, *Sukhdeo* v *Madhusudan* (1931) 10 Pat, 305, *Bissessor Ram* v *Ramakant Dubey* (1934) 13 Pat, 7, *Devi Das* v. *Jada Ram* (1934) 15 Lah, 50, *Bulaqi Das* v. *Lalchand* A I.R. 1934 Lah., 865. See also *Jagannath* v. *Basist* A I R 1937 Pat, 195. In Bombay the stricter rule was for many years applied and the creditors could proceed against the property of the descendant, but not against his person· *Pranvullubh* v. *Deocristin* Bom. Sel Rep, 4, *Hurbojee* v *Hurgovind*, Bellasis, 76; *Narasimharav* v. *Antaji* (1865) 2 Bom. H.C. (A.C.J.), 61.

sons, grandsons and great-grandsons are co-extensive (*v*). There is no difference between sons and grandsons as to the payment of principal and interest (*w*). For the purpose of this liability of male issue for debts, the assets include not only the separate or self-acquired property of the ancestor but also the ancestral property (*w*[1]). As the liability of the sons, grandsons, and greatgrandsons to pay their ancestor's debts out of ancestral property in their hands depends upon the nature of the debt, if it is immoral or illegal they are not liable to pay it to the extent of that property. But their liability to pay the debts of the ancestor out of his separate property in their hands is the same liability as that of the ancestor himself and the son, grandson or great-grandson, just like any other heir who takes the assets, is not entitled to claim an exemption on the ground that the debts are immoral or illegal. So too, under the Dayabhaga law, the son's liability is the same as that of his father irrespective of the character of the debt, for he has no right by birth in his father's property which he takes strictly as his heir.

Not personal but confined to assets.

Dayabhaga law.

§ 323. The question alluded to in the preceding paragraph was formerly much discussed: where property descended from father to son, was the whole, or any lesser part of such property, to be treated as assets liable to be taken in payment of the father's debts? After some conflict of decisions, it was finally settled that the assets comprised not only the separate property of the father but the whole of the coparcenary property in the hands of the father in which the sons had equal rights with him. Accordingly the rule that sons are liable for debts which are contracted by the father for his own purposes, provided they are not incurred for

Assets include the whole joint property.

But in that Presidency also the law was, by legislation, brought into conformity with the more equitable rule observed elsewhere: Bombay Act VII of 1866 (Hindus' liability for ancestor's debts); *Sakharam* v. *Govind* (1873) 10 Bom. H.C., 361; *Udaram* v. *Ranu* (1875) 11 Bom. H.C., 76; *Lallu Bhagwan* v. *Tribhuvan Motiram* (1886) 13 Bom., 653; *Anant* v. *Tukaram* (1929) 53 Bom., 463.

(*v*) *Masit Ullah* v. *Damodar Prasad* (1926) 53 I.A., 204, 48 All., 518; *Sheo Ram* v. *Durga Baksh* (1928) 3 Luck., 700 A.I.R. 1928 Oudh., 378 F.B.; *Babu Ramji* v. *Rai Mahamaya* A.I.R. 1936 Pat., 158; (1934) 15 Lah., 50 *supra; Chhotey Lal* v. *Ganpat Rai* (1935) 57 All., 176, 198 F.B.

(*w*) *Lachman Das* v. *Khunnu Lal* (1897) 19 All., 26 F.B.; *Ladu* v. *Gobardhan* (1925) 4 Pat., 478.

(*w*[1]) In *Thaj Mahomed Saib* v. *Balaji Singh* (1934) 57 Mad., 440, it was held that a provident fund amount standing to the credit of a deceased Hindu at his death which is paid to his son as a dependent is not in law assets in his hands.

immoral or illegal purposes applies whether the ancestral property is of the ordinary partible character (*x*) or is an impartible estate or Raj (*y*). But an impartible estate governed by the Madras Impartible Estates Act, 1904, is not liable for the debts of a father when they are not such as would entitle a managing member, not being the father, to bind the estate.

Liability exists even when father is not manager.

§ 324. The pious obligation of a Hindu to discharge the debts of his father not tainted with immorality is irrespective of the fact whether the father is or is not the manager of the joint family. Where the joint family includes also persons other than the father and his sons, the interests in the joint family property that will be liable for the father's debts will be the share belonging to the father and his male issue (*z*)

Liability exists whether father alive or dead.

§ 325. The liability of the son is stated by the old writers to arise, not only after the actual death of the father, but after his civil death, as when he has become an anchoret, or when he has been twenty years abroad, in which case his death may be presumed; or when he is wholly immersed in vice, which is explained by Jagannatha as indicating a state of combined insolvency and insolence, in which the father, being devoted to sensual gratifications, gives up all attempts to satisfy his creditors, and sets them at defiance (*a*). And so when the father is suffering from some incurable disease, or is mad, or is extremely aged (*b*). These questions

(*x*) *Ponnappa* v. *Pappuvayyangar* (1881) 4 Mad., 1, *Peda Venkanna* v. *Srinivasa* (1918) 41 Mad., 136 F.B., *Sheo Pershad* v. *Jung Bahadur* (1888) 9 Cal. 389.

(*y*) *Muttayan Chetty* v. *Sangili* (1883) 9 I A, 128, 6 Mad, 1 reversing (1880) 3 Mad., 370, *Sivagiri* v. *Tiruvengada* (1884) 7 Mad. 339; see also *Minakshi Naidu* v. *Immudi Kanaka* (1889) 16 I.A, 1, 12 Mad., 142. The liability of the son's interest to be attached and sold during his father's lifetime for the latter's debts exists in the Punjab where according to a special custom the son cannot enforce a partition during his father's lifetime: *Nihalchand* v. *Mohan Lal* (1932) 13 Lah., 455; *Devi Das* v. *Jadaram* (1934) 15 Lah., 50.

(*z*) *Lalta Prasad* v *Gajadhar* (1933) 55 All., 283, *Virayya* v. *Parthasarathi Appa Rao* (1934) 57 Mad., 190, *Chhotey Lal* v. *Ganpat Raj* (1935) 57 All., 176 F.B., overruling *Official Liquidator, U. P. Oil Mills Co* v. *Jamna Prasad* (1933) 55 All., 417; *Devidas* v. *Jada Ram* (1934) 15 Lah, 50; *Shanmugam* v. *Nachu* (1937) (1) M.L.J., 278, *Venkataramana* v. *Narayana* A.I.R. 1937 Mad, 556, *Sourendra Mohan Sinha* v. *Hari Prasad* (1926) 52 I.A., 418, 437, 5 Pat., 135, 155.

(*a*) Vishnu., Dig I, 185, Yajn., II, 50, 2 Stra. H.L., 277, 2 W. MacN., 282.

(*b*) Katyayana, Brihaspati, Dig, I, 192, 193.

which were discussed in the earlier cases (*c*) have ceased to be of practical importance since 1874, when the Privy Council decided that as the father can effect a sale of the family property in favour of the creditor which is binding upon the son (*d*), so the creditor can enforce his claim by decree and execution against the interests of both the father and the son in the joint family property (*d*[1]), a doctrine which later cases have repeatedly reaffirmed (*e*).

The law is now well established that under the Hindu law, the pious obligation of a son to pay his father's debts exists whether the father is alive or dead (*f*).

§ 326. The creditor has not as was once supposed (*g*) two distinct remedies against the son in respect of his father's debt, one to enforce the claim against him during the father's life and the other to sue him in respect of it after the father's death. It may be taken as established that there is only one cause of action which arises equally against the father and the son at the time when the debt is due and payable. The statute of limitations runs equally against the

Suits against father and son.

(*c*) *Karpan* v. *Veriyal* (1868) 4 M.H.C., 1; *Muttayan Chetti* v. *Sangili* (1880) 3 Mad., 370, 381; *Ponnappa* v. *Pappuvayyangar* (1881) 4 Mad., 2, 13, *Gurusami* v. *Chinna Mannar* (1882) 5 Mad., 37.

(*d*) *Girdharee Lall* v *Kantoo Lall* (1874) 1 I.A., 321 (a Mithila case).

(*d*[1]) *Muddun Thakur* v *Kantoo Lal* (1874) 1 I.A., 333.

(*e*) *Suraj Bunsi Koer* v. *Sheo Prasad* (1879) 6 I.A., 88, 5 Cal., 148; *Muttayan Chetty* v. *Sangili* (1883) 9 I.A., 128, 6 Mad., 1; *Mussamut Nanomi Babuasin* v. *Modun Mohun* (1886) 13 I.A., 1, 13 Cal., 21, *Khalilul Rahman* v *Govind* (1893) 20 Cal, 328, *Ramasami Nadan* v. *Ulaganatha* (1899) 22 Mad. (F B.), 49; *Badri Prasad* v. *Madan Lal* (1893) 15 All. (F.B.), 75, *Govind Krishna* v. *Sakharam* (1904) 28 Bom., 383; *Dattatraya Vishnu* v. *Vishnu Narayan* (1912) 36 Bom., 68.

(*f*) *Brij Narain* v. *Mangla Prasad* (1924) 51 I.A., 129, 46 All., 95, superseding the observations to the contrary in *Sahu Ram's* case (1917) 44 I.A., 126, 39 All., 439. In *Brij Narain's* case, the Privy Council observed: "*Sahu Ram Chandra's* case must not be taken to decide more than what was necessary for the judgment, namely, that the incurring of the debt was there the creation of the mortgage itself and that there was therefore no antecedency either in time or in fact." The observations in *Chet Ram* v. *Ram Singh* (1922) 49 I.A., 228, 44 All., 368, which followed *Sahu Ram's* case must also be regarded as superseded. (1899) 22 Mad., 49 F.B. *supra*; *Peda Venkanna* v. *Srinivasa* (1918) 41 Mad., 136 F.B.; *Arumugam* v. *Muthu* (1919) 42 Mad., 711 F.B.; *Govind* v. *Sakharam* (1904) 28 Bom., 383, 389; *Hanmant Kashinath* v. *Ganesh* (1919) 43 Bom., 612; *Bal Raja Ram* v. *Manik Lal* (1932) 56 Bom., 36; *Badri Prasad* v. *Madan Lal* (1893) 15 All., 75 F.B., *Abdul Karim* v. *Ram Kishore* (1925) 47 All., 421, 422; *Debendra Kumar* v. *Fyzabad Bank Ltd.* (1924) 3 Pat., 63.

(*g*) *Natesayyan* v. *Ponnuswami* (1893) 16 Mad., 99; *Ramayya* v. *Venkataratnam* (1894) 17 Mad., 122.

Limitation.

father and the son from that date (*h*). The Madras High Court has held that the period of limitation for a suit on the debt would be the same against the son as against the father (*i*). The Allahabad High Court has however taken the view that the article applicable to a suit against a son in all cases will be article 120 of the Limitation Act and not the same article as applies to a suit against the father (*j*). This view would seem to be open to question; for the suit against the son is also upon the debt only and not upon an independent cause of action. The proceeding against the son is only an additional method of reaching the property, as in execution of a decree against the father himself, the son's interest can be seized and sold. The fact that the son's obligation is confined to debts which are not immoral or illegal does not make it a different liability (*k*). The pious obligation of the son is now no more than a phrase, for the liability arises at once as a legal liability of the joint estate. In a recent case, the Bombay High Court has adopted the view of the Madras High Court (*l*). Where however a judgment has been obtained against the father on the debt, that by its own force creates a debt against the father which a son is also bound to discharge and a suit against the son has been held to be not upon the judgment but upon the debt created by the decree against the father and the article applicable will be article 120 of the Limitation Act (*m*). The debt for which the judgment was recovered against the father must however be a debt for which the son would be liable. In *Brijnandan* v *Bidya Prasad,* the Calcutta High Court has held that a suit against a son upon a mortgage executed by his father for a debt which is neither antecedent nor for family purposes

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(*h*) *Mallesam* v. *Jugala* (1900) 23 Mad., 292 F.B., *Arunachalam Chetty* v. *Raman* (1914) 16 M.L.T, 614; *Periaswami* v *Seetharama Chetti* (1904) 27 Mad, 243, F.B., *Sri Rajah Parthasarathy Appa Rao* v *Subba Rao* (1927) 50 Mad., 249, *Lakshman* v. *Mahableshwar* A.I R. 1931 Bom, 542; *Narsingh Misra* v. *Lalji* (1901) 23 All., 206.

(*i*) (1900) 23 Mad., 292 (F.B.) *supra,* (1914) 16 M.L.T., 614 *supra;* (1904) 27 Mad., 243 (F.B.) *supra,* (1927) 50 Mad., 249 *supra.*

(*j*) *Narsingh Misra* v. *Lalji* (1901) 23 All., 206; *Gaurishankar* v *Sheonandan* (1924) 46 All., 384, 390.

(*k*) See per Bhashyam Aiyangar J. in *Periaswami* v. *Seetharama* (1904) 27 Mad., 243, 253, citing *Beck* v. *Pierce* (1889) 23 Q.B.D., 316.

(*l*) *Lakshman* v. *Mahableshwar* A.I R. 1931 Bom., 542; *Ghulam Khoja* v *Shivlal* (1938) 40 Bom. L R., 381, A.I.R. 1938 Bom., 295.

(*m*) *Periaswami* v. *Seetharama* (1904) 27 Mad., 243 F B ; *Jagannatha Row* v. *Seshayya* (1907) 17 M.L.J., 281; *Brijnandan Singh* v. *Bidya Prasad* (1915) 42 Cal., 1068 F.B.

is governed by article 120 of the Limitation Act and not by article 132 as the mortgage as such is not enforceable as against the son and consequently there is no charge on the immovable property (*n*).

Liability ceases with father's.

§ 327. The pious obligation of the son exists only so long as the liability of the father subsists (*o*). The son's liability is neither joint nor joint and several as those terms are ordinarily understood in English law (*p*). The son cannot be sued alone during his father's lifetime. The joinder of the son with the father in a suit to enforce payment of the father's debt is for the purpose of preventing the son from questioning the nature of the debt in execution proceedings against the property. Where the liability of the father is extinguished by the Bankruptcy law of a foreign country or where an insolvent is discharged under s. 45 of the Presidency-Towns Insolvency Act, the son does not continue liable (*q*).

Timebarred Debts.

§ 328. A son is not under Hindu law liable to pay a debt of the father which is timebarred as against the father (*r*). But he continues to be liable for a debt of the father kept alive by the latter's acknowledgment whether before or after partition (*s*). A promise by a father in writing to pay his timebarred debt which is valid under S. 25 (3) of the Indian Contract Act is neither illegal nor immoral as against the son who will therefore be liable to pay the debt (*t*); such

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(*n*) (1915) 42 Cal., 1068; the starting point of limitation was left open, as in any case the suit was barred.

(*o*) *Periaswami* v. *Seetharama* (1904) 27 Mad., 243 F.B.; *Narayana* v. *Virappa* (1917) 40 Mad., 581; *Mulchand* v. *Jairamdas* A.I.R. 1935 Bom., 287.

(*p*) (1917) 40 Mad., 581 *supra*; A.I.R. 1935 Bom., 287 *supra*.

(*q*) (1917) 40 Mad. 581 *supra*; *Magadhu Pillai Rowther* v. *Asan Muhammadhu* (1919) 26 M.L.T, 88; *Mayanadan* v. *Arunachala* A.I.R. 1926 Mad., 1106.

(*r*) *Subramania Aiyar* v. *Gopal* (1909) 33 Mad., 308; *Lakshman* v. *Mahableshwar* A.I.R. 1931 Bom., 542; *Achutanand* v. *Surajnaraın* (1926) 5 Pat., 746; *Mulchand* v. *Jairamdas* A.I.R. 1935 Bom., 287.

(*s*) *Muniswami* v. *Kuttimoopan* (1933) 56 Mad., 833; see also *Gajadhar* v. *Jagannath* (1924) 46 All., 775, 784 F.B., *Lalta Prasad* v. *Gajadhar* (1933) 55 All., 283, 297.

(*t*) *Narayanaswami* v. *Samidoss* (1883) 6 Mad., 293; *Ram Kishen Rai* v. *Chhedi Rai* (1922) 44 All., 628; *Gajadhar* v. *Jagannath* (1924) 46 All., 775 (F.B.), 783, 784 F.B.; *Champak Lal* v. *Raya Chand* A.I.R. 1932 Bom., 522. It may be a question whether S. 25 (3) of the Indian Contract Act applies to the son's promise to pay his father's timebarred debt. A Hindu son is not personally liable for his father's debt; but see *Raja of Ramnad* v. *Chidambaram* (1938) 1 M.L.J., 597, 601 P.C.; *Pestonji* v. *Bai Meherbai* A.I.R. 1928 Bom., 539; *Asa Ram* v. *Karan Singh* (1929) 51 All., 983, 985, (where there was neither decision

a renewal of the debt will be a new cause of action against both the father and the son.

Sons parties to creditor's suit.

§ 329. Where the sons, being properly parties to the suit against the father, raise any issue as to the nature of the debt, any adverse finding will bind them just as any finding in their favour will disentitle the creditor to attach and sell their interest in execution (*u*). The fact that a Court cannot pass a personal decree against the sons will not prevent the Court from declaring the liability of their interest to be taken in execution of that decree. But where the suit is dismissed as against the son and decreed only against his father, the son cannot be liable for the debt unless the dismissal as against him was not upon the merits. Otherwise the dismissal of the suit involves the finding that the debt is of such a nature that the son is not liable for it either because the debt was immoral or he was released from it or the debt was not proved against him. The matter is *res judicata* as between the creditor and the son, and whatever be the ground, as his liability is excluded, his interest in the family property cannot be proceeded against in execution of a decree against his father. Accordingly in *Rajaram* v. *Raja Bakhsh* (*v*), where in a suit instituted against a mortgagor's sons and grandsons, a simple money decree was passed against the estate of the debtor in the hands of the sons as legal representatives of the father and the suit was dismissed as against the grandsons, it was held that the interest of the grandsons in the family property cannot be taken under Section 53 of the Civil Procedure Code in execution of the decree (*w*)

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nor expression of opinion on the point), *Abani Bilas* v. *Kanti Chundra* (1933) 38 C W N, 253 But apart from S 25 (3) of the Indian Contract Act, a contract to pay his father's barred debt may be good, if there is otherwise consideration for it as against the son, (1938) 1 M.L.J, 597 P.C, *supra*

(*u*) *Luchman Dass* v *Giridhur* (1880) 5 Cal, 855 F B, *Ramphul Singh* v. *Deg Narain* (1882) 8 Cal, 517, *Beni Parshad* v *Puran Chand* (1896) 23 Cal, 262. But where a creditor first makes a son of the debtor a party to the suit and afterwards withdraws the suit as against him, the case would ordinarily be different *Inder Pal* v *The Imperial Bank* (1915) 37 All, 214 For, the bar under Or. 23 Rule 1 of the C P. Code is only of a fresh suit in respect of the same subject matter [compare *Singa Reddi* v *Subba Reddi* (1916) 39 Mad., 987, 996] But a withdrawal might in some cases be a waiver of the right to proceed against the sons altogether

(*v*) A.I.R. 1938 P.C, 7, 42 C.W N., 200

(*w*) In *Shiam Lal* v. *Ganeshi* (1906) 28 All., 288, where in a suit against father and son on a pronote by the father, the son was exempted from liability on the pronote as he was no party to it, it was held that in execution, the son's share could be proceeded against. This would seem to be right as the dismissal of the suit as against

History of the doctrine of pious obligation.

§ 330. Starting from the theory that it is a pious duty on the part of the son to pay his father's debts, the Hindu law liability of sons has proceeded step by step till the debts of the father, not being illegal or immoral, have become in every sense a liability of the joint estate of the father and the sons. In 1874, the case of *Girdharee Lall* v. *Kantoo Lall* (*x*) laid down that the father could sell the joint estate of himself and his sons for his debts, provided they were not immoral and the case of *Muddun Thakoor* v. *Kantoo Lall* (*y*) established that the joint estate could be sold in execution of a money decree against the father. In 1879, the Privy Council, after reviewing the fundamental principles of the Mitakshara law and the prior decisions, laid down the following propositions in the case of *Suraj Bunsi Koer* v. *Sheo Pershad* (*z*); "1st, that where joint ancestral property has passed out of a joint family, either under a conveyance executed by a father in consideration of an antecedent debt, or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree for the father's debts, his sons by reason of their duty to pay the father's debts cannot recover that property unless they show that the debts were contracted for immoral purposes and that the purchaser had notice that the debts

Suraj Bunsi's case.

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the son was only in respect of his personal liability. In *Doraiswami* v. *Nagaswami* A.I.R. 1929 Mad., 898, the suit against the father having been on a pronote, if the exoneration in the previous suit was limited to the personal liability of the son, it would be similar to the case in 28 All., 288. Otherwise it would be contrary to the decision of the Privy Council in A.I.R. 1938 P.C. 7. *Sinnammal* v. *Settiya Goundan* (1938) 1 M.L.J., 875. The case of *Venkureddi* v. *Venkureddi* (1927) 50 Mad., 535, F.B, relied upon in A.I.R. 1929 Mad., 898 was different as it concerned only the alienees of a son's share and the parties were co-defendants and there was no contest and no decision between them on any point. The decision in *Papiah* v. *Subbasastrulu* (1914) 27 M.L.J., 276, however, is not good law. Where the sons are proper parties to a suit and they are later on dismissed from the action, the continuance of the son's liability would depend upon the terms of the dismissal of the suit and the circumstances in which it was made. A dismissal even if it is erroneous, must be held to be absolute and on the merits in the absence of express indications to the contrary and will be *res judicata* as between the creditor and the son. See explanation V to Section 11 of the C. P. Code. A dismissal based upon any technical ground which does not involve the negation of the liability of the son will of course stand upon a different footing. The consequences of an order striking out a person or of a so called dismissal which in the context is only a striking out of the party are of course different. *Abdul Sac* v *Sundara Mudaliar* (1931) 54 Mad., 81 F.B.

(*x*) (1874) 1 I.A., 321.

(*y*) (1874) 1 I.A., 333.

(*z*) (1879) 6 I.A., 88, 106, 5 Cal., 148, 171.

were so contracted; and, 2ndly, that the purchasers at an execution sale, being strangers to the suit, if they have not notice that the debts were so contracted, are not bound to make inquiry beyond what appears on the face of the proceedings".

In 1882, in *Muttayan Chetti* v. *Sangili Vira* the Privy Council held that the whole estate was liable in the hands of the son for all the debts, which though neither necessary nor beneficial to the family, were free from anv taint of immorality. It was also held that the fact that property in that case was an impartible zamindari could not affect its liability for the payment of the father's debts when it came into the hands of the son by descent from the father. Since it became assets in his hands, if not duly administered in payment of his father's debts, it was liable, as against the son, to be attached and sold in execution (*a*). In 1885, in *Nanomi Babuasin* v. *Modun Mohun*, the Judicial Committee explaining the inter-action of the two principles of the Mitakshara law, namely (1) that a son takes a present vested interest jointly with his father in ancestral estate and (2) that he is legally bound to pay his father's debts, not incurred for immoral purposes, to the extent of the property taken by him through his father, observed that the effect of the decisions on the theory of pious obligation of the sons was destructive of the principle of independent coparcenary rights in the sons. That decision established that if the father's debt, not having been contracted for immoral purposes is such as to support a sale of the entirety of the joint estate, either he may sell the latter without suit or the creditor may obtain a sale of it by suit. But the joint sons, not being parties to the execution proceedings or to the sale, are not precluded from having the question as to the nature of the debt tried in a suit of their own, a right which will, however, avail them nothing unless it can be shown that the debt was not such as to justify a sale of the joint estate (*b*).

What passes under sale or mortgage

§ 331. The question whether the interest which is sold or mortgaged by the father or sold under a decree for money or for enforcement of mortgage against him is the entirety of the joint estate or the interest of the father alone has been the subject of several decisions of the Privy Council which

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(*a*) (1882) 9 I.A., 128, 6 Mad., 1, 17-18.

(*b*) (1885) 13 I.A., 1, 13 Cal., 21, 35-36 "trying the fact or the nature of the debt."

are not easy to reconcile. In *Deendyal's* case (*c*), *Hurdey Narain's* case (*d*), *Simbhunath's* case (*e*), *Pettachi Chetti's* case (*f*), and in *Abdul Aziz's* case (*g*), it was held that the interest which passed in execution of the decree against the father was only the father's personal interest and nothing more. But in *Nanomi Babuasin's* case (*h*), *Bhagbut Pershad's* case (*i*), *Minakshi Naidu's* case (*j*), *Mahabir Prasad's* case (*k*), and *Sripat's* case (*l*), it was held that the entirety of the family property passed by the execution sale.

The enquiry in all these cases has been what the parties contracted about if there was a conveyance or what the purchaser had reason to think he was buying if there was no conveyance but only a sale in execution of a money decree (*m*). As Lord Watson put it in the course of the argument in *Pettachi Chetti's* case, in the case of a sale in execution of a money decree, "the questions are, what did the Court intend to sell and what did the purchaser understand that he bought" (*n*). These are questions of mixed law and fact and must be determined according to the evidence in the particular case (*o*). In *Bhagbut* v. *Mt. Girja Koer* it was decided that the onus is upon the sons when seeking to set aside such sale to prove that the debt was contracted for an immoral purpose. It is unnecessary for the creditors to show that there had been a proper inquiry or that the money had been borrowed in a case of necessity (*p*).

(*c*) *Deendyal* v. *Jugdeep Narain* (1877) 4 I.A., 247, 3 Cal., 198.

(*d*) *Hurdey Narain* v. *Rooder Perkash* (1884) 11 I.A., 26, 10 Cal., 626.

(*e*) *Simbhu Nath* v. *Golabsingh* (1887) 14 I.A., 77, 14 Cal., 572.

(*f*) *Pettachi Chetty* v. *Sivagiri Zamindar* (1887) 14 I.A., 84, 10 Mad., 241.

(*g*) *Abdul Aziz Khan* v. *Appayaswami* (1904) 31 I.A., 1, 27 Mad., 131.

(*h*) *Mt. Nanomi Babuasin* v. *Madan Mohun* (1885) 13 I.A., 1, 13 Cal., 21.

(*i*) *Bhagbut Pershad* v. *Mt. Girja Koer* (1888) 15 I.A., 99, 15 Cal., 717.

(*j*) *Minakshi Naidu* v. *Immudi Kanaka* (1889) 16 I.A., 1, 12 Mad., 142.

(*k*) *Mahabir Pershad* v. *Markunda Nath* (1889) 17 I.A., 11, 17 Cal., 584.

(*l*) *Sripat* v. *Tagore* (1917) 44 I.A., 1, 44 Cal., 524.

(*m*) (1887) 14 I.A., 77, 83, 14 Cal., 572 *supra.*

(*n*) (1887) 14 I.A., 84, 10 Mad., 241, 248 *supra.*

(*o*) (1904) 31 I.A., 18, 27 Mad., 131 *supra.*

(*p*) (1888) 15 I.A , 99, 15 Cal., 717 *supra.*

Father's alienation to pay his antecedent debt

§ 332. While it is a pious duty for a son under the Mitakshara law to pay such debts of his father as were not contracted for immoral purposes, it is also according to the Hindu law a pious duty for a person to pay off his own debts. From these two propositions, it follows that an alienation by a father living jointly with his sons under the Mitakshara law to pay off his antecedent debts, not incurred for immoral purposes, is an alienation by him for the performance of indispensable duties within the meaning of the Mitakshara I, i, 29 (*q*). Consequently, the distinction between alienations by conveyance and those made by process of execution is that the former can be made only for justifying necessity or for the purpose of raising money in order to satisfy pre-existing debts (*r*). Paradoxically enough it would seem that the doctrine is not based on any necessity for the protection of creditors but is rested upon the pious obligation of the sons to see that their father's debts are paid (*s*); in consequence, the sons' share is placed at the disposal of the father so that he may be able to pay off his debts so as to relieve his sons from their duty (*t*). The distinction between an involuntary sale of the father's property for the satisfaction of his own debt and a voluntary disposition by him consists in the limitation that in the latter case the debt must be antecedent to the transfer of property and not contemporaneous with it (*u*). Antecedent debt means an indebtedness of the father prior in time to and independent in origin of the particular dealing with the family property, whether by way of sale, mortgage or other disposition which it is sought to enforce against the son (*v*). It was possible to have taken the view that while the distinction between a sale for the purpose of paying an antecedent debt and the contracting of a debt was a real one, a mortgage debt was none the less a debt within the meaning of the texts of Narada and Brihaspati and there was no need to distinguish between a secured debt and an unsecured debt. This

The meaning of 'antecedent debt'.

(*q*) *Upooroop Tewary* v. *Lalla Bandhajee* (1881) 6 Cal, 749, *per* Mitter, J.

(*r*) (1879) 6 I.A, 88, 105, 5 Cal, 148 *supra*

(*s*) *Sat Narain* v *Das* (1936) 63 I A, 384, 395, 17 Lah., 644.

(*t*) In other words, it is on the principle of the liability of the son's share for the discharge of his father's debts that the father's power of disposal of the son's share for the satisfaction of his debts is based.

(*u*) *Shanmukam* v. *Nachu* A.I.R 1937 Mad., 140, (1937) 1, M.L.J, 278.

(*v*) An antecedent debt need not necessarily be in favour of the person to whom the particular alienation is made. *Pandurang* v. *Bhagwandas* (1920) 44 Bom., 341.

limitation itself, though anomalous on the face of it and open to obvious criticism, has been explained by Lord Dunedin as a more or less desperate attempt to reconcile conflicting principles and is now firmly established on the principle of *stare decisis* (*w*).

Accordingly, a mortgage executed by a father for his own purposes and not justified by any family necessity is not binding on his sons as a mortgage. The debt, however, as an unsecured debt would attract the pious obligation of the sons and can be recovered under a decree for money by attachment and sale of the joint estate (*x*). The liability under a mortgage which is not for an antecedent debt will however render a subsequent mortgage or a sale binding upon the sons as the earlier mortgage would be antecedent to the later alienation (*y*). So too, as the debt of the father is the debt of the son also, it would be an antecedent debt so as to empower the latter to dispose of the joint family property belonging to himself and his son (*z*).

Brij Narain's case.

§ 333. On account of conflicting decisions, a Full Board of the Judicial Committee examined the whole subject in *Brij Narain* v. *Mangla Prasad* and Lord Dunedin laid down the following five propositions:—

(1) The managing member of a joint undivided estate cannot alienate or burden the estate *qua* manager except for purposes of necessity; but

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(*w*) *Brij Narain* v. *Mangla Prasad* (1924) 51 I.A., 129, 137, 46 All., 95; see also *Venkataramanaya* v. *Venkataramana* (1906) 29 Mad., 200 F.B.; *Shanmugam* v. *Nachu* A.I.R. 1937 Mad., 140, (1937) 1 M.L.J., 278.

(*x*) *Kandaswami* v *Kuppu* (1920) 43 Mad., 621; *Rayalu Aiyar* v. *Vairavanchetty* 1936 M.W.N., 866, a simple money decree can be passed against a minor in respect of a junior member's debt for family purpose; *Sama Rao* v. *Varnajee Vapuji* (1923) 46 Mad., 64, 79; *Sami Ayyangar* v. *Ponnammal* (1898) 21 Mad., 28; *Ghulam Khoja* v. *Shivlal* (1938) 40 Bom. L.R., 381, A.I.R. 1938 Bom., 295.

(*y*) (1924) 51 I.A., 129, 46 All, 95 *supra* approving *Armugam* v. *Muthu* (1919) 42 Mad, 711 F.B.; *Ram Rekha* v. *Ganga Prasad* (1927) 49 All, 123 F.B.; *Gopal Das* v *Topan Das* (1935) 16 Lah, 624; *Satyanarayana* v. *Satyanarayana Murthi* (1926) 50 M.L.J., 144; *Gaurishankar* v. *Sheonandan* (1920) 46 All., 384.

(*z*) *Sheo Ram* v. *Durga Baksh* A.I.R. 1928 Oudh., 378 F.B., 3 Luck., 700. In *Rayalu Aiyar* v. *Vairavanchetty* (1936) M.W.N., 866 where a family consisted of a father, son and grandson it was held that the son had no right to mortgage *his* son's share of the family property even though it was to secure repayment of his (the son's) father's antecedent debts. This view is erroneous and has been dissented from in *Shanmugam* v. *Nachu* (1937) 1 M.L.J., 278, A.I.R. 1937 Mad., 140; see also *Guru Din* v. *Rameshwar* A.I.R. 1933 Oudh., 102.

(2) If he is the father and the other members are the sons, he may, by incurring debt, so long as it is not for an immoral purpose, lay the estate open to be taken in execution proceeding upon a decree for payment of that debt.

(3) If he purports to burden the estate by mortgage, then unless that mortgage is to discharge an antecedent debt, it would not bind the estate.

(4) Antecedent debt means antecedent in fact as well as in time, that is to say, that the debt must be truly independent and not part of the transaction impeached.

(5) There is no rule that this result is affected by the question whether the father, who contracted the debt or burdens the estate, is alive or dead (*a*).

A mere formal antecedency in time where there is no real antecedency in fact is insufficient to make a debt an antecedent one. In other words, the prior debt must be independent of the second debt and the transactions must be dissociated in fact so that they cannot be regarded as part of the same transaction (*b*). While a timebarred debt of the father cannot as such be enforced against the sons, it has sufficient vitality to support an alienation by way of sale or mortgage by the father to pay it off (*c*). It has also been held that a debt

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(*a*) (1924) 51 I.A., 129, 46 All., 95.

(*b*) *Narain Persad* v. *Sarnam Singh* (1917) 44 I.A., 163, 39 All, 500; *Suhu Ram* v. *Bhup Singh* (1917) 44 I.A., 126, 39 All, 437; *Chet Ram* v. *Ram Singh* (1922) 49 I.A., 228, 44 All., 368, *Jogidas* v. *Ganga Ram* (1917) 21 C.W.N., 957 P.C, *Mian Karim* v *Dargah Pir Rattan* (1931) 35 C W N, 1221, P C., 51 I.A., 129, 46 All, 95 *supra*, *Bhim Singh* v *Ram Singh* (1924) 46 All, 301; *Chandra Deo* v. *Mata Prasad* (1909) 31 All, 176 F B.; *Ram Rekha Singh* v. *Ganga Prasad* (1927) 49 All, 123 F.B.; *Babu Ram* v. *Mahadev Ram* A.I.R. 1927 All., 127; *Shaikh Jan Mohammad* v *Bikoo Mahto* (1928) 7 Pat., 798, *Badri Prasad* v. *Madanlal* (1893) 15 All., 75 F.B.; *Butamal* v *Gopalsingh* (1930) 11 Lah., 164; *Iqbal Singh* v. *Jasmer Singh* (1934) 15 Lah., 715, 723. *Madhusudan* v. *Bhagwan* (1929) 53 Bom., 444, *Jai Narain* v. *Mahabir Prasad* A.I.R. 1926 Oudh., 470, 2 Luck, 226; *Thirunavukkarasu Chetty* v. *Muthukrishna* (1931) M.W.N., 467 (interval of few days); *Muni Lal* v *Gian Singh* A.I.R. 1931 Lah., 717; *Ram Karan* v *Baldeo* [1938] Pat., 168.

(*c*) *Gauri Shanker* v. *Sheo Nandan* (1924) 46 All., 384; *Gajadhar* v. *Jagannath* (1924) 46 All., 775 F.B.; *Jagadambika* v. *Kali Singh* (1930) 9 Pat., 843; *Naro Gopal* v. *Paragauda* (1917) 41 Bom., 347; *Lalji Singh* v. *Muchkund* A.I.R. 1934 Pat., 699; *Vishvanath* v. *Shankargir* A.I.R. 1934 Nag., 264.

which is not due and payable is sufficient to support a father's alienation (*d*).

Summary of decisions.

§ 334. From these and other decisions, both of the Privy Council and of the Courts in India, the following propositions are deducible:—

1. In cases governed by the Mitakshara law, a father may sell or mortgage not only his own share but also the share of his male issue in family property, for the purpose of satisfying antecedent debts of his own, not incurred for any family necessity or benefit, provided they are not immoral or illegal (*e*) and the sale or mortgage may be enforced against his sons by suit or proceedings to which they are no parties.

2. Whether the sale or mortgage passes the father's interest only or the entire interest of both father and sons in the property sold or mortgaged depends upon the intention of the parties to be gathered from the instrument of sale or mortgage and from surrounding circumstances (*f*).

3. A creditor may enforce payment of the personal debt of a father, not being illegal or immoral, by attachment and sale of the entire interest of father and sons in the family

(*d*) *Damodaram* v. *Bansilal* (1928) 51 Mad., 711; *Subbarayulu* v. *Ratnam Aiyar* A.I.R. 1931 Mad, 615; *Baburao* v. *Pandharinath* A.I.R. 1930 Nag., 43. An unascertained sum of money such as a debt incurred by acceptance of bills in respect of goods can be a good antecedent debt. *Bal Rajaram* v. *Maneklal* (1932) 56 Bom., 36; as to unliquidated damages, see *Mian Karim* v. *Dargah Pir Rattan* (1931) 35 C.W.N., 1221, P.C. Neither pressure nor legal necessity is required to justify alienation for an antecedent debt. *Rama Rao* v. *Hanumantha* (1929) 52 Mad., 856; *Tulshi Ram* v. *Bishinath* (1928) 50 All., 1; *Babusingh* v. *Behari* Lal (1908) 30 All., 156. A contract for a loan which never was completed, to pay off a previous debt which was otherwise discharged cannot be an antecedent debt: *Jawahirsingh* v. *Udai Parkash* (1926) 53 I.A., 36, 48 All., 152. As to pre-emption debts, see *Kishen Sahai* v. *Ragunath* (1929) 51 All., 473. A father alone has the right to burden the family estate for his antecedent debt; *Gunni* v. *Dalchand* (1931) 53 All., 923; *Chiranji Lal* v. *Bankey Lal* (1933) 55 All., 370; but a father has no power to alienate his son's interest after it is attached by his creditor, *Subbraya* v. *Nagappa* (1909) 33 Bom., 264.

(*e*) *Girdharee Lal* v. *Kantoolal* (1874) 1 I.A., 321; *Suraj Bunsi Koer* v. *Sheo Persad* (1879) 6 I.A., 88, 5 Cal., 148; *Nanomi Babuasin* v. *Madan Mohun* (1885) 13 I.A., 1, 13 Cal., 21; *Brij Narain* v. *Mangal Prasad* (1924) 51 I.A., 129, 46 All., 95; *Lal Bahadur* v. *Ambika Prasad* (1925) 52 I.A., 443, 47 All., 795; *Ram Rekha* v. *Ganga Prasad* (1927) 49 All., 123 F.B.; *Iqbal Singh* v. *Jasmer Singh* (1934) 15 Lah., 715; *Adurmoni* v. *Chowdhry* (1873) 3 Cal., 1, *Ramphul* v. *Deg Narain* (1883) 8 Cal., 517; *Narayanacharya* v. *Narso* (1876) 1 Bom., 262; *Cooverji* v. *Dewsey* (1893) 17 Bom., 718.

(*f*) *Simbhunath* v. *Golapsingh* (1887) 14 I.A., 77, 14 Cal., 572; *Daulat Ram* v. *Mehrchand* (1887) 14 I.A., 187, 15 Cal., 70; *Shanmukam* v. *Nachu* (1937) 1 M.L.J., 278; compare *Gharibullah* v. *Kholak* (1903) 30 I.A., 165, 25 All., 407.

property and it is not absolutely necessary that the sons should be parties either to the suit itself or to the proceedings in execution (*g*).

4 The question whether the execution sale passes only the father's interest in the property sold or the whole property including the son's interest depends upon the form of the execution proceedings including the sale proclamation and sale certificate as well as upon the proceedings in suit in which the decree was made (*h*). While the absence of the sons in the execution proceedings may be a material consideration, there is no rule that the coparcenary interest will not pass by an execution sale where the suit was against the father alone. The question in each case will be whether the purchaser bargained and paid for the entirety of the interest. It is not a question of what the Court could have done or what it ought to have done but what it did and what was put up for sale and what was purchased (*i*). This is in each case a mixed question of law and fact as to what the Court intended to sell and what the purchaser expected to buy. The Court cannot sell more than the law allows, but if it intended to sell less than it might have sold or less than it ought to have sold, and this was known to the purchasers,

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(*g*) (1874) 1 I A., 321 *supra*, (1879) 6 I A., 88 *supra*, *Muttayanchetty* v. *Sangili* (1883) 9 I A, 128, 6 Mad., 1 *supra*, 14 I A, 77 *supra*. *Pettachichetty* v *Sivagiri* (1887) 14 I.A, 84, 10 Mad, 241, *Bhagbut Pershad* v. *Mt Girja Koer* (1888) 15 I.A, 99, 15 Cal., 717, *Minakshi* v *Immudi* (1888) 16 I.A., 1, 12 Mad., 142; *Mahabir Pershad* v *Markunda Nath* (1889) 17 I A, 11, 17 Cal, 584, *Abdul Aziz* v *Appayaswami* (1903) 31 I.A, 1, 27 Mad, 131, *Jagabai* v *Bhukhan Das* (1887) 11 Bom, 37, *Vishvanath* v *Keshavbhat* (1934) 58 Bom, 273, *Sabha Ram* v *Kishan Singh* (1930) 52 All., 1027, *Mahadeo Ram* v *Ganesh* A I R 1937 Pat., 517; *Sardarilal* v. *Bharat National Bank Ltd* (1932) 12 Lah., 495, *Sarju Prasad* v *Ram Saran Lal* A.I.R. 1931 All, 541, *Chhotey Lal* v *Ganpat Rai* (1935) 57 All, 176 F B., *Jainarayan* v. *Sonaji* A.I.R. 1938 Nag., 24

(*h*) (1888) 15 I.A., 99 *supra*, (1886) 13 I A, 1 *supra*, (1877) 4 I.A., 247 *supra*, (1883) 11 I A, 26 *supra* In *Maruti* v. *Babaji* (1891) 15 Bom., 87, *Beni Prasad* v. *Purdan Chand* (1896) 23 Cal., 262, *Timmappa* v. *Narsinha* (1913) 37 Bom., 631, and *Hanmandas* v *Valabhdas* (1919) 43 Bom., 17 it was held that the father's interest alone passed. In *Cooverjy* v. *Dewsey* (1893) 17 Bom., 718 and in *Md Hussein* v. *Dipchand* (1892) 14 All., 190, and *Veerasoorappa* v. *Errappa* (1906) 29 Mad, 484, it was held that the entire interest passed.

(*i*) (1887) 14 I.A, 84 *supra*, *Nanomi Babuasin* v. *Madun Mohun* (1887) 13 I A., 1, 13 Cal., 21; *Doulat Ram* v. *Mehr Chand* (1888) 14 I.A., 187, 15 Cal., 70.

no more will pass than what was in fact offered for sale (*j*). Where the son intervenes in execution and fails to get a definite decision in his favour that it is only the father's share that should be sold, the inference is that the entirety of the estate passes to the purchaser at the Court sale. It is the substance and not the mere technicalities of the transaction that should be regarded (*k*).

Where a defendant possesses both an individual and a representative character, and where he has been sued for a debt which would bind the whole family which he represents, and where execution is taken out against him under the decree, the Court is at liberty to look at the judgment to see what was intended to be sold under his right, title and interest, and may treat the decree as binding the whole family which is represented by the defendant, and as properly executed against the joint family property (*l*).

5. Where a sale or mortgage is made by the father without his son joining in it in order to satisfy his antecedent debt, or when in execution of a decree for money or on a mortgage by the father, the ancestral property is sold, the sons, not being parties, are entitled to have the nature of the debt tried in a suit of their own (*m*).

(*j*) *Deendyal* v *Jagdeep Narain* (1877) 4 I.A., 247, 3 Cal., 198; *Hurdey Narain* v. *Rooder Prakash* (1883) 11 I.A., 26, 10 Cal., 626; (1887) 13 I.A., 1 *supra*. (1887) 14 I.A., 84 *supra;* (1887) 14 I.A., 77 *supra*, (1882) 9 I.A., 128 *supra;* (1904) 31 I.A., 1 *supra; Pemsingh* v. *Partab* (1892) 14 All., 179 F.B.

(*k*) *Mahabir Pershad* v. *Markunda Nath* (1889) 17 I.A., 11, 17 Cal., 584; *Sripatsingh* v. *Tagore* (1917) 44 I.A., 1, 44 Cal., 524.

(*l*) *Bissessur Lall* v. *Luchmessursingh* (1879) 6 I.A., 233, 5 C.L.R., 477; *Darbhanga* v. *Coomar* (1872) 14 M.I.A, 605; *Jugal Kishore* v. *Jotindra Mohun* (1883) 11 I.A., 66, 10 Cal., 985; *Jairam* v. *Joma Kondia* (1887) 11 Bom., 361; *Jankibai* v. *Mahadev* (1894) 18 Bom., 147; *Lala Parbhu* v. *Mylne* (1887) 14 Cal., 401; *Harisaran* v. *Bhubanesvari* (1890) 15 I.A., 195, 16 Cal., 40; *Sheo Pershad* v. *Rajkumar* (1893) 20 Cal., 453; *Radha Prasad* v. *Ramkhelawan* (1896) 23 Cal., 302; *Devji* v. *Sambhu* (1900) 24 Bom., 135; *Sripat* v. *Tagore* (1917) 44 I.A., 1, 44 Cal., 524.

(*m*) Some of the dicta of the Privy Council and of the Courts in India would entitle the son to dispute the fact of the debt also. *Nanomi Babuasin* v. *Modun Mohun* 13 I.A., 1, 18, 13 Cal., 21; *Ramasamayyan* v. *Viraswami* (1898) 21 Mad., 222, 226; *Kishen Pershad* v. *Tipan Pershad* (1907) 34 Cal., 735, 742. It is fairly clear from the more recent decisions that in a suit upon a debt against the father, he represents the sons when they are not made parties so far as the factum of the debt is concerned and the judgment against the father itself creates the debt. Fraud or collusion, of course, will always be an exception. When a decree is passed against the father for a debt proved against him, it is not easy to see how the sons can dispute the father's liability under it except of course in respect of the nature of the debt regarding which the father

Burden of proof.

§ 335. Where a Hindu son comes into Court to assail a mortgage made by his father or a decree passed against his father or a sale held or threatened in execution of such a decree—whether it be upon a mortgage security or in respect of a simple money debt—where there is nothing to show any limitation of the interest sold or threatened with sale or charged in a security or dealt with by a decree, it rests upon him, if he seeks to escape from having his interest affected by the sale, to establish that the debt which he desires to be exempted from paying was of such a nature that he, as the son of a Hindu, would not be under a pious obligation to discharge or that his interests in the property were not covered by the mortgage or touched by the decree or affected by the sale certificate (*n*).

Burden of proof of immorality of debts.

§ 336. The burden of proof which is upon the son to establish that the debts in question were incurred by his father for immoral purposes is not discharged by proving a general charge of immorality but there must be proof of direct connection between the debt or the expenditure and the acts of immorality (*o*). It is unnecessary for the alienee or the creditors to show that there had been a proper inquiry or that the money had been borrowed in a case of necessity (*p*).

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could not represent the sons. *Natesayyan* v. *Ponnusami* (1893) 16 Mad., 99; *Joharmal* v. *Eknath* (1900) 24 Bom., 343; *Periaswami* v. *Seetharama* (1904) 27 Mad., 243, 252, F.B.; *Karansingh* v. *Bhup Singh* (1905) 27 All., 16, F.B., *Inder Pal* v. *Imperial Bank Ltd.* (1915) 37 All, 214; *Mohan Lal* v. *Balaprasad* (1922) 44 All., 649, *Abdul Karim* v. *Ram Kishore* (1925) 47 All., 421, *Chander Pershad* v. *Sham Koer* (1906) 33 Cal., 676.

(*n*) *Pemsingh* v. *Partabsingh* (1892) 14 All., 179 F.B., approving *Beni Mahdo* v. *Basdeo Patak* (1890) 12 All., 99 and *Bhawani Baksh* v. *Ram Dai* (1891) 13 All., 216.

(*o*) *Shyam Narain* v. *Suraj Narain* (1932) 64 M.L.J, 148 P.C., *Sri Narain* v. *Lala Raghubans* (1912) 25 M L J, 27, 17 C.W.N., 124 P.C. *Venkayya* v. *Narasimha* (1938) 1 M.L.J., 33, dissenting from *Gurumurthi* v. *Subrahmanya* (1928) 107 I.C., 401, *Ulfat Rai* v. *Tejnarain* (1927) 8 Lah., 632, *Raj Kishore* v. *Madan Gopal* (1932) 13 Lah., 491, *Sohan Lal* v. *Kartar Singh* (1935) 16 Lah., 320, *Dattatraya* v. *Vishnu* (1912) 36 Bom., 68, 73, *Brijmohan* v. *Mahabeer* (1936) 63 Cal., 194, *Tulshi Ram* v. *Bishnath Prasad* (1928) 50 All., 1, *Ganeshi Lal* v. *Bhagwan Singh* (1936) A.W.R., 547; *Devanandan Prasad* v. *Harihar Prasad* A.I.R. 1935 Pat., 140, *Rajeshwar* v. *Mangni Ram* A.I.R. 1933 Nag. 89; *Bal Rajaram* v. *Manekh Lal* (1932) 56 Bom, 36, 53, 54; *Nannu Shankar Tawker* v. *Bashyam* (1938) M.W.N., 126.

(*p*) *Bhagbut Pershad* v. *Mt. Girja Koer* (1888) 15 I.A., 99, 15 Cal., 717; *Mata Din* v *Gaya Din* (1909) 31 All., 599, *Johan Singh* v. *Hardat Singh* (1935) 57 All., 357, *Suraj Bunsi* v *Sheo Prasad* (1878) 6 I.A., 88, 106, 5 Cal., 148, *Babu Singh* v. *Bihari Lal* (1908) 30 All., 156, *Tulshi Ram* v. *Bishnath Prasad* (1928) 50 All., 1.

In *Muddun Thakoor* v. *Kantoo Lall* (*q*) the Judicial Committee observed that a purchaser under an execution is not bound to go beyond the decree to ascertain whether the Court was right in giving the decree or having given it, in putting up the property for sale under an execution upon it. But the immoral character of the debt is certainly no defence to an action against the father where he alone is sued or if it is to be regarded as open, he might not set it up. In either view, the decree would be a proper one as against the father and properly enforced against his interest in the property (*r*). But when the creditor proceeds by way of attachment and sale in execution of a money decree, the son can object that his interest is not liable on the ground that the debt evidenced by the decree was contracted for illegal or immoral purposes. Where he does not succeed and his interests are not released from attachment, he is entitled to bring a suit in which the whole question can be determined under Or. 21 R. 63 of the Civil Procedure Code.

Money decree.

While the requirement that the creditor or the alienee from the father should have notice that the debt is contracted for immoral purposes is consistent with principle, the other requirement that, though a judgment creditor had notice, the purchaser at an execution sale, when he is not the decree-holder, should also have had notice that the debts were contracted for immoral purposes, if his purchase is to be set aside, would appear to create a difficulty (*s*), unless, of course, it is the duty of the sons to intervene in execution and object to the sale of their interests on the ground that the father's debt is illegal or immoral. Where the sons are minors, to cast upon them such a duty at the peril of losing all their interests in the joint family property, even in a case where the debt is immoral, seems inconsistent with the special protection which the law generally affords them. It does appear singular that a purchaser under a decree should be entitled, as against the sons, to assume the existence of a state of facts which was not and could not have been adjudicated upon in the suit against the father alone. Of course, all that the sons can claim is, that they ought not to be barred from trying the nature of the debt in a suit of their own.

Notice of the nature of the debt.

(*q*) (1874) 1 I.A., 321, 334.

(*r*) *Vishvanath* v. *Parkash Chandra* A.I.R. 1935 All., 278.

(*s*) (1879) 6 I.A., 88, 106, 5 Cal., 148. Where the creditor himself is the purchaser the rule is different.

In cases where the property is put up for sale under a mortgage decree, no attachment takes place (*t*) and under the Civil Procedure Code, 1908, the proceedings for sale under the mortgage decree are not proceedings in execution. To require that a purchaser at the sale, if he is not the decree-holder himself, should have notice that the debt was illegal or immoral involves either that the sons who were minors or majors should apply themselves to be made parties even though the creditor does not choose to implead them as parties to the suit or should give public notice at the time of the settlement of the proclamation of sale to all intending purchasers of their objections. While it is true that in many cases there is collusion between the father and the sons in seeking to set aside a sale on the ground of immorality, and such suits invariably fail, that can be no ground for imposing upon the sons a duty to intervene in the suit or in execution which the Civil Procedure Code does not impose upon other litigants at the risk of being totally barred of their rights In *Suraj Bunsi's* case (*u*) where the sons preferred a claim in execution proceedings and objected to the sale of their interest, the Court refused to adjudicate upon it and allowed the sale to take place. The Judicial Committee observed. "Their Lordships think that the respondents (purchasers) must be taken to have notice, actual or constructive, of the plaintiff's objections and of the order made upon them and therefore to have purchased with knowledge of the plaintiff's claim and subject to the result of this suit" (*v*).

Sales in execution of a decree enforcing a mortgage.

§ 337 Where a father has mortgaged the family property for an antecedent debt, not of immoral or illegal character, a sale under a decree against him enforcing the mortgage will bind his sons, even though they have not been made parties

(*t*) *Davachand* v *Hemchand* (1880) 4 Bom, 515 F B, *Kasinath* v. *Sadasiv* (1893) 20 Cal, 805, *Krishnamma* v *Perumal* (1885) 8 Mad., 388.

(*u*) (1879) 6 I A, 88 5 Cal., 148, *Krishnaji* v *Vithal* (1888) 12 Bom., 625, *Ram Chander* v. *Md Nur* (1923) 45 All, 545, 547, *Luchman Doss* v *Giridhur* (1880) 5 Cal, 855 F B, *Ramphul Singh* v *Dej Narain* (1882) 8 Cal., 517, *Beni Pershad* v *Puranchand* (1896) 23 Cal, 262, *Trimbak* v *Narayan* (1884) 8 Bom, 481, *Mahabir* v *Basdeo* (1884) 6 All, 234 While a stranger *bona fide* purchaser is entitled to assume the validity of a simple money decree and the authority to sell the judgment-debtor's interest, he cannot assume that the decree and the authority to sell would bind the interests of persons, not parties to the decree.

(*v*) For a contrary result arising from the son's attempted intervention, see *Mahabir Prasad* v. *Markunda Nath* (1889) 17 I.A., 11.

to the suit (*w*). It is now settled that the sons or other coparceners are not necessary parties to such a suit, for the father or other managing member effectually represents the others (*x*). The sons therefore will not have any right of redemption after a foreclosure or sale under a decree which is binding upon them The right to redeem is extinguished unless the sale or foreclosure is set aside (*y*). Where however the son is not a party to the suit, he is entitled to have the decree and sale set aside and as a consequence, to redeem, on the ground that the debt was tainted with immorality and was therefore not binding upon him (*z*). Where after a mortgage there was a partition between him and his sons and the father cannot represent the interest of the sons in the creditor's suit upon the mortgage, the sons' right to redeem where they are not made parties to the suit remains unaffected (*a*) and they are not bound to have the sale set aside. The latter remedy is also open to them on proof of the immorality of the debt.

§ 338. Where a Hindu father died after a decree for money was passed against him in a suit to which he alone was a party and before any attachment in execution was made, there was, prior to the enactment of section 53 of the Civil Procedure Code, 1908, a difference of opinion between the High Courts as to whether the liability of a

Sons liable in execution.

(*w*) *Suraj Bunsi Koer* v. *Sheo Pershad Singh* (1878) 6 I.A., 88, 5 Cal., 148, *Ponnappa* v. *Pappuvayyangar* (1882) 4 Mad., 1, 9 Mad., 343, *Srinivasa* v *Yelaya* (1882) 5 Mad, 251, *Ramphul Singh* v *Deg Narain* (1882) 8 Cal., 517, *Krishnamma* v. *Perumal* (1885) 8 Mad., 388; *Sadashiv Dinkar* v. *Dinkar Narayan* (1882) 6 Bom., 520; *Shiv Ram* v. *Sakharam* (1911) 33 Bom., 39, *Hurdey Narain* v. *Rooder Perkash* (1883) 11 I.A., 26, 28, 10 Cal., 626, *Basamal* v. *Maharaj Singh* (1886) 8 All., 205, *Mathura Prasad* v. *Ramchandra* (1903) 25 All., 57, *Lal Singh* v. *Pulandar Singh* (1906) 28 All., 182; *Sundararaja* v. *Jagannada* (1882) 4 Mad, 111.

(*x*) *Kishen Parshad* v. *Har Narain Singh* (1911) 38 I.A., 45, 33 All, 272, *Sheoshankar* v. *Jaddokunwar* (1914) 41 I.A, 216, 36 All, 383; *Venkatanarayana* v. *Somaraju* [1937] Mad., 880 F.B.; *Horilal* v. *Munman Kunwar* (1912) 34 All., 549 F.B., *Ramkrishna* v. *Vinayak* (1911) 34 Bom., 354, *Madhusudhan* v. *Bhagwan* (1929) 53 Bom., 444; *Ramasamayyan* v. *Virasami* (1898) 21 Mad., 222.

(*y*) *Ganpat Lal* v. *Bindbasini* (1920) 47 I.A., 91, 47 Cal., 924; *Muthuraman Chetti* v. *Ettappaswami* (1899) 22 Mad., 372.

(*z*) *Kehri Singh* v. *Chunnilal* (1911) 33 All., 436; *Balki Mahapatra* v. *Brojabasi* (1912) 16 C.W.N., 1019; *Balkisen Lal* v. *Choudhuri Tapesur* (1912) 17 C.W.N., 219, (1898) 21 Mad., 222 *supra*, *Palani* v *Rangayya* (1899) 22 Mad., 207, *Lala Suraj Prasad* v. *Golab Chand* (1901) 28 Cal., 517, *Raja Raghunandan* v. *Kumar Ghananund* (1931) 10 Pat., 124 dissenting from *Bhawani Prasad* v. *Kallu* (1895) 17 All, 537 F.B.

(*a*) *Trimbak* v. *Narayan* (1884) 8 Bom., 481.

Hindu son to pay his deceased father's debts could be enforced in execution of the decree According to the Madras and Allahabad High Courts, such a decree could not be executed against ancestral property in the hands of the son even to the extent of the father's interest in the property and the only remedy of the creditor was to institute a fresh suit against the son This view was based upon the ground that as the joint estate became vested in the son by the right of survivorship, he was not the legal representative of the deceased nor was the property assets in his hands (*b*). On the other hand, the Bombay and Calcutta High Courts held that there was no necessity for any separate suit and that the son could be proceeded against in execution (*c*) Where there is a decree upon a mortgage against the father and he dies before the sale, the proceedings may be continued against the sons (*d*).

Attachment prevents survivorship

Where the father died after attachment and before sale, the rule of survivorship did not defeat the execution proceedings, for the attachment in favour of the judgment creditor constituted for the purposes of Hindu law, a valid charge which could not be defeated by the death of the father, the judgment debtor, before the actual sale (*e*)

Section 53 of the Civil Procedure Code.

In *Shivram* v *Sakharam*, it was held that there was no substantial difference between the position of legal representatives added as parties to the suit before decree and legal representatives brought in after decree (*f*). The Indian Legislature has adopted the view of the Bombay and Calcutta High Courts in section 53 of the Code of Civil Procedure, 1908, which provides for cases where the father (judgment debtor) dies before the decree has been fully satisfied and where the father dies after suit and before a decree is

(*b*) *Periaswami* v *Seetharama* (1904) 27 Mad. 213, 218 F B, *Lachmunarain* v *Kunji Lal* (1894) 16 All, 449, *Narsingh* v. *Lalji* (1901) 23 All, 206

(*c*) *Umed* v *Goman* (1896) 20 Bom., 385, *Shivram* v *Sakharam* (1909) 33 Bom, 39, *Amar Chandra* v. *Sebak Chand* (1907) 34 Cal, 642 F.B. See *Hanmant* v *Ganesh* (1919) 43 Bom, 612, *Devidas* v *Jada Ram* (1934) 15 Lah, 50, *Sri Chandra* v. *Mt Shyam Kumari* (1932) 11 Pat, 445.

(*d*) *Chander Pershad* v *Sham Koer* (1906) 33 Cal, 676, *Umamaheswara* v. *Singaperumal* (1885) 8 Mad., 376; *Inder Pal* v *The Imperial Bank* (1915) 37 All., 214, *Hira Lal* v *Parmeshar* (1899) 21 All., 356; *Ramkrishna* v. *Vinayak* (1911) 34 Bom, 354

(*e*) *Suraj Bunsi* v. *Sheo Prasad* (1879) 6 I.A., 88, 105, see *infra* § 344

(*f*) (1909) 33 Bom., 39.

obtained. S. 53 runs as follows:—"For the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative" (*g*).

Mode of adjustment.

§ 339. A father's debts are a first charge upon the inheritance and must be paid in full before there can be any surplus for division (*h*). As between the parceners themselves the burden of the debts is to be shared in the same proportion as the benefit of the inheritance (*i*).

Partition.

Where the family estate is divided, it is necessary to take account of both the assets and the debts for which the undivided estate is liable and the debts of the father incurred prior to partition, unless they are immoral or illegal, are a liability of the joint estate for which provision is required to be made on partition and this rule would apply whether the partition is between the father and the sons or, after his death, between the sons themselves. And where a suit for partition is brought, it is right that the Court should make provision for the discharge of the father's debts incurred prior to the suit out of the joint estate of the father and the sons before directing partition of the estate by metes and bounds (*j*).

Provision for debts.

Liability if no provision made.

Where no provision is made for the discharge of debts at a partition out of court or in the decree for partition, the rule as stated in the text of Vishnu will apply: "But after partition,

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(*g*) S. 53 of the C. P. Code 1908, applies to mortgage decrees as well as to money decrees. *Meyyappa* v. *Meyyappa* (1924) 46 M.L.J., 471; *Ganesh* v *Narayan* (1931) 55 Bom., 709, (claim for injunction) following *Sakarlal* v *Bai Parvati* (1902) 26 Bom., 283, and *Krishnabai* v. *Sawlaram* (1927) 51 Bom., 37 'Property' in S. 53 means and includes proprietary interest in such property, *Chhotey Lal* v. *Ganpat Rai* (1935) 57 All., 176 F.B. 'Debt' in S. 53 includes a prepartition debt. *Venkatanarayana* v. *Somaraju* [1937] Mad., 880 F.B. S. 53 will not avail against a coparcener who is not a son. *Lakshmanan Chetty* v. *Muthu Chelliah* (1935) 68 M.L.J., 104, *Subbaratnam* v. *Gunavanth Lal* (1937) 1 M.L.J., 224, *Raja of Ramnad* v. *Chidambaram* (1938) 42 C.W.N., 565, P.C., (1938) 1 M.L.J., 597, 609.

(*h*) Narada, XIII, 32; Dayabhaga, I, 47, 48; Vyav. Mayukha, IV, 6, *Tarachand* v. *Reeb Ram* (1866) 3 M.H.C.R., 177, 181.

(*i*) Katyayana, 1 Dig., 201; Narada, I, § 2; Vishnu, Dig., I, 200; D.K.S., vii, §§ 26-28, 2 Stra. H.L., 283. The case of *Doorga Pershad* v. *Kesho Pershad* (1882) 9 I.A., 27, 8 Cal., 656, which seems to contradict the proposition in the text, must depend on the special circumstances of the case.

(*j*) *Sat Narain* v *Das* (1936) 63 I.A., 384, 17 Lah., 644 approving *Venkureddi* v *Venkureddi* (1927) 50 Mad., 535 F.B.; *Bawan Das* v. *O. M. Chiene* (1922) 14 All., 316.

they shall severally pay according to their shares of inheritance" (*k*). It is now settled that the father's power to sell or mortgage for the discharge of his debts exists only so long as the joint family remains undivided (*l*). But it has nevertheless been held by all the courts that the sons are liable for the debts, incurred by a father prior to partition, not being illegal or immoral, even after a partition between him and his sons (*m*).

Pre partition debts.

Creditor's decree after partition.

§ 310 Where the creditor obtains his decree against the father alone after partition for a debt incurred by the father before partition, the liability of the sons to pay the debt out of their respective shares can only be enforced by a separate suit, for the sons were neither represented by the father in the suit up to the passing of the decree nor could it be said that the decree as such bound the son's share (*n*) This seems quite consistent with principle A Full Bench of the Madras High Court has however held that a decree for mesne profits made after partition in a suit instituted before partition against the father who was also the managing member could be executed against the shares allotted to the sons at the partition The ground of decision appears to have been that the father represents the sons in a suit instituted before partition up to the date of decree(*o*). But obviously the father cannot represent the sons after partition and the decision cannot be supported (*p*).

(*k*) Vishnu, VI, 36

(*l*) *Sat Narain* v *Das* (1936) 63 I A, 384, 17 Lah, 644

(*m*) *Jagannatha* v *Visvesam* (1924) 47 Mad, 621, *Subrahmanya* v *Sabapathi* (1928) 51 Mad, 361 F B, *In re Balusami* (1928) 51 Mad, 417 F B, *Annabhat* v *Shivappa* (1928) 52 Bom, 376, *Jawahar Singh* v *Parduman Singh* (1933) 14 Lah., 399, *Pannalal* v *Rama Nand* A I R 1936 Lah, 193, *Atul Krishna Roy* v. *Lala Nandanji* (1935) 14 Pat, 732 F B., overruling *Ram Ghulam* v *Nandkishore* (1925) 4 Pat., 469, *Bankey Lal* v *Durga Prasad* (1931) 53 All, 868 F B, overruling *Gaya* v *Murlidhar* (1927) 50 All, 137, *Ram Saran* v. *Bhagwan* (1929) 52 All, 71 and *Ajodhia* v *Data Ram* 1931 A L J, 104, *Tribeni Prasad* v. *Bishambar Nath* A I.R. 1934 All, 212, *Raghunandan* v *Moti Ram* A I R. 1929 Oudh., 406 F B., 6 Luck, 497 F B., *Kulada Prasad* v *Haripada* (1913) 40 Cal, 407, *Lalta Prasad* v *Gangadhar* (1933) 55 All., 283.

(*n*) *Krishnaswami* v *Ramaswami* (1899) 22 Mad, 519, *Lakshman Chettiar* v *Govindarajulu* (1898) 8 M L T, 349, *Kuppan Chetty* v *Masagoundan* [1937] Mad, 1004, *Veerayya* v *Venkata* A I R. 1936 Mad, 887, *Govindram* v *Nattu Lal* A I R 1937 Nag, 45

(*o*) *Venkatanarayana* v *Somaraju* [1937] Mad, 880 F B.

(*p*) The partition was pending the suit for possession and mesne profits and so far as award of possession was concerned, it will be governed by Sec. 52 of the T.P. Act But a decree for mesne profits is only a decree for money.

Before partition.

But where the decree was obtained by the creditor against the father alone before a partition with his sons, it has been held by the Madras and Nagpur High Courts that the creditor is bound to bring a fresh suit against the sons to make their shares liable for the decree debt and that he cannot proceed by way of execution of the decree(*q*). The ground of decision was stated thus: "the principle upon which the son cannot object to ancestral property being seized in execution for an unsecured personal debt of the father is that the father under the Hindu law is entitled to sell on account of such debt the whole of the ancestral estate" (*r*). And as the power of the father comes to an end the moment the father and the sons are separated in interest, the decree obtained before partition cannot support an attachment of the son's share. A contrary view has been taken by the Allahabad High Court in *Kishan Sarup* v. *Brij Raj Singh* as well on the ground that the liability of the joint estate was not destroyed by the partition as on the ground that the father represented the son in the creditor's suit in which the decree was made (*s*). This view was approved by a Full Bench of the Patna High Court (*t*) and is followed in Lahore (*u*) and in Oudh (*v*).

The question was discussed by a Full Bench of the Madras High Court and doubts as to the correctness of the earlier decisions in Madras to the contrary were expressed (*w*). The view that the right to attach and sell in execution of a money decree against the father can only be rested on the father's power to sell for the discharge of his antecedent debts (*x*)

(*q*) (1899) 22 Mad, 519 *supra*, *Kameswaramma* v. *Venkatasubba* (1915) 38 Mad, 1120, *Bapiraju* v *Sri Ramulu* A.I.R. 1934 Mad., 662; *Jainarayan* v *Sonaji* A I R 1938 Nag., 24, *Tirumalaimuthu* v *Subrahmanya* (1937) 1 M.L J, 243, see *Subrahmanya* v. *Sabapati* (1928) 51 Mad., 361 F B.

(*r*) (1899) 22 Mad, 519, 521 *supra*.

(*s*) (1929) 51 All, 932. The explanation of this case in (1937) 1 M.L.J., 243, 247 *supra*, that the person who wanted to get his property exempted from the attachment was a party to the money decree does not appear to be correct See also the observations of the Judges in [1937] Mad., 880 F.B. *supra*.

(*t*) *Atulkrishna Roy* v *Lala Nandanji* (1935) 14 Pat., 732 F.B., 774; *Bankey Lal* v. *Durga Prasad* (1931) 53 All, 868 F B.

(*u*) *Jawahirsingh* v *Pardumansingh* (1933) 14 Lah, 399; *Nand Kishore* v. *Madan Lal* A.I R. 1936 Lah., 64.

(*v*) *Raghunandan Prasad* v. *Motisingh* A.I.R. 1929 Oudh., 406 F.B., 6 Luck, 497 F.B., *Puttu Lal* v. *Parbati* A.I.R. 1935 Oudh., 443.

(*w*) *Venkatanarayana* v. *Somaraju* [1937] Mad., 880 F.B.

(*x*) *Krishnaswami* v. *Ramaswami* (1899) 22 Mad., 519, 521; *Kameswaramma* v. *Venkatasubba* (1915) 38 Mad., 1120; *Tirumalamuthu* v. *Subrahmanya* (1937) 1 M.L.J., 243, 247.

is not supported by the case of *Girdharee Lall* v. *Kantoo Lall*. In that case, it was based simply on the son's obligation to pay out of ancestral property his father's debts: "If his father had died, and had left him as his heir and the property had come into his hands, could he have said that because this was ancestral property which descended to his father from his grandfather, it was not liable at all to pay his father's debts?" (*y*). So also the principle underlying the execution of a money decree against the father was stated in *Sat Narain* v. *Behari Lal*: "When the decree which was executed was made in a suit to which the sons were not parties and the property sold was joint property of the father and the son, the sale was good on the principle of Hindu law that it is the pious duty of a Hindu son to pay his father's debts unless it is shown that the debt in respect of which the decree was made was contracted by the father to the knowledge of the lender for the purposes of immorality" (*z*). As stated by Lord Thankerton in the most recent case, the father's liability is a liability of the joint estate (*a*) and no principle of Hindu law would seem to require the creditor to bring a separate suit against the sons after partition when a decree for a debt made against the father before he became divided with his sons is, as a decree, binding upon them so far as their shares in the joint estate are concerned. All that the sons can claim is that not being parties to the suit, they ought not to be barred from trying the nature of the debt in execution proceedings (*b*) Subject to it, the decree against the father before partition makes it a liability of the joint estate enforceable in execution against all who were constructively parties to the suit and decree On the view that the decree is to be treated as one against the sons also, it will continue to be one against them, notwithstanding the subsequent partition and there may be no difficulty created by s 60 (1) of the C P Code (*c*) It is by no means clear that a separate suit will remove any legal impediment, for, in the suit instituted after partition, no personal decree

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(*y*) (1874) 1 I A, 321, 330, 331, see also the propositions stated in *Suraj Bunsi's* case (1879) 6 I A, 88, 105, 106, *Nanomi's* case (1886) 13 I A, 1, 13 Cal, 21, *Bankey Lal* v. *Durga Prasad* (1931) 53 All, 868, 876 F B, *Lalta Prasad* v *Gajadhar* (1933) 55 All, 283, 294, 295

(*z*) (1924) 52 I A, 22, 30, 6 Lah, 1, 11

(*a*) *Satnarain* v *Das* (1936) 63 I.A, 384, 17 Lah, 644.

(*b*) *Periasami* v *Seetharama* (1904) 27 Mad, 243 F B., *Thavasi muthu* v *Thavasimuthu Nadar* A I R 1931 Mad, 824.

(*c*) (1924) 52 I A, 22, 30, 6 Lah, 1 *supra*, see *Pangudaya* v *Uthandiya* (1938) 2 M L J, 33, 39, *Suryanarayana* v *Viswanatham* (1936) 71 M L J, 518.

can be obtained against the sons nor can they be treated as legal representatives of the father while he is alive (*d*).

Debts contracted after partition.

§ 341. Debts contracted by a father after partition with his sons will not be binding upon them or payable by them out of their shares. For, where a father has separated from his sons, the whole of his property will descend at his death to an after-born son Therefore all debts contracted by him subsequent to the partition will be payable by that son. But Jagannatha is of opinion that even in such a case, if the after-born son has not property sufficient to pay the debts, they should be discharged by the separated sons (*e*). Whether this would have been the case under the older law or not, when the possession of assets was not necessary in order to render the sons liable, it is clear now on principle that sons are not liable for their father's debts incurred by him after they are divided from him, except to the extent to which the share allotted to the father on partition comes to them on his death.

Obligation arising from possession of assets.

§ 342. *Secondly*, the obligation to pay the debts of the person whose estate a man has taken is expressly declared. It does not rest, as in the case of sons, upon any duty to relieve the deceased at any cost, but upon the broad equity that he who takes the benefit should take the burden also (*f*). It is evident that this obligation attached whether the property devolved upon an heir by operation of law, or whether it was taken by him voluntarily as an executor *de son tort*, for the liability is said to arise equally whether a man takes possession of the estate of another or only of his wife. As Narada says· "He who takes the wife of a poor and sonless dead man becomes liable for his debts, for the

(*d*) "This statutory fiction (contained in S. 53 of the C. P. Code) however only applies to the case of a deceased father and we should not be justified in extending it to a case where the father is still living or in inferring, as has been suggested, that, as the decree could, under the section, be executed against the property in question if the father was dead, it must *a fortiori* be executable against the same property where the father is alive": *Kameswaramma* v. *Venkatasubba Rau* (1915) 38 Mad, 1120, 1124

(*e*) Brih, Dig, I, 195, 196, D. K S., V, 16-18.

(*f*) "He who has received the estate or the wife of the deceased should be made to pay his debts, or failing either, the son who has not received an inheritance In the case of a sonless deceased, those who take the heritage should be made to pay". Yajn., II, 51, Brih., XI, 52; Katyayana, Dig., I, 190, 226. "Of the successor to the estate, the guardian of the widow, or the son, he who takes the estate becomes liable for the debts." Narada, I, 23; Gaut., XII, 40; *Karimuddin* v. *Gobind Krishna* (1909) 36 I.A., 138, 147; 31 All., 497, 506.

wife is considered as the dead man's property" (*g*). Even the widow is not bound to pay her husband's debts, unless she is his heir, or has promised to pay them, or has been a joint contractor with him (*h*). And where the wife paid the debts of the husband during his life-time, there is no obligation on his estate to pay such moneys to her, and an alienation to repay such amount will not be upheld (*i*).

"Assets are to be pursued into whatever hands. See Narada, cited by Jagannatha, 1 Dig., 272. And innumerable other authorities may be cited were it requisite in so plain a case". This is the remark of Mr. Colebrooke, approving of a Madras pundit's *futwah*, that where uncle and nephew were undivided members, and the nephew borrowed money and died, leaving his property in the hands of the uncle's widow, she might be sued for the debt (*j*). So in Bombay, a suit was maintained on an account current with a deceased debtor against his widow and three other persons, strangers by family, on the ground that they had taken possession of his property, but they were held liable only to the extent to which they had become possessed of the property (*k*). Similarly in Madras, where a suit was brought against the representatives of two deceased co-debtors to recover a debt incurred for family purposes, it was decided that the son-in-law of one of the deceased co-debtors and his brothers were properly joined as defendants, on the ground that they, in collusion with the widow of the deceased, had, as volunteers, intermeddled with, and substantially possessed themselves of the whole property of the family of the deceased co-debtor (*l*). In each of these cases the person in possession of the property held it without any title. Where there is an executor *de son tort*, a creditor may sue to recover his debt and is not confined to an administration action The rule of English law,

Executor *de son tort.*

(*g*) Narada, I, §§ 21-24

(*h*) Narada, I, 16, 17, Yajn, II, 46, 49, Vishnu, VI, 31, Katyayana, Dig, I, 216

(*i*) *Himmat Bahadur* v *Bhawani Kunwar* (1908) 30 All., 352, affirmed by the P C in (1911) 33 All, 342.

(*j*) 2 Stra. H L, 282

(*k*) *Kupurchund* v *Dadabhoy*, Morris, Pt. II, 126. So, in Calcutta, where the half brother of the deceased was sued jointly with his sons for a debt, the Court held that he could not be liable as heir, which he manifestly was not, but that he would have been liable if it had been shown that he had possessed himself of any of the property of the deceased, *Rampertab* v *Gopeekisen*, Sev. 101.

(*l*) *Magaluri* v *Narayana* (1881) 3 Mad, 359; *Kanakamma* v *Venkataratnam* (1884) 7 Mad., 586, *Khitish Chundra* v. *Radhika Mohun* (1908) 35 Cal., 276.

as to which there has been difference of opinion, that no liability as executor *de son tort* can arise when there is another personal representative, does not apply in India (*m*). The definition of 'legal representative' in section 2 (7) of the Civil Procedure Code includes any person who intermeddles with the estate of the deceased.

Debts are not a charge upon the estate.

§ 343. The unpaid debts of the deceased, when they are unsecured, are neither a charge upon the estate nor is the heir, in the first instance, personally liable for them. The heir is only liable to the extent of the assets he has inherited from the person whose debts he is called upon to pay. But as soon as the property is inherited, a liability *pro tanto* arises and is not removed by the subsequent loss or destruction of the property and still less, of course, by the fact that the heir has not chosen to possess himself of it, or has alienated it after the death (*n*). "The property of a deceased Hindu is not so hypothecated for his debt as to prevent his heir from disposing of it to a third party, or to allow a creditor to follow it, and take it out of the hands of a third party, who has purchased in good faith and for valuable consideration. The creditor may hold the heir personally liable for the debt, if he have alienated the property, but he cannot follow the property" (*o*). The right of a creditor to follow the assets in the hands of an alienee or legatee from the heir or legal representative can only be enforced by a separate suit against him and not by merely levying execution against the assets in his hands under a judgment against the legal representative (*p*). But where a judgment is obtained against a debtor, it can be executed against a stranger who has intermeddled with the estate, for he is a legal representative within the meaning of sections 50 and 52 of the Civil

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(*m*) *Narayanasami* v. *Esa Abbayi Sait* (1905) 28 Mad., 351; *Dhanput Singh* v. *Moheshnath* (1920) 24 C.W.N., 752; *Parthasarathy Appa Rao* v. *Venkatadri Appa Rao* (1923) 46 Mad., 190 F.B., (per Schwabe C. J. at 205, 206, per Kumaraswami Sastri J. at 233-234, on appeal (1925) 52 I A., 214.

(*n*) This passage is quoted with approval in *Anant Govind* v. *Tukaram* (1929) 53 Bom., 463, 468, *Kasi* v. *Buchireddi* Mad Dec., 1860 (78); *Unnapoorna* v. *Ganga* 2 W.R., 296, *Keval Bhagwan* v. *Ganpati* (1884) 8 Bom, 220, *Girdhar Lal* v. *Bai Shiv* (1884) 8 Bom., 309.

(*o*) *Unnopoorna* v. *Gunga* 2 W.R, 296; *Jamiyatram* v. *Parbhudos* 9 Bom. H.C, 116; *Lakshman* v. *Sarasvatibai* (1875) 12 Bom. H.C, 78. *Veerasokkaraju* v. *Papiah* (1903) 26 Mad., 792; *Haji Saboo* v. *Ally Md* (1906) 30 Bom., 270. As to what circumstances will negative good faith, see *Greender Chunder Ghoon* v. *Mackintosh* (1879) 4 Cal., 897. As to a legatee, see *Ram Oottum* v. *Oomesh* 21 W.R., 155.

(*p*) *Jay Chandra* v. *Satish Chundra* (1931) 58 Cal., 170.

Procedure Code (*q*). A voluntary transfer of property by way of gift, if made *bona fide*, and not with the intention of defrauding creditors, is valid against creditors (*r*). So too would be a devise. Where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by and the liabilities of the donor at the time of the gift to the extent of the property comprised therein (*s*).

Liability of coparcener taking by survivorship.

§ 344 Another question arises, how far the liability to pay debts out of assets prevails against the right of survivorship, in cases where the debtor does not stand in the relation of paternal ancestor to the heir In this case the moral and religious obligation has vanished, and it is a mere conflict of two legal rights. It is the settled law of the Mitakshara as it is administered in all the provinces, except in the provinces of Madras and Bombay and the Central Provinces including Berar, that an undivided coparcener cannot, without the consent of his coparceners, sell or mortgage his undivided share in the joint estate (*t*). But in all the provinces, since the decision of the Privy Council in *Deen Dyal's* case in 1877, it is well-established that the undivided interest of a coparcener is liable to attachment and sale in execution of a decree against him for his separate or personal debt (*u*) The undivided interest cannot however be attached after his death, though when an attachment is made during his lifetime, it can be sold after his death (*v*) In case the creditor effects no

Effect of attachment.

(*q*) The decision in *Chatha Kelan* v *Gounder* (1894) 17 Mad, 186 is no longer good law

(*r*) *Gnanabhai* v *Srinavasa* (1868) 4 Mad H C, 81, *Raibishen Chand* v *Asmanda Koer* (1884) 11 I A, 164, 6 All, 560

(*s*) Section 128 of the Transfer of Property Act now applies to Hindus S 53 T P Act applies to immovable property. As to movable property, see *Abdul Hye* v *Mir Mohammad* (1883) 11 I A, 10, 10 Cal, 616, *Ah Foon* v *Hoehai Pat* (1932) 9 Rang, 614

(*t*) *Deendyal* v *Jugdeepnarain* (1877) 4 I A, 247, 252, 3 Cal, 198, *Suraj Bunsi* v *Sheo Prasad* (1879) 6 I A, 88, 101, 102, 109, 5 Cal, 148 *Sadabartprasad* v *Foolbash* 3 B L R F B, 34, 37, *Madho Prasad* v. *Mehrbansingh* (1891) 17 I A, 194, 18 Cal, 157, *Lakshman Dada Naik* v *Ramachandra* (1880) 7 I A, 181, 5 Bom, 48, *Balgovind Das* v *Narainlal* (1893) 20 I A 116, 15 All, 336, see as to Berar, *Syed Kasam* v *Jorawar Singh* (1922) 49 I.A 358, 50 Cal., 84, *Ramkisan* v. *Md Abdul Sattar* (1928) 32 C W N, 1149, P.C, *Bhojraj* v. *Nathuram* (1917) 37 I C, 498, 12 N L R, 161, *Amardayal* v. *Harprasad* (1920) 5 P L J., 605, *Ralla Ram* v *Atma Ram* (1933) 14 Lah, 584, *Udaram* v. *Ranu* (1875) 11 B H C, 76

(*u*) (1877) 4 I A, 247, 3 Cal 198 *supra*, (1879) 6 I.A., 88, 5 Cal, 148 *supra*

(*v*) (1879) 6 I A, 88 109 *supra*, *Bithaldas* v *Nandkishore* (1901) 23 All, 106, *Lachmi Narain* v *Kunji Lal* (1894) 16 All, 449, *Fakirchand* v *Santlal* (1926) 48 All, 4, compare *Sheik Karoo* v *Rameswara Rao* (1921) 6 Pat, L.J, 451. See *ante* § 338,

attachment before the death of his debtor, he is altogether without a remedy so far as the debtor's interest in coparcenary property is concerned. The reason for this distinction is that in the one case, the execution proceedings had, before the coparcener's death, gone so far as to constitute in favour of the decree-holder a valid charge upon the joint estate to the extent of the undivided interest of the deceased which could not be defeated by his death(*w*). This is an equity in favour of the decree-holder which the Courts have recognised. But where no attachment has been made during the judgment-debtor's lifetime, on his death, his coparceners take the whole estate by survivorship and are not liable for the personal debts and obligations of their deceased coparcener. An equity which might have been enforced against the judgment-debtor's interest, while it existed, cannot affect that interest when it has passed to a surviving coparcener except by repealing the rule of the Mitakshara law (*x*). The result is that if the deceased debtor is an ordinary coparcener, who has left neither separate nor self-acquired property, the creditor, who has not attached his share before his death, is absolutely without a remedy.

§ 315 When the Judicial Committee in *Suraj Bansi Koer* v. *Sheo Prasad* (*y*) spoke of an attachment as creating a charge in favour of the decree-holder, they were certainly using the term in the sense of some legal fetter or equity preventing the operation of the rule of survivorship, whether the attachment would confer title or create any interest in the property or not.

The view that has prevailed in some cases that an attachment merely places the property *in custodia legis*, so as to prevent alienation by the defendant, but does not create anything in the nature of a lien or a charge (*z*) cannot be regarded as free from doubt. Strong observations have been made by the Judicial Committee in *Ananta Padmanabhaswami* v. *Official*

(*w*) (1879) 6 I.A., 88, 5 Cal., 148 *supra*.

(*x*) *Madho Pershad* v. *Mehrbansingh* (1890) 17 I.A., 194, 18 Cal., 157, *Balgovind Das* v. *Naraınlal* (1893) 20 I.A., 116, 15 All., 336. See also *Harischander* v. *Mt. Nanki* A.I.R. 1937 Lah., 328.

(*y*) (1879) 6 I.A., 88, 5 Cal, 148 *supra*.

(*z*) *Motilal* v. *Karrabudin* (1898) 24 I.A., 170, 25 Cal., 179; *Kristnasawmy* v. *Official Assignee of Madras* (1903) 26 Mad., 673; *Sankaralinga Reddy* v. *Kandasawmy Thevan* (1907) 30 Mad., 413; *Zemindar of Karvetnagar* v. *Trustee of Tirumalai, Tirupati, etc., Devastanams* (1909) 32 Mad., 429.

Receiver, Secunderabad (*a*) where it is observed that in *Krishnasuamy* v. *Official Assignee of Madras* (*b*), the Madras High Court, ignoring the opinion of the Judicial Committee in *Suraj Bunsi's* case, appears to have taken a dictum in *Motilal* v. *Karrab-ul-din* (*c*) from its context and used it for a purpose which it did not have in view.

Attachment before judgment.

Where the attachment however is one before judgment, until a decree is passed, it cannot operate to render the attached property available for sale in execution (*d*). So that if the defendant dies before decree, the creditor is without a remedy, notwithstanding the attachment, for in such a case the right of survivorship takes effect before the attachment can become effectual for execution (*e*) Where there has been an attachment before judgment, and the defendant dies after decree, but before proceedings in execution are taken, there has been a difference of opinion as to whether the rights of the surviving coparceners, or those of the attaching creditor should prevail. The Bombay and the Patna High Courts have decided that the right of survivorship prevails as against the attachment before judgment (*f*). The Madras High Court has held in favour of the attaching creditor (*g*) While an attachment before judgment has not for all purposes the same effect as an attachment after decree, the effect of Order 38, Rule 11 of the Civil Procedure Code, 1908, is to make the property attached before judgment, property attached in execution of a decree, at least for the purpose of subjecting the coparcener's right of survivorship to the rights of the creditor under the attachment (*h*).

(*a*) (1933) 60 I.A., 167, 174, 175, 56 Mad., 405, reversing (1931) 54 Mad., 727.

(*b*) (1902) 26 Mad., 673.

(*c*) (1898) 24 I.A., 170, 25 Cal, 179.

(*d*) Or. 38, Rules 5 to 11, C.P.C.

(*e*) *Ramanayya* v *Rangappayya* (1894) 17 Mad, 144

(*f*) *Subrao Mangesh* v. *Mahadevi* (1914) 38 Bom., 105, *Sunder Lal* v. *Raghunandan* (1924) 3 Pat, 250

(*g*) *Muttuswami Chetty* v. *Chinnammal* (1914) 26 M.L.J., 517, *Sankaralinga* v. *Official Receiver* (1925) 49 M.L.J., 616 dissenting from (1914) 38 Bom., 105 *supra*.

(*h*) See *Meyyappa* v. *Chidambaram* (1924) 47 Mad, 493 F.B.; *Arunachala* v. *Periaswami* (1921) 44 Mad., 902 F.B.

Of course where a coparcener in Madras or Bombay contracts a mortgage debt on the security of his undivided coparcenary interest, his death will not affect the right of the mortgagee. In provinces where the coparcener cannot mortgage his undivided interest, his debt can stand only on the footing of a simple money claim. The purchaser at an execution sale stands in the shoes of the judgment debtor and is entitled to work out his rights by means of a partition (*i*).

Onus of proof of assets.

§ 346. The onus of proving that assets have come to the hands of the heir is in the first instance on the creditor. But it would be enough if he gave such evidence as would afford reasonable grounds for an inference that assets had, or ought to have, come to the hands of the heir. When once it is admitted or proved that the heir had come into possession of assets belonging to the estate of the deceased, it is for him to satisfy the court that the amount of the assets is not sufficient to satisfy the plaintiff's claim, or that they were of such a nature that the plaintiff was not entitled to be satisfied out of them, or that they have been duly administered and disposed of in satisfaction of other claims (*j*). The mere fact of a succession certificate having been taken out was held not to be even *prima facie* evidence of the possession of assets (*k*).

Cases of agency.

§ 347. The *third* ground of liability is that of agency, express or implied, or of the authority to act on behalf of another conferred by Hindu law. Mere relationship, however close, creates no obligation. Parents are not bound to pay the debts of their son, nor a son the debt of his

(*i*) *Deendyal* v. *Jugdeep Narain* (1877) 4 I.A., 247, 251, 252, 3 Cal., 198; *Suraj Bansi* v. *Sheo Prasad* (1879) 6 I.A., 88, 109, 5 Cal., 148, this subject will be fully discussed in the next chapter. *Post* §§ 384-394.

(*j*) *Kottala* v *Shangara* (1866) 3 M.H.C.R., 161; *Joogal Kishore* v. *Kalee Churn* (1876) 25 W.R., 224, *Magaluri Garudiah* v. *Narayana* (1881) 3 Mad., 359, *Krishnayya* v. *Chinnayya* (1884) 7 Mad., 597, *Veera Sokkaraju* v. *Papiah* (1903) 26 Mad, 792; *Ranchod Das* v. *Krishna Dass* (1911) 12 I.C, 253, *Raja of Kalahasti* v. *Prayogdossjee* (1916) 35 I.C, 224, *Angavalathammal* v. *Janaki* A.I.R. 1924 Mad., 466; *Hazura Singh* v. *Kishan Singh* A.I.R. 1933 Lah., 447; *Mohammed Sharif* v. *Mehraj Din* A.I.R. 1934 Lah., 106; *Ma Aye* v. *V. M. R. P. Chettyar Firm* A.I.R. 1933 Rang., 309; *Lal Behari* v. *Bindesari Misra* A.I.R. 1934 All., 249, *Sumeshar Bind* v. *Baldeo Sahu* A.I.R. 1935 All., 390; *Tamiz Bano* v. *Nand Kishore* (1927) 49 All., 645; *Daw Toke* v. *Maung Ba Han* (1927) 5 Rang., 44. A decree cannot be executed against a person who was not made a party either to the suit or execution proceedings. *Gangaraju* v. *Somanna* A.I.R. 1927 Mad., 197; *Rathnammal* v. *Sundaram* A.I.R. 1933 Mad., 508; but see *Mt. Karam Kaur* v. *Matwal* (1933) 14 Lah., 696.

(*k*) *Kottala* v. *Shangara* (1866) 3 M.H.C.R., 161.

mother (*l*) A husband is not bound to pay the debts of his wife, nor the wife the debts of her husband (*m*) Still less, of course, can any member of a family be bound to pay the debts of a divided member, contracted after partition, for such a state of things wholly negatives the idea of agency (*n*). It would be different if he had become the heir of the debtor, or taken possession of his assets. On the other hand, all the members of the family, and therefore all their property, divided or undivided, will be liable for debts which have been contracted on behalf of the family by one who was authorised to contract them (*o*).

Manager.

The most common case is that of debts created by the manager of the family. He is the accredited head or representative of the family, and authorised to bind the other members even when minors, for all proper and necessary purposes, within the scope of his authority (*p*) The managing member is not an agent or partner of the other coparceners, nor is he a trustee for them (*q*). As long as the family remains undivided, his authority cannot be revoked or controlled except with his own consent His authority to incur expenditure and contract loans and enter into transactions is one which is determined by family necessity or family benefit Within those limits, his discretion is unfettered. If a decree is passed against him in respect of a liability properly contracted for the necessities of the family, the binding character of this decree upon the interests of the other members depends, not upon their having or not having been parties to the suit, but upon the authority of the manager

(*l*) Nor is the nephew bound to pay the debts of his uncle who was the managing member of the family. *Ram Ratan* v. *Lachman Das* (1908) 30 All., 460.

(*m*) Yajn., II, 46, Vishnu., VI, 31, 32, Narada, I, 16, 18, Brih, Dig, I, 218, Katyayana, Dig, I, 219, *Mootoocomarappa* v. *Ilinnoo* Mad. Dec of 1855, 183

(*n*) *Narayana* v *Rayappa* Mad Dec of 1860, 51

(*o*) This passage is cited with approval in *Venkatanarayana* v. *Somaraju* [1937] Mad, 880 F.B., Manu, VIII, 166, Raghunandana, V, 33-36, "When the debtor is dead, and the expense has been incurred for the benefit of the family, the debt must be repaid by his relations, even though they be separated from him in interests," Narada, I, 13 (S.B.E. Vol. XXXIII, p. 45).

(*p*) *Gharib-ullah* v. *Khalak Singh* (1903) 30 I.A., 165, 25 All., 407; *Ram Avtar* v. *Chowdhuri Narsingh* (1906) 3 C.L.J., 12; *Venkatanarayana* v. *Somaraju* [1937] Mad, 880 F.B., *Siri Kant Lal* v. *Sidheswari* (1937) 16 Pat., 441, 447. What are such necessary purposes will be examined fully in the next chapter, §§ 361-365.

(*q*) *Annamalai* v. *Murugesa* (1903) 30 I A., 220, 26 Mad, 544, *Perrazu* v *Subboroyudu* (1921) 48 I A, 280, 44 Mad, 656, *Vaikuntam* v. *Avudiappa* A.I.R. 1937 Mad., 127.

to contract the liability (*r*). So if the manager has borrowed money for family necessities upon his personal security, he will have a right to contribution from the other members, which will arise at the time when he expends the money for their benefit (*s*).

But the liability of the family is not limited to contracts made, or debts incurred, by the manager. Narada says: "What has been spent for the household by a pupil, apprentice, slave. woman, menial, or agent must be paid by the head of the household." The rule in Brihaspati is to the same effect: "When a debt has been incurred for the benefit of the household, by an uncle, brother, son, wife, slave, pupil or dependent, it must be paid by the head of the family" (*t*). Of course, this implies that the persons referred to have acted either with an express authority, or in circumstances of such pressing necessity that an authority may be implied (*u*). Narada says: "Debts contracted by the wife never fall upon the husband, unless they were contracted for necessaries at a time of distress, for the household expenses have to be defrayed by the man" (*v*). *A fortiori* the husband is liable for any debts contracted by his wife in a business which he has assigned to her to manage (*w*). And on the same principle it has been stated "that persons carrying on a family business, in the profits of which all the members of the family would

(*r*) The entire passage is cited with approval in *Dwarka Nath* v. *Bungshi Chundra* (1905) 9 C.W.N., 879; *Hari Vithal* v. *Jairam Vithal* (1890) 14 Bom., 597, overruling *Maruti Narayan* v. *Lilachand* (1882) 6 Bom., 564, and *Lakshman Venkatesh* v. *Kashinath* (1887) 11 Bom., 703; *Melamal* v. *Gori* (1922) 3 Lah., 288; *Sakharam* v. *Devji* (1899) 23 Bom., 372, *Baldeo* v. *Mobarak* (1902) 29 Cal., 583; there is no difference on this point between the Mitakshara and the Dayabhaga law. As to debts contracted by an executor, see *Debendra Nath* v. *Hem Chandra* (1904) 31 Cal, 253, *Srish Chundra Nandi* v. *Sudhir Krishna* (1932) 59 Cal., 216.

(*s*) *Aghore Nath Mukhopadhya* v. *Grish Chunder* (1893) 20 Cal., 18, *Vellayappa* v. *Krishna* (1917) 34 M.L.J., 32, 36; see *Satrohan* v. *Bharath Prasad* A.I.R. 1931 All., 652; see Article 107 of the Limitation Act which provides three years for a suit by the manager of an undivided family for contribution in respect of a payment made by him on account of the estate.

(t) Nar., I, 12; Brih., XI, 50; Mit., I, 1, 29, 30, Vishnu., VI, 34, 39; Manu, VIII, § 167, Yajnavalkya, Dig., I, 196; Katyayana, Dig., I, 219; 1 W. MacN., 286. See as to the liability of the heir for debts *bona fide* incurred by executors acting under a will which was afterwards set aside, or by an adopted son whose adoption was afterwards held invalid, *Fanindro Deb* v. *Jugudishwari* (1887) 14 Cal., 316.

(*u*) *Mudit* v. *Ranglal* (1902) 29 Cal., 797.

(*v*) Narada, I, 18.

(*w*) Yajn., II, 48; Brih, XI, 53; Vishnu. VI, 87; 2 W. MacN, 278, 281.

participate, must have authority to pledge the joint family property and credit for the ordinary purposes of the business. And, therefore, that debts honestly incurred in carrying on such business must override the rights of all members of the joint family in property acquired with funds derived from the joint business" (*x*). This power, when exercised by an agent, or personal representative of the manager, cannot, however, exceed that which is vested in the principal. For instance, when a family trading business has devolved upon a widow, her agent cannot exceed the limited powers of dealing with the estate which are possessed by the widow (*y*).

No presumption of benefit.

§ 318 There is no presumption that a debt contracted by a manager is one for the benefit of the family and not for his own private purposes The karta of a joint family carrying on a family business has implied authority to borrow money for the purposes of the business, but for promissory notes executed by him in his own name for money borrowed by him, the other members of the family are not liable unless it is shown that the money was borrowed for the purpose of the business (*z*)

A decree obtained against a managing member for a debt binding on the family can be executed against the shares of the other members, whether before or after division in status (*a*) Similarly, a mortgage of family property by the managers of a joint trading family to pay a debt due by

(*x*) Per Pontifex J, *Johurra Bibee* v *Sreegopal* (1876) 1 Cal, 475, *Sheo Pershad* v *Saheb Lal* (1893) 20 Cal, 453, *Raghunathji Tarachand* v *Bank of Bombay* (1911) 34 Bom, 72, *Sanka Krishna Murthi* v *Bank of Burma* (1912) 35 Mad, 692, *Bishambharnath* v *Sheo Narain* (1907) 29 All, 166, *Mahabir Prasad* v *Amla Prasad* (1924) 46 All, 364 See also *Guruswami Nadar* v *Gopalasami Odayar* (1919) 42 Mad, 629

(*y*) *Sham Sunder* v. *Achhan Kunwar* (1899) 25 I A, 183, 21 All., 71

(*z*) *Abdul Majid Khan* v. *Saraswati* (1933) 61 I A, 90, *Ganpat Rai* v *Munni Lal* (1912) 34 All, 135, *Khazana Mal* v *Jagannath* (1923) 4 Lah, 200, *Muthureddi* v *Chinnappa* (1920) 39 M.L.J., 486, *Vithal* v *Shivappa* (1923) 72 I C, 659, *Girdhari Lal* v. *Kishen Chand* (1924) 5 Lah, 511, *Dwarka Nath* v *Bungshi Chundra* (1905) 9 C.W.N., 879, *Chalamayya* v *Varadayya* (1899) 22 Mad, 166, see also cases in note (*x*) *supra* *Krishna Ayyar* v *Pierce Leslie & Co* A.I.R. 1936 Mad, 64

(*a*) *Daulat Ram* v. *Mehr Chand* (1888) 14 I A, 187, 15 Cal, 70; *Hari Vithal* v. *Jairam Vithal* (1890) 14 Bom., 597, which held that *Lakshman* v. *Kashinath* (1887) 11 Bom., 700 and *Maruti Narayan* v. *Lila Chand* (1882) 6 Bom, 564 were overruled by *Daulat Ram's* case 14 I A, 187 *supra*, *Jankibai* v *Mahadev* (1894) 18 Bom, 147, *Bhana* v *Chendhu* (1897) 21 Bom., 616, *Sakharam* v. *Devji* (1899) 23 Bom., 372, *Sheo Pershad* v *Raj Kumar Lal* (1893) 20 Cal, 453, *Baldeo Sonar* v. *Mobarak Ali Khan* (1902) 29 Cal, 583; *Dwarka Nath* v. *Bungshi Chandra* (1905) 9 C.W.N, 879 (no difference between the

the firm binds all other members of the family and if the property is sold under a decree obtained against the mortgagors alone, the sale cannot be set aside by the other members, merely on the ground that they were not parties to the suit (*b*). Of course, debts contracted or conveyances executed by any individual member of a joint family, for his own personal benefit, will not bind the interests of the other members (*c*).

Liability for debts under promissory notes.

§ 349. Where the father borrows money on a promissory note, the sons are liable for the debt to the extent of their interests in the joint estate provided it is neither illegal nor immoral So too, where the managing member borrows money on a promissory note for family purposes, his coparceners are also liable to pay the debt out of their shares. No doubt the ordinary rule as to the liability on a negotiable instrument is as laid down in *Sadusuk Janki Das* v. *Sir Kishan Pershad*: "No person is liable upon a hundi or a bill of exchange unless his name appears upon the instrument in a manner which, upon a fair interpretation of its terms, shows that the name is the name of the person really liable" (*d*). The other coparceners can be made liable only upon the debt or the consideration and not upon the note itself. The liability of the other members for the debt evidenced by the note is a liability which is external to the obligation arising on the making of the promissory note and while the liability of the maker is absolute, the liability of the other members is limited to their interest in the estate and depends upon the character of the debt (*e*).

Sec. 27 of the Negotiable Instruments Act is only relevant where a person is sought to be made liable as a party to the promissory note or a bill of exchange, but it can have no application to cases where the persons who are not parties to the negotiable instrument are sought to be made liable for the

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Mitakshara and Dayabhaga schools); *Kunj Behari* v. *Kandh Prasad* (1907) 6 C.L.J., 362, *Nunna Setti* v. *Chidaraboyina* (1903) 26 Mad., 214, 222; *Subbanna* v. *Subbanna* (1907) 30 Mad., 324; *Royarappan* v. *Koyotan* (1918) 35 M.L.J., 51, *Guru Din* v. *Rameshwar* A.I.R. 1933 Oudh, 102; *Suryanarayana* v. *Visvanathan* (1936) 71 M.L.J., 518; *Venkatanarayana* v. *Somaraju* [1937] Mad., 880 F.B.; *Jai Kishen* v. *Ramchand* A.I.R. 1935 Lah., 1.

(*b*) *Daulat Ram* v. *Mehr. Chand* (1888) 14 I.A., 187, 15 Cal., 70.

(*c*) *Venkatasami* v. *Kuppaiyan* (1878) 1 Mad., 354 (F.B.); *Guruvappa* v. *Thimma* (1887) 10 Mad., 316.

(*d*) (1919) 46 I.A., 33, 46 Cal., 663.

(*e*) Per Shephard J. in *Krishna Ayyar* v. *Krishnaswami Ayyar* (1900) 23 Mad., 597, 605; *Jiwan Dass* v. *Peoples' Bank* A.I.R. 1937 Lah., 927.

debt or the consideration, in consequence of an obligation cast upon them by their personal law in respect of such debt (*f*). The Allahabad and Patna High Courts apparently take the view that a joint Hindu family is a legal person according to Hindu law, lawfully represented by and acting through the managing members thereof and that the other members are liable on the note itself (*g*) The Calcutta and Bombay High Courts have held that the other members are liable only on the debt or the consideration and not on the note (*h*) In a recent Full Bench case, the Madras High Court observed that the distinction between the suit on the debt and one on the note is merely a verbal distinction and not one of substance (*i*) In more recent cases, the Madras High Court has held, upon a review of all the authorities, that the other members can be made liable only on the consideration and not on the note (*j*)

In the case of *Abdul Majid Khan* v *Saraswatibai*, the action was upon two promissory notes executed by the karta of a joint family and was brought after his death against the surviving members of his family The Judicial Committee observed that if it was necessary for the proper conduct of the joint family business, that money should be borrowed from time to time on promissory notes, it would be within the authority of the deceased as karta to borrow money *in his own name* for the purpose of the family business (*k*)

(*f*) Per Subramania Ayyar J in (1900) 23 Mad. 597, 606 *supra*

(*g*) *Krishnanand* v *Rajaram* (1922) 44 All. 393, *Raghunath* v *Sri Narain* (1923) 45 All, 434, *Sitikant Lal* v *Sidheshwari Prasad* (1937) 16 Pat, 441, *Tikamchand* v *Sudarsan* AIR 1933 Pat. 263, see also *Bhaguansingh & Co* v *Bakshi Ram* AIR 1933 Lah, 494

(*h*) *Hari Mohan Ghose* v *Sourendra* AIR. 1925 Cal. 1153, 41 CLJ. 535, *Ramgopal Ghose* v *Dhirendra Nathsen* (1927) 54 Cal. 380; *Indu Bala* v. *Lakshminarayan* AIR 1935 Cal. 102, *Vithalrao* v *Vithalrao* (1923) 25 Bom LR. 151, AIR 1923 Bom, 244, *Manchersha* v *Govind* AIR 1930 Bom, 424 See also *Motilal* v *Punjaji* AIR 1933 Nag, 160, *Sagarmal* v *Bhikusa* A.I R 1936 Nag, 252, *Jibach Mahto* v *Shibshanker* AIR 1933 Pat, 687 For earlier Calcutta view, see *Nagendra Chandra* v *Amar Chandra* (1903) 7 CWN. 725, *Baisnabchandra* v *Ramdhon Dhor* (1907) 11 CWN, 139

(*i*) *Satyanarayana* v *Mallayya* (1935) 58 Mad, 735, 742 FB. *Krishna Chettiyar* v *Nagamoni Ammal* (1915) 39 Mad. 915

(*j*) *Narayana Rao* v *Venkatappayya* [1937] Mad, 299, *Maruthamuthu Naicker* v *Kadir Badsha* (1938) 1 MLJ, 378 FB, overruling *Nataraja Naicken* v *Ayyaswami Pillai* (1916) 32 MLJ, 354, *Thankammal* v. *Kunhamma* (1918) 37 MLJ, 369. On the death of the maker, a suit upon the note would lie only against his legal representatives But where the surviving coparceners are not parties, the action fails against them *Seshayya* v *Sanjivarayudu* (1934) 67 MLJ, 393

(*k*) (1933) 61 I.A., 90, 92, AIR 1934 PC, 4.

The case must be taken as deciding that the other members of the family would be liable for moneys borrowed upon promissory notes executed by a karta for the purpose of the family business; but it cannot be taken as deciding that the liability of the other members is upon the note itself.

The distinction pointed out in *Narayana Rao* v. *Venkatappayya* between a suit upon the debt and one on the note is real enough. The special presumptions and rules laid down in sections 118 to 122 of the Negotiable Instruments Act cannot be applied as against the other members who are not parties to the instrument. Accordingly consideration for a note cannot be presumed but will have to be proved by the persons suing upon the note. Nor can an indorsee of a note make the other members liable unless it is proved that as between the original parties there was consideration for the note (*l*). A recent Full Bench of the Madras High Court has held that the indorsee of a promissory note executed by the managing member of a joint Hindu family is limited to his remedy on the note unless the indorsement is so worded as to transfer the debt (*m*)

Insolvency of father.

§ 350. Where a Hindu father who with his sons constitutes a Mitakshara undivided family is adjudicated an insolvent, his undivided interest in the joint family property as well as his separate property vests in the Official Assignee under the Presidency-Towns Insolvency Act, 1909, or in the Court or the Receiver under the Provincial Insolvency Act, 1920 (*n*)

The undivided interests of the sons do not vest in the Official Assignee or Receiver on the father's insolvency (*o*). But the insolvent father's power to sell or mortgage the joint family properties for payment of his antecedent debts, not incurred for immoral or illegal purposes, vests in the Official Assignee or Receiver It is settled that this is by virtue of sec. 52, sub-sec. 2 (b) of the Presidency-Towns Insolvency

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(*l*) [1937] Mad, 299 The other members are liable only to the extent of their interest in the joint family property, unless they are contracting parties, *Mutsaddi Lal* v. *Sakhir Chand* (1936) 17 Lah. 311; *Sirikant Lal* v. *Sidheswari* (1937) 16 Pat., 441. A minor member is not personally liable *Bishen Singh* v. *Kidar Nath* (1921) 2 Lah., 159; *Jwala Prasad* v *Bhuda Ram* (1931) 10 Pat., 503.

(*m*) *Maruthamuthu Naicker* v. *Kadir Badsha* (1938) 1 M.L.J., 378 F.B.

(*n*) Sections 17 and 52 (2) (*b*) of the Presidency-Towns Insolvency Act, 1909, and section 28 of the Provincial Insolvency Act, 1920.

(*o*) *Sat Narain* v. *Behari Lal* (1925) 52 I.A., 22, 39, 6 Lah., 1 reversing (1922) 3 Lah., 329 F.B.

Act which provides that "the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge" also vests in the Official Assignee (*p*). It has been held by Courts in India that the power of the father to sell his son's interest for the payment of his proper debts is "property" within the meaning of sec 28 (2) of the Provincial Insolvency Act (*q*).

The Official Assignee, or the Court or the Receiver, as the case may be, has therefore the power to sell the joint family property for the payment of the debts of the insolvent father which are not immoral or illegal. But as the father's power of sale for his antecedent debts exists only so long as the joint family property is undivided, the capacity of the Official Assignee, or the Court or the Receiver, as the case may be, exists only so long as there has been no partition or even division in status It has accordingly been held that the Official Assignee or Receiver cannot sell the joint estate for the payment of the father's debts after a suit for partition had been instituted by any of the sons, which constitutes a severance in interest (*r*) Any unilateral declaration of intention to sever in interest equally puts an end to the power of the Official

(*p*) *Sat Narain* v *Das* (1936) 63 I A, 384, 17 Lah, 644 affirming (1926) 7 Lah, 376, *Official Assignee of Madras* v. *Ramachandra Ayyar* (1923) 46 Mad, 54, *Sellamuthu Servai, In re* (1924) 47 Mad, 87 F B, *Balusami Ayyar, In re* (1928) 51 Mad., 417 F.B.

(*q*) *Sankaranarayana* v *Rajamani* (1924) 47 Mad, 462, *Seetharama* v *Official Receiver, Tanjore* (1926) 49 Mad, 849 F B. ("Such power vests as 'property' within S. 2 d of the Act," per Venkatasubbarao J *ib* p 867), *Venkataramana* v. *Narayana* A I R. 1937 Mad, 556, *Bawandas* v *Chiene* (1922) 44 All, 316, *Allahabad Bank Ltd* v. *Bhagwan & Co.* (1926) 48 All., 343, *Om Prakash* v *Motiram* (1926) 48 All, 400, *Ramkulam* v *Kailash* (1930) 52 All, 493, *Anandprakash* v *Naraindas* (1931) 53 All, 239 F.B, *Khemchand* v *Narayindas* (1925) 6 Lah, 493, *Siddheswarnath* v *Deokali* (1934) 9 Luck, 304, A I R 1934 Oudh, 1, *Chairman, District Board, Monghyr* v *Sheoduttsingh* (1926) 5 Pat, 476, *Bholaprasad* v *Ramkumar* (1932) 11 Pat, 399, *Bishwanath* v *Official Receiver* (1937) 16 Pat, 60 F B, overruling *Nilkantha* v *Debendra* (1936) 15 Pat., 363, *Haridas* v *Lallubhai* (1931) 55 Bom, 110 disapproving the observations of Macleod, C J, in *Shripad* v *Basappa* (1925) 49 Bom, 785, 787; *Lalji* v *Bansidhar* A I R 1933 Nag, 373, *Fateh Chand* v. *Hiralal* A I R 1935 Nag, 193 The view expressed in the following cases that the son's share itself vests in the Official Assignee or Receiver is incorrect; *Amolak* v *Mansukh* (1924) 3 Pat, 857, *Fakirchand* v. *Motichand* (1883) 7 Bom, 438, *Rangayya* v *Thanickachala* (1896) 19 Mad., 74

(*r*) *Satnarain* v. *Das* (1936) 63 I A., 384, 17 Lah, 644 approving *Balusami Iyer, in re.* (1928) 51 Mad., 417 F.B. and disapproving *Sitaram* v *Beniprasad* (1925) 47 All., 263, *Krishnamurthy* v. *Sundara moorti* (1932) 55 Mad., 558.

Assignee or Receiver to sell the son's share for the father's debts. Similarly when the son's interest in the family property has been attached in execution of any decree against him, the power of the Official Assignee or Receiver to sell it for the payment of the debts of the insolvent father is gone (*s*). Though the power vested in the Official Assignee or Receiver is subject to the same limitations as in the case of the father, the death of the latter does not terminate it (*t*). The Official Assignee or Receiver is entitled to make the son's share liable for the father's debts, even if the father's power of sale did not vest in him, or after vesting in him. the power became extinguished by a division in status (*u*).

Insolvency of manager.

§ 350 A. Where the managing member of an undivided Hindu family is adjudicated an insolvent, his undivided interest in the joint family property as well as his separate property, just like that of any other coparcener, vests in the Official Assignee or Receiver. The question whether or not the power which a managing member, not being the father of the other coparceners, possesses to sell or mortgage the joint family property including the interests of the other coparceners for debts contracted for family purposes vests also, on his insolvency, in the Official Assignee or Receiver cannot be regarded as finally settled. It has been held in some of the cases that like the father's power to sell or mortgage for his antecedent debts, the managing member's power to sell for family debts vests in the Official Assignee or Receiver (*v*) This view would seem to derive no support from the relevant provisions of the Presidency-Towns Insolvency Act or the Provincial Insolvency Act or from the two decisions of the Privy Council in *Satnarain* v. *Behari*

(*s*) *Gopalakrishnayya* v. *Gopalan* (1928) 51 Mad., 342; *Official Receiver* v. *Arunachala* (1933) 66 M.L.J., 412 affirming A.I.R. 1931 Mad., 118, *Subbarao* v. *Official Receiver, Guntur* (1935) 42 M.L.W., 295, A.I R. 1935 Mad., 427, *Official Receiver* v. *Imperial Bank* (1936) 59 Mad, 296, *Kanyaka Parameswaramma* v. *Venkataramiah* (1936) 71 M.L.J., 294, *Palaniappa* v. *Palani* (1936) 71 M.L.J., 541; *Shripad* v *Basappa* (1925) 49 Bom., 785

(*t*) *Sitarama* v. *Official Receiver* (1926) 49 Mad., 849 F.B., *Baluswami, in re* (1928) 51 Mad, 417 F.B.; *Fakirchand* v. *Motichand* (1883) 7 Bom, 438; *Gorishankar* v. *Official Receiver* (1932) 13 Lah., 464.

(*u*) (1928) 51 Mad., 417, 439 F.B. *supra.*

(*v*) *Rangayya* v. *Thanikachala* (1896) 19 Mad., 74; *Nunnesetti* v *Chidaraboyina* (1903) 26 Mad., 214; *Official Receiver* v. *Ramachandrappa* (1929) 52 Mad, 246; *Sardamal* v. *Aranvayal* (1897) 21 Bom., 205; *Kanhaiya Lal* v. *Dabha Bari* A.I.R. 1933 Nag., 150; *Mt. Champa* v. *Official Receiver, Karachi* (1934) 15 Lah., 9.

Lal (*w*) and in *Satnarain* v. *Das* (*x*). In *Satnarain* v *Behari Lal*, it was held that the definition of 'property' in section 2 (d) of the Provincial Insolvency Act and in section 2 (e) of the Presidency-Towns Insolvency Act contemplates only an absolute and unconditional power of disposal and not a power which is conditional upon the debt of a Hindu father or manager being of a particular character (*y*) Neither the share of a son, nor the share of any other coparcener can itself vest in the Assignee The intention of the Statute is not that the property itself, viz, the share of the son or the coparcener vests in the Assignee The provisions of section 30 of 11 and 12 Vic Ch 21 refer to powers vested in any such insolvent which he might lawfully execute for his benefit and the Indian decisions under that Act cannot be regarded as good law under the provisions of section 52 (2) (b) of the Presidency Towns Insolvency Act or section 28 (2) read with section 2 (d) of the Provincial Insolvency Act The decision of the Privy Council that the father's power to sell or mortgage the son's interest in the joint estate vests in the Assignee is based on the language of s. 52 (2) (b) of the Presidency-Towns Insolvency Act, according to which the property of the insolvent shall comprise *inter alia* the capacity to exercise all such powers in or over or in respect of such property as might have been exercised by the insolvent *for his own benefit* There can be no doubt that the father's power under Hindu law to discharge his own debts is for his own benefit Whether the decision in *Satnarain* v *Das* applies to the insolvency of a father under the Provincial Insolvency Act is not altogether free from doubt Since the decision in *Satnarain* v *Das* (*z*) apparently approves of the decisions in *Bawan Das* v *Chiene* (*a*) and in *Sita Ram* v *Beni Prasad* (*b*) which were under the Provincial Insolvency Act, it may be taken as settling the law in favour of the view that the father's power of disposal vests in the Receiver under the Provincial Insolvency Act. There can however be little doubt that neither the provisions of s 28 read with sec 2 (d) of the Provincial Insolvency Act nor the words in section 52 (2) (b) of the Presidency Towns Insolvency Act

(*w*) (1925) 52 I A, 22, 6 Lah, 1
(*x*) (1936) 63 I A, 384, 17 Lah, 644.
(*y*) (1925) 52 I A, 22, 6 Lah., 1.
(*z*) (1936) 63 I A, 384, 17 Lah, 644
(*a*) (192[illegible]) 14 All, 316
(*b*) (19[illegible]) 47 All., 263.

support the view that a disposing power which a man may exercise for his own benefit will cover the case of the power of a managing member of a Hindu undivided family to dispose of the joint estate including the interest of the other coparceners for the discharge of debts contracted by him for family necessity or benefit. The words 'for his own benefit' have been taken from the corresponding English Bankruptcy Statutes and it has been held in England that a power that can only be exercised for the joint benefit of the bankrupt and another is not a power that can be exercised for his own benefit (*c*). That expression is confined to powers capable of being exercised for the benefit of the bankrupt alone. The karta's power is exercised not for his own benefit but for the benefit of himself and all the coparceners. His power of disposal is not an absolute and unconditional power, as is contemplated by the Insolvency Acts in India (*d*). Nor can such a power be held to be property within the meaning of either of the two Acts, for a power to dispose for the benefit of the family is a power in the nature of a trust and not a power for his own exclusive benefit (*e*).

Insolvency of coparcener

§ 350 B On the insolvency of a member of the coparcenary, his interest in the joint estate as well as his separate property vests in the Official Assignee or Receiver together with his right to a partition and both are available for the

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(*c*) *In re Taylor's Settlement Trusts* [1929] 1 Ch. 435, *In re Mathieson* [1927] 1 Ch. 283, *In the goods of Jane Turner* (1887) 12 P.D, 18. "The distinction between a power of appointment over property and property has always been recognised, and it has always been held that an unexercised power is not '*the property*' of the donee of the power The power exercises an effect upon property but *per se* it is not property". *Ex parte Gilchrist* (1886) 17 Q.B.D., 167, 521 cited in [1927] 1 Ch 283, 294 *supra*

(*d*) The dissenting judgment of Curgenven J. in (1929) 52 Mad, 246, 252 *supra* and that of Macleod C. J. in *Shripad* v. *Basappa* (1925) 49 Bom., 785, 787 would seem to be right. Bhashyam Ayyangar J. commenting upon the older statutes which are no longer in force in India, observed in *Nunna* v. *Chidaraboyina* (1903) 26 Mad, 214, 222 "If the question were *res integra* and not covered by a course of judicial decisions, I should entertain considerable doubt as to whether a power, which under the Hindu law, a managing member of a joint Hindu family has over the interests and shares of the junior members in the family property is a power vested in the insolvent which he can lawfully exercise for his benefit." So too, Devadoss J expressed his own view in strong terms in (1929) 52 Mad., 246, 258 though he felt himself bound by authority.

(*e*) See *Seetharama Chettiar* v. *Official Assignee, Tanjore,* (1926) 49 Mad., 849, 856 where the decision in *Nichols* v. *Nixey* (1885) 29 Ch. D., 1005 is distinguished.

payment of his debts (*f*). When the estate of a coparcener has vested in the Official Assignee under an insolvency, that estate would continue after his death and would not be defeated by survivorship (*g*).

(*f*) *Nunnesetti* v *Chidara Boyina* (1903) 26 Mad, 214, *Lashmanan* v *Srinivasa* A.I.R. 1937 Mad, 131, 71 M L J, 707. See also *Venkatarayudu* v *Sivaramakrishnayya* (1935) 58 Mad, 126

(*g*) *Fakirchand* v *Motichand* (1883) 7 Bom., 438, see also *Gori Shanker* v *Official Receiver, Delhi*, (1932) 13 Lah., 464.

CHAPTER X.

ALIENATIONS.

Division of subject.

§ 351. The law of alienation falls naturally into two divisions, according as the property in question is separate or joint. Where it is joint, the person who makes the alienation may do so in his character as father, as managing member of the family, or as an ordinary coparcener. Further the alienor may purport to dispose of more than his share in the entire property, or of a portion equal to, or less than, his share. Again the alienation may be voluntary or involuntary (*a*) Finally, the validity of an alienation as well as the mode in which the rights of alienees are worked out depends upon the law of the Mitakshara as administered in the different provinces or upon the law of the Dayabaga.

Alienation of separate property.

§ 352. A Hindu governed by the Mitakshara law has full powers of alienation over his separate property, that is, property which is not held by him jointly with others. He can sell or mortgage it, or alienate it by gift *inter vivos* or bequeath it by will either in favour of a stranger or relative. A father who is separated from his sons can, of course, dispose at pleasure, not only of his share, but of all property acquired after partition (a^1); since "one born previously to the distribution of the estate has no property in the share allotted to his father" (a^2). The same rule will apply as to self-acquisition, and on the same grounds, for it is not the coparcenary property of the co-heirs (*b*). In one passage *Vijnaneswara* expressly states that "the son must acquiesce in the father's disposal of his own self-acquired property" (*c*). In an earlier passage, however, he states that the father "is subject to the control of his sons and the rest, in regard to the immovable estate, whether acquired by himself, or inherited from his father or other predecessor," citing as an authority the text of *Vyasa* (*d*)

Of self-acquired immovable property.

(*a*) Sales, in execution, of the interests of the father or the managing member or of the coparceners have been dealt with in the last chapter as also the extent of the vesting on insolvency of their interests in the Official Assignee or Receiver. (See *ante* §§ 350, 350 A, 350 B). Alienations of impartible estates are discussed in Chapter XIX

(a^1) Narada, XIII, 43, Vivada Chintamani, 314; Mit., I, i, 30, see as to the early law, *ante* §§ 258-261.

(a^2) Mit, I, vi, 5.

(*b*) Mit., I, iv, 1, 2.

(*c*) Mit., I, v, 10

(*d*) Mit., I, i, 27.

Hence, there was a conflict of decisions as to whether self-acquired immovables are absolutely at the father's disposal or not (*e*) Eventually all the High Courts affirmed the father's absolute powers of disposition over his self-acquired immovable property (*f*) Finally in 1898, the Judicial Committee, on a review of all the texts and rulings, held that the father of an undivided family subject to the Mitakshara law, had full power of disposition over his self-acquired immovable property They said of the conflicting texts of the Mitakshara, "All these old text-books and commentaries are apt to mingle religious and moral considerations, not being positive laws, with rules intended for positive laws ... It is, as their Lordships think, the most reasonable inference that the passage in section 1, belongs to the former class of precepts, and those of sections 4 and 5 to the latter" (*g*) And similarly a man is at perfect liberty to dispose of property which he has inherited collaterally or as an heir to his maternal grandfather, or in such a mode that his descendants do not by birth acquire an equal interest in it (*h*) And whatever be the nature of the property, or the mode in which it has been acquired, a man without issue may dispose of it at his pleasure, as against his wife, or daughters, or his remote descendants, or his collateral relations (*i*)

(*e*) 1 Stra H L 261, 2 Stra H L 436 441, 450, *Tarachand* v *Reeb Ram* (1866) 3 Mad H C, 50, 55, *Mahasookh* v *Budree* (1869) 1 N W P, 153 (against the father's power) For the contrary opinion, see 1 W MacN, 2 cited with approval by the Privy Council but as to a different point, *Gopee Krist* v *Gunga Persaud* (1854) 6 M I A 53, 77, see too *Rungamma* v *Atchamma* (1852) 4 M I A, 1, 103

(*f*) *Muddun Gopal* v *Ram Buksh* (1863) 6 W R, 71, *Ojoodhya* v *Ramsarun*, *ib*, 77, *Raja Ram Tewary* v *Luchmun* (1867) 8 W R 15, *Sudanund* v *Soorjoo Monee* (1869) 11 W R, 436, *Bishen Perkash* v *Bawa* (1873) 20 W.R, 137 (P C) affrmg (1868) 10 W R, 287, *Nana Nurain* v *Huree Punth* (1862) 9 M I A. 96, 121, *Gangabai* v *Vamanaji* (1864) 2 Bom H C, 301, *Sital* v *Madho* (1877) 1 All, 394, *Subbayya* v *Surayya* (1887) 10 Mad, 251, *Nagalingam Pillai* v *Ramachandra Tevar* (1901) 24 Mad 429, *Somasundara Mudaliar* v *Ganga Bissen* (1905) 28 Mad, 386, see Vivada Chintamani, 76, 229, but see p 309

(*g*) *Rao Balwant Singh* v *Rani Kishori* (1898) 25 I A 51, 67 20 All, 267

(*h*) See *ante* § 275, *Jugmohandas* v *Mungaldas* (1886) 10 Bom 528, *Raj Kishore* v *Madan Gopal* (1932) 13 Lah, 491, *Muhammad Husain Khan* v *Kishna Nandan* (1937) 64 I A, 250, [1937] All, 655

(*i*) *Mulraz* v *Chalehani* (1838) 2 M I A, 54, *Nagluteehmee* v *Gopoo* (1856) 6 M I A, 309, *Narottam* v *Narsandas* (1866) 3 Bom H C (A C J), 6, *Ajoodhia* v *Kashee* (1872) 4 N W.P, 31 These were all cases of wills Of course, as regards collaterals, it is assumed that it has not been acquired by him in such a way as to make them coparceners with him in respect of it *Tayumana* v. *Perumal* (1864) 1 Mad H.C, 51.

After-born son.

On principle, it would seem that where a father separates from his sons reserving a share for himself, a son born after partition is a coparcener with him in the share allotted to the father; for, on his birth he acquires a right in the ancestral property allotted to the father. The father therefore can have no right to dispose of his share at his pleasure as against his after-born son (*j*). The last surviving coparcener in a family can at his will alienate the entire joint family property as at the moment of alienation it is his exclusive property.

Dayabhaga law.

Father's power.

§ 353. Under the Dayabhaga law, a father has absolute powers of alienation not only in respect of his separate property, but also in respect of ancestral property, whether movable or immovable; for, the sons have, according to that system, no interest by birth in the ancestral estate and can neither enforce a partition against the father nor control his management. The father is the absolute owner of the property. Jimutavahana took the view that the text of Vyasa prohibiting a sale or gift of ancestral immovable estate was intended to show a moral offence, but not to invalidate the sale or other transfer (*k*). In 1812, the Sudder Court held that a gift by a father of his whole estate, real and personal, ancestral and otherwise, to a younger son during the life of the elder, was valid though the gift of the whole ancestral landed property was immoral (*k*[1]). In 1831, the Supreme Court of Bengal

(*j*) Mit., I, 1, 30; I, VI, 5 But in *Kali Das* v. *Krishan Chandradas* (1869) 2 Beng L.R., 103, 120; a Dayabhaga case (see p 105, per Norman J.) dealing with the Mitakshara, a contrary view was expressed by Sir Barnes Peacock, C. J. His view would seem to be opposed to the fundamental principle of the Mitakshara law for, where a coparcener, not being a father, obtains a share at partition, any son born to him after partition will acquire a right by birth in that share as ancestral property. The only effect of the partition is to cut off the interests of the coparceners, whether sons or others who have entered into the partition. The statement in the Mitakshara, I, vi, 2 that "he obtains after the demise of his parents both their portions" emphasises the view that the other brothers are not entitled to that share which is reserved for the father after the death of the parents and does not involve the conclusion that the after-born son has no right to it during his life. For, if he is to get his father's share, it cannot be at the absolute disposal of the father. The view that he is a coparcener with his father is reinforced by Mit., I, vi, 7 which declares that where his father reunites, the after-born son is also a coparcener along with the others. This view derives support from the Smritichandrika, XIII, 3 to 11 (pp. 224-226) and the Vivada Ratnakara (XIV 2) cited in §420.

(*k*) Daya Bh., II, 28.

(*k*[1]) *Ramkoomar* v. *Kishenkunker* 2 S.D., 42 (52), F. MacN., 277. See also *Eshanchund* v. *Eshorechund* 1 S.D., 2, F. MacN., 356, 340; *Raujikrisno* v. *Taraneychurn ib*, 265, Appx., VIII; *Kumla* v. *Goroo* 4 S.D., 322 (410); but see the case of *Bhowanny Churn* v. *The heirs of Ram Kaunt* (1816) 2 S.D., 202 (259), F. MacN., 283, 294.

referred the question to the Judges of the Sudder Dewanny, who returned the following certificate: "On mature consideration of the points referred to us, we are unanimously of opinion that the only doctrine that can be held by the Sudder Dewanny Adaulut, consistently with the decisions of the Court, and the customs and usages of the people, is that a Hindu, who has sons, can sell, give, or pledge, without their consent, immovable ancestral property, situated in the province of Bengal, and that, without the consent of the sons, he can, by will, prevent, alter or affect their succession to such property" (*l*). This certificate has ever since been accepted as settling the law in Bengal, on the points to which it refers (*m*) and it makes no difference that the property is impartible, and descends by the rule of primogeniture (*n*)

Power of coparceners.

§ 351 As regards those who are coparceners in Bengal, that is brothers, cousins, or the like, who have taken property jointly by descent, or who have acquired it jointly, there is also no difficulty. In Bengal the right of every coparcener is to a definite share, though to an unascertained portion of the whole property. This right passes by inheritance to female or other relations, just as if it were already divided, and it may be disposed of by each male proprietor just as if it were separate or self-acquired property And such alienations will be taken into account as part of his share in the event of a partition. But, of course, no one can dispose of more than his share, unless by consent of the others, or for necessary purposes (*o*) And so an undivided coparcener may in Bengal lease out his own share, and put his lessee in possession (*p*)

(*l*) *Juggomohun* v *Neemoo*, Morton, 90, *Motee Lal* v *Mitterjeet* 6 S.D., 73 (85).

(*m*) See *per curiam*, *Ramkishore* v *Bhoobunmoyee* S D of 1859, 250, *affd* on review, S D of 1860, 1, 489.

(*n*) *Uddoy* v *Jadublal* (1880) 5 Cal., 113; *Narain* v. *Lokenath* (1881) 7 Cal., 461. Of course there never was any doubt as to the right of a Bengal proprietor to dispose of his property to the prejudice of relations other than his own issue, as for instance to deprive his widow of her share on a partition. *Debendra* v. *Brojendra Coomar* (1890) 17 Cal., 886, F MacN., 360; *Bhowanee* v. *Mt Taramunee* 3 S D., 138 (184); *Sheodas* v *Kunwul* 3 S D., 234 (313), *Tarnee Churn* v. *Mt. Dasee*, 3 S D, 397 (530).

(*o*) *Rajbulubh* v. *Mt Buneta* 1 S D., 44 (59), *Prannath* v. *Calishunkur* 1 S.D, 45 (60), *Anundchund* v *Kishen* 1 S D, 115 (152), see Mr. Colebrooke's notes *Ramkanhaee* v. *Bung Chund* 3 S.D., 17 (22), *Kounla* v *Ram Huree* 4 S.D., 196 (247), *Sakhawat* v. *Trilok* 5 S D, 338 (397); 2 W MacN, 291, 294, 296, 306, n., 313.

(*p*) *Ram Debul* v. *Miterjeet* (1872) 17 W R, 420; *Macdonald* v *Lalla Shib* (1874) 21 W.R., 17.

Mitakshara law. Father's power over ancestral movables.

§ 355. Next, as to the position of the father in a Mitakshara joint family. Apparently at one time, the father's power over ancestral movable property was larger than his power over ancestral immovable property. But by the time of Vijnanesvara, it is evident that the distinction had practically disappeared. For, Vijnanesvara himself does not claim for the father an absolute power of disposal over movables but only an "independent power in the disposal of them for indispensable acts of duty and for purposes prescribed by texts of law, as gifts through affection, support of the family, relief from distress and so forth" (*q*). The comment of Nilakantha on the text, "The father alone is master of all gems, pearls and corals" was that it signified the father's independence in wearing and using ear-rings, rings, etc., but not in giving or alienating them (*r*). The question of the father's power over movables arose incidentally in several cases, but for sometime never received a full discussion (*s*). In 1872, the Allahabad High Court held that ancestral movables were chargeable with maintenance, since whatever might be the father's power of disposal, they were not the subject of such separate ownership by him as to be free from the ordinary charges affecting Hindu inheritance (*t*). In *Lakshman Dada Naick* v. *Ramchandra*, a Hindu under the Mitakshara law died possessed of a large amount of ancestral movable property, leaving two undivided sons. By his will he bequeathed to one of his sons nearly the whole of the property. The Court, after reviewing the provisions of the Mitakshara and the Mayukha, and the previous decisions set aside the will. They held that it could not be valid either as

(*q*) Mit, I, 1, 27; Viramit, I, 30 (Setlur ed, 286), this is the view taken by Sir T. Strange (1 Stra. H.L., 20, 261) and Dr. Mayr. (p. 40). In the Punjab a father is said to be at liberty to make gifts of ancestral movable property without the consent of his male heirs, but not of immovable property, whether ancestral or self-acquired, Punjab Customary Law, II, 102, 163, 178. Mr. Colebrooke and Mr MacNaghten apparently considered that in regard to ancestral movables the power of the father is only limited by his own discretion and by a sense of spiritual responsibility (2 Stra. H.L., 9, 436, 441, 1 W. MacN., 3). The latter passage was cited with approval by the Privy Council in *Gopeekrist* v. *Gungapersaud* (1854) 6 M.I.A., 53, 77, but this point was not then before them.

(*r*) Vyav. Mayukha, IV, 1, 5.

(*s*) *Sudanund* v. *Bonomallee*, Marsh., 320, 2 Hay., 205; *Nallatambi* v. *Mukunda* (1868) 3 Mad. H.C., 455. See, too, per Turner, C.J., *Ponnappa* v. *Pappuvayyangar* (1882) 4 Mad., 47; *Rayacharlu* v. *Venkataramaniah* (1868) 4 M.H.C., 60; *Beer Pertab* v. *Maharaja Rajender* (1868) 12 M.I.A., 1, 38, *Pauliem Valloo* v. *Pauliem Soorya* (1877) 4 I.A., 109, 1 Mad., 252.

(*t*) *Shib Dayee* v. *Doorga Pershad* (1872) 4 N.W.P., 63.

a gift or as a partition. They said: "It would be impossible to hold a gift of the great bulk of the family property to one son, to the exclusion of the other, to be a gift prescribed by texts of law; for the texts which we next quote distinctly prohibit such an unequal distribution" (t^1). In *Baba* v *Timma*, a Full Bench of the Madras High Court held that an undivided Hindu father has no power except for purposes warranted by special texts to make a gift to a stranger of ancestral estate whether movable or immovable (u). In Allahabad also, it has been held that a gift by a father to one son of ancestral movable property to the detriment of the other, not for any of the special purposes specified by the Mitakshara, is invalid (v) The special purposes mentioned in the Mitakshara I. i. 27 as justifying the father's alienation of ancestral movables are, except in one instance, the same as those mentioned in I. i. 28 and I. i. 29 They are relief from distress, support of the family and indispensable duties, in other words, they refer to family necessity or benefit and include pious purposes It may therefore be taken as settled that, except in the matter of gifts through affection, the father has no greater power over ancestral movables than over ancestral immovables (u)

Gift of affection

The father's power to make gifts through affection within reasonable limits of ancestral movable property has been fully recognised (w) In *Ramalinga* v *Narayana*, the Privy Council held that 'the father has undoubtedly the power

(t^1) *Lakshman* v *Ramachandra* (1876) 1 Bom, 561, *affd* (1881) 7 I A., 181, 5 Bom 18, practically overruling the previous decision in *Ramchandra* v *Mahadev* 1 Bom H C. Appx, 76 (2nd ed), *acc Chatturbhooj* v *Dharamsi* (1885) 9 Bom, 438, *Jugmohan Das* v *Mangal Das* (1886) 10 Bom, 528, *Rathnam* v *Siva Subramania* (1892) 16 Mad., 353

(u) (1884) 7 Mad 357 F B

(v) *Nand Ram* v *Mangal Sen* (1909) 31 All, 359, see also *Bankey Lal* v *Nattha Ram* A I R 1929 All, 199

(w) *Jugmohandas* v *Mangaldas* (1886) 10 Bom., 528, 549, (1909) 31 All., 359, *supra*, see also per Ranade, J., in *Hanmantapa* v *Jivubai* (1900) 24 Bom, 547, 553, 554

(x) *Bachoo* v *Mankore Bai* (1907) 34 I A, 107, 31 Bom, 373 affirming (1905) 29 Bom, 51 (gift to daughter of Rs. 20,000 where the estate was worth 10 to 15 lakhs), *Hanmantapa* v *Jivubai* (1900) 24 Bom, 547 (gift of movables worth Rs. 2,000 out of ancestral estate worth Rs. 23,000 to a widowed daughter-in-law), *Madhusoodhan* v *Ramji* (1920) 5 P L J, 516 (ante-nuptial provision for maintenance of daughter and son in-law), but see *Kamakshi* v. *Chakrapani* (1907) 30 Mad., 452 (gift of considerably large portion of property to daughter, held invalid), *Jinnappa* v *Chimmava* (1935) 59 Bom., 459, 462. It has been held that gifts of affection of immovable property can be made. *Ramasami* v. *Vengiduswami* (1899) 22 Mad., 113. See *infra* § 370.

under the Hindu law of making, within reasonable limits, gifts of movable property to a daughter" (x^1). But such gifts through affection of joint family property when they are by will, are invalid since the right of the coparceners vests by survivorship at the moment of the testator's death and there is accordingly nothing upon which the will can operate (y). In *Subbarami* v. *Ramamma*, the Madras High Court held that a will made by a Hindu father bequeathing certain family properties for the maintenance of his wife was invalid as against his infant son though it would have been a proper provision if made by him, during his life-time (z). This may be in a sense valid enough. There is however no compelling logic, but great inconvenience, in not regarding wills "as gifts to take effect upon death at least as to the property which they can transfer and the persons to whom it can be transferred" (a). The contrary would be in accordance with the general principle of jurisprudence recognised in the *Tagore* case as applicable to Hindu law.

By will.

§ 356. Far more important is the father's power to alienate the family property for the discharge of his antecedent debts, which not being illegal or immoral the sons are under a pious obligation to discharge. The principle of the Mitakshara law that sons have independent coparcenary rights in the ancestral estate and that the father is subject to their control in the alienation of the family property has been almost destroyed by the principle which has been established by the decisions that the sons cannot set up their rights against their father's alienation for an antecedent debt or against his creditors' remedies for their debts, if not tainted with immorality (b). The attempt made by Lord Shaw in *Sahu Ram's* case (c) to reconcile the two conflicting principles by restricting and postponing the son's liability for the father's debts till after the father's death has eventually proved unsuccessful. The law is now settled by the decision of the

Right of father to sell to satisfy his own debts.

(x^1) (1922) 49 I.A., 168, 173, 45 Mad., 489 (gift to daughter of Rs. 8,000).

(y) *Lakshman Dada Naik* v. *Ramchandra* (1881) 7 I A, 181, 5 Bom., 48, 62, following *Suraj Bunsi's* case (1879) 6 I.A., 88, 5 Cal., 148; *Vitla Butten* v. *Yamenamma* (1874) 8 M.H.C.R., 6; *Lakshmi* v. *Subramania* (1889) 12 Mad, 490 (will treated as ante-adoption agreement); *Parvatibai* v. *Bhagwant Viswanath* (1915) 39 Bom., 593.

(z) (1920) 43 Mad., 824 distinguishing *Appan Patra* v. *Srinivasa* (1917) 40 Mad., 1122 as a case of a gift made with the consent of the coparcener; see also *Bhikhabai* v. *Purshotham* (1926) 50 Bom., 558.

(a) *Tagore* v. *Tagore* (1872) I.A. Supp., 47, 69.

(b) *Nanomi Babuasin* v. *Modun Mohun* (1886) 13 I.A., 1, 13 Cal., 21, 35; *Girdharee Lal* v. *Kantoo Lal* (1873) 1 I.A., 321; *ante* § 330.

(c) *Sahu Ram* v. *Bhup Singh* (1917) 44 I.A., 126, 39 All., 437.

Privy Council in *Brij Narain* v. *Mangla Prasad* (*d*) and the clear tendency of the courts is to recognise an alienation for an antecedent debt of the father, not being illegal or immoral, as on the same footing as an alienation for a family necessity. The doctrine of the father's power to alienate for his antecedent debt has received a great extension by the recognition of the involuntary transfer or assignment of that power on his insolvency to the Official Assignee or Receiver (*e*).

Authority of father.

§ 357 Except in the matter of gifts through affection and of alienations for antecedent debts and in the matter of his power to effect a partition amongst his sons (*f*), there is under the Mitakshara law no distinction between a father and his sons (*g*). They are simply coparceners (*h*). So long as he is capable the father is the head of the family He is in all cases naturally and in the case of infant sons necessarily the manager of the joint family estate (*i*). He is entitled to the possession of the joint property (*j*). He directs the concerns of the family within itself and represents it to the world (*k*). The father has no greater power over coparcenary property than any other managing member who is not the father. Where the property is ancestral each son acquires on his birth an interest equal to that of his father. If it is acquired by joint labour or joint funds, then, from the very nature of the case, all stand on the same footing. And in the same manner his grandsons and great-grandsons severally take an interest on their respective births in the rights of their fathers who represent them, and therefore in unascertained shares of the entire property. It is, therefore, an established rule that a father can make no disposition of the joint property which will prejudice his issue, unless he obtains their assent, if they are able to give it, or unless there is

Restricted by rights of issue.

(*d*) (1924) 51 I A, 129, 46 All, 95.

(*e*) This subject has been fully discussed in the last chapter

(*f*) *Alluri Venkatapathi Raju* v *Dantaluri Venkatanarasimharaju* (1936) 63 I A, 397, 401, [1937] Mad, 1, 16

(*g*) *Sahu Ram Chandra* v. *Bhup Singh* (1917) 44 I A, 128, 39 All., 437.

(*h*) See *per curiam*, *Suraj Bunsi* v *Sheo Prashad* (1879) 6 I.A., 88, 100; *Palanivelappa* v. *Mannaru* (1865) 2 Mad. H C., 416; *Rayacharlu* v. *Venkataramaniah* (1868) 4 Mad., H. C, 60; *Shudanund* v. *Bonomalee* (1866) 6 W.R, 256, *Lalti Kuar* v. *Ganga* 7 N-W.P., 261, 279.

(*i*) (1879) 6 I A., 88, 5 Cal, 148 *supra*, *Venkatanarayana* v. *Somaraju* [1937] Mad., 880 F.B.

(*j*) *Bhaskari Kasavarayadu* v. *Bhaskaram Chalapatirayadu* (1908) 31 Mad., 318.

(*k*) *Baldeo* v. *Sham Lal* (1879) 1 All., 77; [1937] Mad., 880 F.B. *supra.*

some established necessity or moral or religious obligation to justify the transaction. Where his acts are questioned, he has not even the benefit of a presumption in his favour that they were necessary or justifiable (*l*). And it makes not the least difference whether the disposition is in favour of a stranger, or one of the family themselves (*m*). The test is, whether it is an infringement upon their vested rights (*n*).

Manager's authority.

§ 358. The powers of a managing member of a joint family are governed exactly by the same principles as those applicable to a father. Of course, his personal debts are not binding upon his coparceners as those of a father are upon his sons and therefore alienations made by him to pay such debts do not bind them. The text of Vyasa cited in the Mitakshara states the extent of the powers of the managing member, whether a father or not, to dispose of family property. "Even a single individual may conclude a donation, mortgage, or sale of immovable property, during a season of distress, for the sake of the family, and especially for pious purposes". Vijnanesvara's explanation of this text is: "While the sons and grandsons are minors incapable of giving their consent to a gift and the like; or while brothers are so and continue unseparated; even one person, who is capable may conclude a gift, hypothecation or sale of immovable property, if a calamity affecting the whole family require it, or the support of the family render it necessary, or indispensable duties such as the obsequies of the father or the like, make it unavoidable" (*o*). This explanation evidently limits the authority

Mitakshara law.

(*l*) *Gurusami* v. *Ganapathia* (1882) 5 Mad., 337; *Subramanya* v. *Sadasiva* (1885) 8 Mad., 75, *Chinnayya* v. *Perumal* (1890) 13 Mad., 51.

(*m*) *Baba* v. *Timma* (1884) 7 Mad., 357 F.B. (stranger); *Riasat Ali* v. *Iqbalrai* (1935) 16 Lah., 659 (stranger); *Ganga* v. *Pirthi Pal* (1880) 2 All., 635 (daughter's father-in-law), *Uma Shankar* v. *Mahabir Prasad* A.I.R. 1929 All., 854 (distant relation); *Sohan Lal* v. *Peare Lal* A.I.R., 1929 All., 865 (stranger); *Ponnusami* v. *Thatha* (1886) 9 Mad, 273 (daughter's children); *Rayakkal* v. *Subbanna* (1892) 16 Mad, 84, (gift to wife to the prejudice of a minor son invalid); *Subbarao* v. *Ademma* (1924) 47 M.L.J., 465 (widow and mother); *Sridhara Rao* v. *Srinivasarao* A.I.R. 1934 Mad., 81 (daughter's son); *Picha Pillai* v. *Kathaperumal* A.I.R. 1934 Mad., 356 (nephew); *Sithamahalakshmamma* v. *Kotayya* (1936) 71 M.L.J., 259 (daughter's daughter); *Ningareddi* v. *Lakshmawa* (1902) 26 Bom., 163 (concubine); *Rab Prasad* v. *Chhote Munwan* A.I.R., 1937 Oudh., 29 (avaruddhastree).

(*n*) *Raja Ram Tewari* v. *Luchmun* (1867) 8 W.R., 15; *Ganga Bisheshar* v. *Pirthi* (1880) 2 All., 635; *Bala* v. *Balaji* (1898) 22 Bom., 825; (1892) 16 Mad., 84 *supra*. For instance, where the father had given a lease of land to the family dewan as a reward for faithful services, during the minority, and therefore without the consent of his sons, the lease was set aside: *Pratabnaranan* v. *Court of Wards* 3 B.L.R. (A.C.J.) 21, 11 W.R., 343.

(*o*) Mit., I, i, 28, 29.

of the managing member to cases where the other coparceners are minors and incapable of giving their consent. But in order to bind the adult coparceners their express consent is required. This interpretation is confirmed by what the Mitakshara says in the succeeding paragraph: "Amongst unseparated kinsmen, the consent of all is indispensably requisite, because no one is fully empowered to make an alienation, since the estate is in common" (*p*). Accordingly it was held in Bengal that the consent of those who are of age cannot be dispensed with, even where the transaction is for the benefit of the family (*q*). The contrary, however, was held in other cases, and seems to have been Mr. Colebrooke's opinion (*r*). The whole current of authorities, however, supports the view that the manager of the family property has an implied authority to do whatever is best for all concerned, and that no individual can defeat this power merely by withholding his consent (*s*). For, where family necessity exists, that necessity rests upon the coparceners as a whole and it is proper to imply a consent of all of them to that act of the one which such necessity has demanded (*t*). His authority, however, only extends to the family property. His contracts within his authority bind the entire family property, but they impose no personal liability upon any who are not parties to the contract or upon their separate property (*u*).

(*p*) Mit, I, 1, 30.

(*q*) *Muthoora* v. *Bootun* 13 W R., 30, acc., 1 Stra H L, 20.

(*r*) *Juggurnath* v. *Doobo* (1870) 14 W R, 80, 2 Stra. H.L., 340, 348, *Bishambhur* v *Sudasheeb* (1864) 1 W R, 96, per Muttusami Ayyar, J, *Ponnappa* v *Pappuvayyangar* (1882) 4 Mad, 1, 18 F B

(*s*) *Miller* v. *Runga Nath Moulick* (1886) 12 Cal, 389 (where all the authorities are reviewed by Mitter J.), *Chhotiran* v *Narayandas* (1887) 11 Bom, 605, *Mudit Narayan Singh* v *Ranglal Singh* (1902) 29 Cal, 797, *Biswanath Pershad Mahta* v *Jagdip Narain Singh* (1913) 40 Cal., 342, *Sahu Ramchandra* v. *Bhup Singh* (1917) 44 I A, 1, 39 All, 437 In *Gharibullah* v. *Kholak Singh* (1903) 30 I A, 165, 169, 25 All., 407, it is said: "The karta of an undivided Mitakshara family, with the concurrence of the adult members of the family can mortgage the family property for family purposes in case of necessity so as to charge the property as against all the members of the family". The concurrence of all the adult members is a conclusive presumption of law; *Pratap Narain* v. *Shiamlal* (1920) 42 All, 264, *Karamchand* v. *Ramlabhaya* (1926) 7 Lah, 476, see also *Shamsunder* v *Achankunwar* (1898) 25 I A, 183, 192, 21 All., 71 (case of a widow)

(*t*) *Sahu Ram* v *Bhup Singh* (1917) 44 I A., 126, 130, 39 All., 437, 443.

(*u*) Even where they have not joined in the execution of the contract, they may be personally liable where they specially authorised the manager to enter into such transactions on their behalf, *Chalamayya* v. *Varadayya* (1899) 22 Mad., 166.

Dayabhaga law.

§ 359. The powers of a managing member under the Dayabhaga law to contract debts or to make alienations for purposes of family necessity or benefit are the same as those of a manager under the Mitakshara law (*v*).

Mitakshara text discussed.

§ 360. The power of a managing member to make an alienation is confined according to the Mitakshara to three purposes: (1) in the time of distress (*apatkale*); (2) for the sake or benefit of the family (*kutumbarthe*), and (3) for pious purposes (*dharmarthe*). The meaning of the terms is explained by the Mitakshara: "'time of distress' refers to a distress which affects the whole family; 'for the sake of the family' means 'for its maintenance'; and 'pious purposes' are described as indispensable acts of duty such as the obsequies of the ancestors" (*w*). According to Patkar, J., "the explanation of the text of Brihaspati by the Mitakshara is by no means to be considered as exhaustive and may be treated as illustrative and interpreted with due regard to the conditions of modern life" (*x*). The first of the above purposes would be a case of legal necessity. The second would cover both family necessity and benefit. It is fairly clear from the Mitakshara that the term maintenance or support of the family (*poshana*) would include not only transactions which are absolutely necessary for its bare maintenance but also transactions positively beneficial to the family in the sense that they are clearly calculated to raise its economic level and standard of life.

Family necessity or benefit.

§ 361. It has long been settled that the managing member of a joint Hindu family has power to alienate for value joint family property either for family necessity or for the benefit of the estate so as to bind the interests of all the undivided members of the family whether they are adults or minors. The powers of the manager of a Hindu family were considered by the Privy Council in a case which is always referred to as

(*v*) *Dwarkanath* v. *Bungshichandra* (1905) 9 Cal. W.N., 879; *Bemola* v. *Mohun* (1880) 5 Cal., 792; *Sukhadakanta Bhattacharjya* v. *Jogineekanta* (1933) 60 Cal., 1197, *Sanyasicharan Mandal* v. *Krishnadhan* (1922) 49 I.A., 108, 49 Cal., 560 (a Dayabhaga case); *Benares Bank Ltd.* v. *Hari Narain* (1932) 59 I.A., 300, 307, 54 All., 564.

(*w*) Mit., I, 1, 28, 29.

(*x*) *Ragho* v. *Zaga* (1929) 53 Bom., 419, 426; see also *Nagindas* v. *Mahomed* (1922) 46 Bom., 312, 316.

Hunoomanpersaud's case.

settling the law on the subject (*y*) That was the case of a mother managing as guardian for an infant heir. Of course, a father, and head of the family, might have greater powers, but could not have less, and it has been repeatedly held that the principles laid down in that judgment apply equally to a father, or other coparcener who manages the joint family estate (*y*[1]). Their Lordships said (p. 423): (1) "The power of the manager for an infant heir to charge an estate not his own is, under the Hindu law, a limited and qualified power. It can only be exercised rightly in case of need, or for the benefit of the estate" (*y*[2]). (2) "But where, in the particular instance, the charge is one that a prudent owner would make, in order to benefit the estate, the *bona fide* lender is not affected by the precedent mismanagement of the estate The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded".

"But, of course, if that danger arises, or has arisen, from any misconduct to which the lender is or has been a party, he cannot take advantage of his own wrong, to support a charge in his own favour against the heir, grounded on a necessity which his wrong has helped to cause, therefore the lender in this case, unless he is shown to have acted *mala fide*, will not be affected, though it be shown that, with better management, the estate might have been kept free from debt" (*y*[3]).

(*y*) *Hunoomanpersaud* v. *Mt Babooee* (1856) 6 M.I.A. 393 The same rules apply to the case of one who is *de facto*, though not *de jure* manager of an endowment *Sheo Shanker* v. *Ram Shewak* (1897) 24 Cal, 77 As to the powers of *de facto* guardians of minors, see *Krishnachandra Choudhury* v. *Ratan Rampal* (1915) 20 C.W.N. 645; *Seetharamanna* v. *Appiah* (1926) 49 Mad, 768, *Tulsidas* v. *Vaghela Raisinghji* (1933) 57 Bom, 40 F.B. overruling *Limbaji* v. *Rahi* (1925) 49 Bom, 576, *Mohanund Mondal* v. *Nafur Mondul* (1899) 26 Cal, 820

(*y*[1]) *Gharibullah* v. *Kholaksingh* (1903) 30 I.A., 165, 25 All, 407; *Gajadhar* v. *Ambikaprasad* (1925) 47 All, 459, P.C., *Krishn Das* v. *Nathu Ram* (1927) 54 I.A, 79, 49 All, 149, *Benares Bank Ld* v. *Hari Narain* (1932) 59 I.A, 300, 307, 54 All, 564

(*y*[2]) *Benares Bank* v. *Hari Narain* (1932) 59 I.A. 300 54 All, 564, *Krishn Das* v. *Nathu Ram* (1927) 54 I.A., 79, 49 All, 149, *Hemraj* v. *Nathu* (1935) 59 Bom, 525 F.B., *Jagat Narain* v. *Mathurdas* (1928) 50 All., 969 F.B., *Amrej* v. *Shambhu* (1933) 55 All 1 F.B., *Ram Nath* v. *Chiranji Lal* (1935) 57 All, 605 F.B., *Mrs Johnston* v. *Gopalsingh* (1931) 12 Lah, 546

(*y*[3]) *Partab Bahadur* v. *Chitpalsingh* (1892) 19 I.A, 33 (the earlier stage is 11 I.A, 211), *Neki Ram* v. *Kure* A.I.R., 1928 Lah., 526 (where the lender connives at the borrower's extravagance), *Harnamsingh* v. *Jagirsingh* A.I.R. 1927 Lah, 46 (borrower, a notorious spendthrift).

(3) "Their Lordships think that the lender is bound to enquire into the necessities for the loan, and to satisfy himself, as well as he can, with reference to the parties with whom he is dealing, that the manager is acting in the particular instance for the benefit of the estate" (*z*).

(4) "But they think that if he does so enquire, and acts honestly, the real existence of an alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of his charge (*a*), and they do not think that under such circumstances he is bound to see to the application of the money "(*b*).

"It is obvious that money to be secured on any estate is likely to be obtained upon easier terms than a loan which rests on mere personal security, and that, therefore, the mere creation of a charge securing a proper debt, cannot be viewed as improvident management; the purposes for which a loan is wanted are often future, as respects the actual application, and a lender can rarely have, unless he enters on the management, the means of controlling and directing the actual application. Their Lordships do not think that a *bona fide* creditor should suffer when he has acted honestly and with due caution, but is himself deceived." (*b*[1]).

An additional rule was laid down by the Privy Council in *Krishn Das* v. *Nathu Ram:* "Where the sale has been held to be justified but there is no evidence as to the application of a portion of the consideration, a presumption arises that it has been expended for proper purposes and for the benefit of the family" (*b*[2]). Where the transferee or lender had

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(*z*) *Lala Amarnath* v. *Achankunwar* (1892) 19 I A, 196, 14 All., 420, see *Nowruttun* v. *Balu Bouree* 6 W R., 193; *Bhudaram* v. *Udai Narain* A.I.R. 1932 Pat., 12 He is not bound to inquire into the causes which produced the necessity. *Mohabeer* v. *Joobha* (1869) 16 W.R., 221, *Sheoraj* v *Nukchedee Lall* (1867) 14 W R, 72.

(*a*) (1927) 54 I A., 79, 49 All, 149 *supra*, *Sri Thakur Ramkrishna* v. *Ratanchand* (1931) 58 I.A, 173, 53 All., 190; *Chintamani* v. *Satyabadi* (1922) 1 Pat., 715; *Rodha Ram* v. *Amarchand* (1923) 4 Lah., 208, *Soorendro* v. *Nundun* (1874) 21 W.R, 196; *Ratnam* v. *Govindarajulu* (1877) 2 Mad., 339.

(*b*) (1874) 21 W.R, 196 *supra*, *Krishn Das* v. *Nathu Ram* (1927) 54 I.A., 79, 49 All., 149; *Medai Dalavoi* v. *Nainarthevan* (1922) 27 C.W.N., 365 P.C.; *Tula Ram* v. *Tulshi Ram* (1920) 42 All., 559; *Raghubans* v. *Indrajit* (1923) 45 All., 77, *Johnston* v. *Gopalsingh* (1931) 12 Lah., 546, *Khemchand* v *Jaswantrai* A.I.R. 1934 Lah, 615; *Durgaprasad* v. *Jewdharsingh* (1935) 62 Cal., 733, 744; *Lalji* v. *Muchkund* A.I.R. 1934 Pat., 699.

(*b*[1]) The principle of this case was followed and applied by the Privy Council to the management of a family business in *Sri Thakur Ramkrishna* v. *Ratanchand* (1931) 58 I.A., 173, 53 All., 190.

(*b*[2]) (1926) 54 I.A., 79, 88, 49 All., 149 following *Masit Ullah* v. *Damodar Prasad* (1926) 53 I.A., 204, 48 All., 518; *Ram Sunder* v. *Lachhmi Narain* (1929) 57 M.L.J., 7 (P.C.).

the control and actual application of the money, the rule is otherwise and in such a case he is bound to see that the money raised was properly applied (b^3).

The rule as to *bona fide* inquiry laid down in *Hanoomanpersaud's* case has been embodied in section 38 of the Transfer of Property Act. That section since the amending Act 20 of 1929 has become applicable to Hindus. It runs thus. "Where any person, authorised only under circumstances in their nature variable to dispose of immovable property, transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith" (b^4). The rule laid down in *Hanoomanpersaud's* case as to sufficiency of a reasonable inquiry by the transferee of the existence of a necessity to support an alienation applies as well in the case of simple loans or other transactions which are not transfers of property (b^5).

Cases to which principle applies.

§ 362. The principles above laid down as applicable to the guardian of an infant (c) and the managing member of a joint Hindu family have been also applied to widows or other

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(b^3) *Raja Hurronath* v *Rundhirsingh* (1890) 18 I A, 1, 18 Cal., 311, *Ramasami Chetti* v *Mangatharasu* (1895) 18 Mad, 113, 118, 121 (widow)

(b^4) In *Maharaja of Bobbili* v *Zamindar of Chundi* (1912) 35 Mad, 108, 112, it was said, "If section 38 of the Transfer of Property Act is deemed to enact a rule as to reasonable inquiry in excess of what is required by the Privy Council in *Hunoomanpersaud's* case, it cannot override the Hindu law settled by the Privy Council". This no longer holds good as the section is now directly applicable to Hindus In *Anant Ram* v. *Collector of Etah* (1918) 40 All, 171 (P.C), section 38 of the Transfer Property Act was acted upon by Lord Buckmaster as to the reasonable care which the alienee must take to ascertain the circumstances.

(b^5) (1912) 35 Mad, 108 *supra* following *Kotta Ramaswami* v. *Seshamma* (1881) 3 Mad, 145, *Dhapo* v. *Ramchandra* (1935) 57 All., 374.

(c) (1874) 21 W R, 196 *supra*, (1917) 44 I A, 126, 39, All, 437 *supra*. But see *Dhapo* v. *Ramchandra* (1935) 57 All., 374 as to the difference between the powers of a manager of a family and those of a guardian of an infant.

women, holding the limited estate of a Hindu woman, in their dealings with it (*d*), to shebaits of idols or managers or dharmakartas of Hindu temples or religious endowments, and to heads of mutts (*e*). But a distinction between the managing member of a Hindu family and the shebait of a temple or the dharmakarta of a Hindu religious endowment exists and is real. The analogy between the manager of a joint family and the manager of a religious endowment which has been recognised in many cases seems to be neither complete nor fruitful. Property devoted to religious purposes is *extra commercium* and is, as a rule, inalienable. Ordinary joint family property is fully alienable if all the coparceners are adults and consent to the alienation. And the positions of a trustee and of a manager are not exactly identical. The question of necessity or benefit must necessarily vary not only in degree but according to circumstances in the two cases.

"Benefit of the estate". Its meaning.

§ 363. Ever since the judgment in *Hunooman Persaud's* case, the terms 'necessity' and 'benefit to the estate' have been used side by side, and the Courts are not agreed as to the meaning to be given to the expression 'benefit to the estate'. Anything which is a necessity to the estate will of course be of benefit to it. But the term 'benefit' would seem to import something positive done to enlarge or improve the estate, not a merely negative act such as the discharge of debts or the averting of disaster. In fact, almost all the decided cases relate to acts which were clearly dictated by necessity, to secure the preservation of the estate. The latest authoritative pronouncement of the Privy Council on the subject is thus expressed by Lord Atkinson in *Palaniappa* v. *Devsikamony:* "No indication is to be found . . . . as to what is, in this connection, the precise nature of the things to be included under the description 'benefit to the estate'. It is impossible, their Lordships think, to give a precise definition of it

(*d*) *Kameswar* v. *Run Bahadur* (1881) 8 I.A., 8, 6 Cal., 843, 847, *Amarnath* v. *Achan Kuar* (1892) 19 I.A., 196, 14 All, 420, *Maheshar Baksh* v. *Ratansingh* (1896) 23 I A., 57, 23 Cal., 766, *Bonomali* v. *Jagatchandra* (1905) 32 I A., 80, 32 Cal., 669; *Anant Ram* v *Collector of Etah* (1918) 40 All, 171, 175 P.C.

(*e*) *Prosunno Kumari* v. *Golabchand* (1875) 2 I.A., 145, *Konwar Doorganath* v. *Ramchunder* (1877) 4 I.A., 52, 63, 2 Cal, 341; *Abhiram Goswami* v. *Shyamacharan Nandi* (1909) 36 I.A., 148, 36 Cal., 1003; *Palaniappa* v. *Devasikamony* (1917) 44 I.A., 147, 40 Mad., 709; *Murugesam Pillai* v. *Manickavasaka* (1917) 44 I.A., 98, 40 Mad., 402; *Daivasikhamani* v. *Periyananchetty* (1936) 63 I.A., 261, 274-275, 59 Mad., 809. As to the powers of the manager for a lunatic, see *Goureenath* v. *Collector of Monghyr* (1867) 7 W.R., 5; *Kanti Chunder* v. *Bisheswar* (1898) 25 Cal., 585.

applicable to all cases, and they do not attempt to do so. *The preservation, however, of the estate from extinction, the defence against hostile litigation affecting it, the protection of it or portions of it from injury or deterioration by inundation, these and such like things would obviously be benefits.* The difficulty is to draw the line as to what are, in this connection, to be taken as benefits and what not". It is obvious that all the acts enumerated in this passage would be dictated by necessity in the strict sense. Later on, when their Lordships come to deal with a suggested benefit to the estate it is only to dismiss it as unwarranted. "No authority has been cited for giving any countenance to the notion that a shebait is entitled to sell *debottar* lands solely for the purpose of so investing the price of it as to bring in an income larger than that derived from the probably safer and certainly more stable property, the *debottar* land itself" The case referred to the latitude of alienation permissible to a shebait in charge of *debottar* lands. But it was argued and decided on the footing that the same principles were applicable as those which regulate the rights of alienation possessed by the manager of joint family property (*f*).

Conflict of judicial opinion

Subsequent to this decision, as to what is meant by the expression 'for the benefit of the estate', there has been a conflict of judicial opinion According to one view, unless the transaction is of a defensive character in the sense that it is calculated to protect the estate from threatened danger or destruction, it is not for the benefit of the estate (*g*). According to the other view, it is competent to the managing member to alienate ancestral property when the transaction is for the positive benefit of the family and is such as a prudent owner would carry out with the knowledge available to him at the time (*h*) Differing from the Allahabad High

(*f*) (1917) 44 I A, 117, 40 Mad, 709 (a case which dealt with the validity of a permanent lease given by the dharmakarta or manager of a temple, of lands comprised in a religious endowment) See also on this point, *Krishna Chandra* v *Ratan Ram* (1916) 23 C L J, 432; *Ram Bilas Singh* v *Ramyad Singh* (1920) 5 P L J, 622

(*g*) *Doraisami Ayyar* v. *Venkatarama* (1921) 13 M L W., 618; *Vishnu* v. *Ramchandra* (1923) 25 Bom L R, 508, A I R. 1923 Bom., 453, *Nataraja* v *Lakshmana* A I R, 1937 Mad., 195, *Bhagwan Das* v. *Mahadeo* (1923) 45 All, 390, *Shankar* v *Bechu Ram* (1925) 47 All., 381, *Inspector Singh* v *Kharak Singh* (1928) 50 All., 776.

(*h*) *In re Krishnaswami Doss Reddi* (1912) M.W N, 167, *Ganesha* v *Amritasami* (1918) M W N., 892, *Sellappa* v *Subban* [1937] Mad., 906, *Jagat Narain* v *Mathura Das* (1928) 50 All, 969 F B., dissenting from *Bhagwan Das* v. *Mahadeo* (1923) 45 All., 390; *Shankar Sahai* v *Bechu Ram* (1925) 47 All., 381 and *Inspector Singh* v. *Kharak Singh*

Court, a Full Bench of the Bombay High Court has taken an intermediate view and holds that the manager of a minor's estate under the Hindu law is not entitled to sell the minor's property merely for the purpose of enhancing the value of that estate, or for increasing the minor's income, but that it is not correct to say that no transaction can be for the benefit of the minor which is not of a character to protect or preserve his property (*i*).

Legal necessity.

§ 364. Necessity is not to be understood in the sense of what is absolutely indispensable but what according to the notions of a Hindu family would be regarded as reasonable and proper (*j*). On the whole it would seem that a managing member has authority to do all acts which are clearly reasonable and proper for the realisation, protection or benefit of the joint estate and for the protection and support of all the members of the joint family as well as what is required for indispensable acts of duty (*j*[1]). The difficulty is not so much one of principle, as of its application to the protean nature of circumstances as they present themselves to different minds. It is perfectly clear that the preservation of the estate from extinction, the defence against hostile litigation affecting it, the protection of it or portions from injury or deterioration by inundation are circumstances which would justify an alienation, whether they are regarded from the point of view of legal necessity or benefit to the estate (*j*[2]).

Necessity justifying sale.

§ 365. *Hunooman Persaud's* case was one of mortgage and not of sale. But it is evident that the same principles would apply in either case (*k*). A prudent manager should, of course, where it is possible, pay off a debt from savings rather than by a sale of part of the estate (*l*), and it might be

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(1928) 50 All., 776; *Amrejsingh* v *Shambhusingh* (1933) 55 All., 1 F.B.; *Markandey Singh* v *Badansingh* A I R. 1933 All, 568; *Sohanlal* v. *Zorawarsingh* A I.R. 1937 All, 219; *Shaikh Jan* v. *Bikoo* (1928) 7 Pat., 798; *Ralla Ram* v. *Gobardhandas* A.I.R. 1930 Lah., 679; *Rajsingh* v. *Seth Kishanlal* A.I.R. 1935 All, 299; *Ram Nath* v. *Chiranjilal* (1935) 57 All., 605 F.B.

(*i*) *Hemraj* v. *Nathu* (1935) 59 Bom., 525, 543, F.B.

(*j*) *Kamesvara Sastri* v. *Veeracharlu* (1911) 34 Mad., 422; *Vembu* v. *Srinivasa* (1912) 23 M L.J., 638 where the scope of necessity is discussed.

(*j*[1]) Compare Section 36 of the Indian Trusts Act, 1882.

(*j*[2]) *Palaniappa* v. *Devasikamony* (1917) 44 I.A., 147, 40 Mad., 709.

(*k*) *Krishn Das* v. *Nathu Ram* (1927) 54 I.A., 79, 84, 49 All., 149, 156; *Tulsidas* v. *Vaghela Raisingji* (1933) 57 Bom., 40, 56; *Ramalingam Pillai* v. *Muthayyan* (1914) 26 M.L.J., 528.

(*l*) *Bukshun* v. *Doolhin* 3 B.L.R. (A.C.J.), 423, 12 W.R., 337.

more prudent to raise money by mortgage than by sale. On the other hand, where the mortgage was at high interest, it might be more prudent to sell than to renew (*m*). In every case the question is one of fact, whether the transaction was one which a prudent owner, acting for his own benefit, would enter into.

A sale or mortgage of family property by the managing member is valid on the ground of justifying family necessity where it is (1) for the payment of decree debts and other debts binding on the family (*n*); (2) to pay off the claims of Government on account of land revenue, cesses, taxes and other dues (*o*); (3) for the payment of rents due to the landlord or for payment of decrees for arrears of rent obtained by the landlord against the family (*o*[1]); (4) for the maintenance of the members of the family (*p*); (5) for the purpose of defraying the expenses of marriages of coparceners (*q*) and of daughters born in the family (*r*), (6) for the expenses of the necessary family

(*m*) *Muthoora* v *Bootun* 13 W R, 30

(*n*) *Gharibullah* v *Kholak Singh* (1903) 30 I A, 105, 25 All, 407, *Mudit* v *Ranglal* (1902) 29 Cal, 797.

(*o*) 30 I A, 105 25 All, 407 *supra*, *Venkataraman* v *Sivaguru-natha* A I R 1933 Mad, 639, *Sagarsingh* v *Mathuraprasad* A I R. 1925 Oudh, 750, *Gayaprasad Tiwar* v *Ram Pal Meer* (1915) 13 A.L J, 246.

(*o*[1]) *Srimohan Jha* v *Brij Behary* (1909) 36 Cal, 753.

(*p*) *Bishambur* v *Sudasheeb* (1864) 1 W R, 96, (1903) 30 I A, 105, 25 All, 407, 415 *supra*, *Seeni* v *Angamuthu* (1912) 13 I C, 802, (1912) 1 M W N, 99, *Srinivasa Iyengar* v *Alamelu Ammal* A I R 1927 Mad, 715, *Seethiah* v. *Mutyalu* A I.R 1931 Mad, 106, *Babaji* v *Krishnaji* (1878) 2 Bom, 666, *Mt Raj Kuer* v *Dindayal* A.I R. 1931 Oudh, 325, see also *Makundi* v. *Sarabsukh* (1884) 6 All., 417, 421

(*q*) *Kameswara Sastri* v. *Veeracharlu* (1911) 34 Mad, 422; *Gopalakrishnam* v *Venkatanarasa* (1914) 37 Mad, 273 F B overruling *Govindarazulu* v *Devarabotla* (1904) 27 Mad, 206, *Bhagirathi* v. *Jokhu Ram* (1910) 32 All, 575, *Sundrabai* v. *Shivnarayana* (1908) 32 Bom, 81, *Debilal Sah* v *Nand Kishore Gir* (1922) 1 Pat, 266 But see *Onkar* v. *Kisan Singh* A I R. 1930 Nag, 282 (fourth marriage of coparcener no legal necessity)

(*r*) *Lalla Ganput* v *Toorun Koonwar* (1871) 16 W R, 52, *Chhoti ram* v *Narayandas* (1887) 11 Bom, 605, *Vaikuntam* v *Kallapiran* (1900) 23 Mad, 512, *Vaikuntam* v. *Kallapiran* (1903) 26 Mad, 497; *Ranganaiki* v *Ramanuja* (1912) 35 Mad, 728, (1912) 1 M W N., 99 *supra*, *Ram Charan* v *Mukin Lal* (1914) 36 All, 158, *Prabh Dayal* v *Ralla Ram* A I R 1930 Lah, 672 In *Ram Jas Agarwala* v. *Chand Mandal* [1937] 2 Cal, 764, it was held that there is no legal necessity justifying alienation of properties to meet the expenses of a marriage in contravention of the provisions of the Child Marriage Restraint Act, 1929, but a decree for money was given against the borrower. The decision would seem to be right as there was no necessity for the child's marriage, having regard to the Act, *at the time* of the alienation, though the marriage itself is neither illegal nor invalid.

ceremonies including funeral and annual sradhs (*s*); (7) for the expenses of necessary litigation in connection with the recovery or protection of the joint estate (*t*); (8) for the expenses of defending the head of the family (*u*) or any other member against a serious criminal charge (*v*); (9) for the purpose of carrying on an ancestral trade or business (*w*); (10) to raise money to avert a sale or destruction of the whole or any part of the family property; and (11) for the expenses of necessary repairs to the family properties and for the protection of fields and lands belonging to the family from floods (*x*). But any enumeration of necessary purposes cannot in the nature of things be exhaustive.

§ 366. A legal necessity justifying a sale or mortgage of family property arises only where the purposes abovementioned or similar purposes cannot be met out of the income of the family or the cash on hand (*y*). The purchaser or mortgagee is bound to make a *bona fide* inquiry as to whether the debt for which the mortgage or sale is executed could be met from other sources; for the person who deals with the manager of a joint family property has to consider the propriety and necessity of the transaction in which he is engaged, not merely the propriety and necessity of paying the debt which is the alleged reason for the transaction. If the debt is improper or unnecessary, and known to be so by the lender, the transaction is, of course, invalid. If the payment of the debt is proper and necessary, the transaction will still be invalid, unless the lender has reasonable ground for supposing that it cannot be met without his assistance. There should be

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(*s*) *Lalla Ganput* v. *Toorun Koonwar* (1871) 16 W R, 52; *Saravana* v. *Muttayi* (1871) 6 Mad. H C., 371; *Nathuram* v. *Shoma* (1890) 14 Bom, 562; *Bajrangi* v. *Padarath* A.I.R. 1930 All., 504, following *Churaman* v. *Gopi* (1910) 37 Cal., 1.

(*t*) *Miller* v. *Runganath* (1886) 12 Cal., 389, 400; *Kaloo Singh* v. *Sunderabai* A.I.R. 1926 Nag., 449.

(*u*) *Beni Ram* v. *Mansingh* (1912) 34 All., 4; *Ramalingam* v. *Muthayyan* (1914) 26 M.L.J., 528, *Hanumat* v. *Sonadhari* (1919) 4 P.L J, 653; *Dhanukdhari* v. *Rambirich* (1922) 1 Pat., 171, dissenting from *Nathu* v. *Dindayal* (1917) 2 P.L J., 166; *Said Ahmed* v. *Raja Mahesh Pratab* (1933) 8 Luck., 40, A.I.R. 1932 Oudh, 255.

(*v*) *Ram Raghubar* v. *Dip Narain* (1923) 45 All, 311, *Murli* v. *Bindeswari* A.I.R. 1933 Pat., 708, *Sitla Bakhshsingh* v. *Mt. Ram Raji* A.I.R. 1933 Oudh., 289; *Maruthappan* v. *Niraikulathan* [1937] Mad., 943 (debt incurred to assist prosecution for the murder of a member of the joint family not binding).

(*w*) *Ram Krishna* v. *Rattanchand* (1931) 58 I.A., 173, 53 All., 190; *Ram Prasad* v. *Bishambarnath* A.I.R. 1936 All., 607.

(*x*) *Salig Ram* v. *Mohanlal* A.I.R. 1925 Lah., 407.

(*y*) See cases cited in note (*a*) to § 650, and also next note.

some connection between the money advanced by the transferee and the necessity that is proved. It may be that the slightest enquiry would have shown that there were other funds belonging to the joint estate which could have been used for the purposes or what is not an uncommon case, the manager may be raising sums from other persons purporting to raise them for the same purpose (y^1). The caprice or extravagance of the manager will be relevant to show either that the object of the transaction was an improper one, or that the necessity for it was non-existent (z).

Necessity however does not mean actual compulsion but the kind of pressure which the law recognises as serious and sufficient (a). Accordingly where there are binding debts, which cannot otherwise be met, a sale will be justifiable to pay them off, even though there was no actual pressure at the time in the shape of suits by the creditors (b). For the manager is not bound, and indeed ought not, to put the estate to the expense of actions *A fortiori*, of course, such dealings will be justified where there are decrees in existence, whether, *ex parte* or otherwise, which could at any moment be enforced against the property (c).

Manager's discretion.

Once the legal necessity is made out it is entirely a matter for the decision of the managing member whether the money should be raised by way of mortgage or sale (d). It is a question equally for the manager in the case of an ancestral family business to decide whether it would be better to raise more money by sale or mortgage or to close down the business (e)

(y^1) *Maheshar Baksh Singh* v *Ratan Singh* (1896) 23 I A, 57, 23 Cal, 766, *Lala Amarnath* v *Achan Kuar* (1892) 19 I A, 196, 14 All, 420, per Coutts-Trotter, J, in *Peddayya* v *Venkatakrishnayya* (1916) 1 M W N, 163, 166 See *Sathappan Ambalam* v *Vadivelu* A I R 1928 Mad, 450, *Bashiruddin* v *Mahadeo* A I R, 1924, Oudh, 306

(z) *Damodhur* v *Birja Mohapattur* S D of 1858, 802, *Bapusingh* v *Beharilal* (1908) 30 All, 156, *Neki Ram* v. *Kure* A I R 1928 Lah, 526, *Harnamsingh* v *Jagirsingh* A I R 1927 Lah, 46 (borrower a notorious spendthrift).

(a) *Ramsumran* v *Shyamkumari* (1922) 49 I A, 342, 346, 1 Pat., 741; *Santosh Kumar Mullick* v. *Ganeshchundra* (1926) 31 C W.N, 65.

(b) *Kathur* v *Roopsingh* (1871) 3 N W.P, 4, *Vembu Iyer* v. *Srinivasa Iyengar* (1912) 23 M.L J., 638.

(c) *Purmessur* v *Mt. Goolbee* (1869) 11 W R., 446, *Sheoraj* v. *Nukchedee* (1870) 14 W R, 72.

(d) *Niamat Rai* v *Din Dayal* (1927) 54 I A., 211, 217, 8 Lah, 597; *Ambalavana* v. *Gowri* A.I R. 1936 Mad., 871.

(e) *Niamat Rai* v. *Din Dayal* (1928) 54 I A., 211, 217, 8 Lah., 597.

§ 367. Where the necessity for a particular sale or mortgage is only partial, in other words, where the money required to meet the necessary purposes is less than the amount sought to be raised by the sale or mortgage, the true question is whether the sale itself is one which would be justified by legal necessity. The reason for this is that it is not always possible for the managing member to sell just that share of the family property which will bring in the precise sum which is wanted to clear the debts which are binding (*f*). But in a case where the circumstances only disclose a partial necessity, the sale will however be valid only where the purchaser acts in good faith and after due inquiry and is able to show that the sale itself is justified by legal necessity though he is under no obligation to inquire into the application of any surplus (*g*). Where the manager decides to raise money by a mortgage of family property, he can borrow the precise amount required for a family purpose and the other coparceners will not therefore be liable for any sum borrowed on the security of the family property in excess of the necessity (*h*), and the mortgage will stand good only to the extent of the necessity proved. Partial necessity.

(*f*) *Krishn Das* v. *Nathuram* (1927) 54 I.A., 79, 84, 49 All., 149 (Rs. 500 out of 3,500 not for necessity—sale upheld), *Niamat Rai* v. *Din Dayal* (1927) 54 I A., 211, 8 Lah., 597 (Rs. 5,100 out of 43,500 not for necessity—sale upheld); *Gaurishanker* v. *Jiwan Singh* (1927) 53 M.L.J., 786, P.C., 30 Bom. L R., 64 (Rs. 500 out of Rs. 4,000 not proved—sale upheld); *Medai Dalavoi* v. *Nainar Thevan* (1922) 27 C.W N., 365 P C. (Rs. 712 out of Rs 5,300 not for necessity—sale upheld); *Suraj Bhan Singh* v *Sah Chain Sukh* A.I.R. 1927 P.C. 244 (Rs. 2,000 out of Rs 19,000 not proved—sale upheld), *Masit Ullah* v. *Damodarprasad* (1926) 53 I.A, 204, 48 All, 518 (Rs. 2,000 out of Rs. 18,400 not for necessity—sale upheld); *Jagannath* v. *Srinath* (1934) 61 I.A., 150, 56 All., 123 reversing (1931) 52 All., 391; *Murbi* v. *Ghammar* (1929) 51 All, 61 (Rs. 433 out of Rs. 1,400 not proved); *Ram Sunder* v. *Lachhmi* (1929) 51 All, 430 P.C, A.I.R. 1929 P C, 143 (Rs. 3,023 out of Rs. 10,767 not proved—sale upheld), *Shyam Lal* v. *Badri Prasad* (1929) 51 All., 1039 (Rs. 475 out of Rs. 1,000 not proved—sale upheld); *Achutanand* v. *Surjanarain* (1926) 5 Pat., 746 (Rs. 200 out of Rs. 750 not proved, sale upheld); *Hitendranarain* v. *Sukdeb-prasad* (1929) 8 Pat., 558 (Rs. 637 out of Rs. 6,400 not proved—sale upheld); *Kamta Prasad* v. *Durga Dat* A.I.R. 1935 Pat., 368; but see *Juthan Ram* v. *Ramun Ram* A.I.R. 1938 Pat., 263; *Manki Kaur* v. *Hunsraj* A.I.R. 1938 Pat., 301.

(*g*) (1927) 54 I A., 79, 88 *supra*; *Nagappa* v. *Brahadambal* (1936) 62 I.A., 70, 58 Mad., 350.

(*h*) *Benares Bank Ld.* v. *Harinarain* (1932) 59 I.A., 300, 54 All., 564; *Anantram* v. *Collr. of Etah* (1918) 40 All., 171 P.C.; *Thakur Jai Indra* v. *Khairati Lal* (1929) 4 Luck., 107, A.I.R. 1928 Oudh., 465; *Dwarka Ram* v. *Bakshi Parnaw* (1935) 14 Pat., 595. See *Durga Prasad* v. *Jewdhari Singh* (1935) 62 Cal., 733 (where the point was not decided). See also *Lachuman Prasad* v. *Sarnamsingh* (1917) 44 I.A., 163, 39 All., 500; *Ramcharan* v. *Bhagwan* (1926) 53 I.A., 142, 48 All., 443.

An alienation which is clearly for benefit of the family, if within reasonable limits, will be valid apart from any question of necessity (h^1).

Illustrations of benefit.

§ 368. Illustrations of transactions for the benefit of the estate have been given by Beaumont, C.J., in the Full Bench case of *Hemraj* v. *Nathu* (i): (1) the sale for adequate price of land which could not be conveniently cultivated with other property of the family, directly coupled with the investment of the sale proceeds in the purchase of lands which could be so conveniently cultivated (j); (2) the sale of lands in order to raise money to secure irrigation or permanent improvement of other land of the family; (3) a beneficial exchange (k), or the sale of a house in a dilapidated condition (l). Reclamation of lands or planting of fruit trees or other agricultural improvements will of course, within limits, be of benefit to the family. So too it would seem that any insurance effected against loss or destruction by fire in respect of family property or houses or goods employed in family trade will be of benefit to the family. A mortgage may validly be made for raising money in order to make additions and improvements to the family house within reasonable limits (m). A Hindu father, it has been held, cannot sell family lands merely because they are situated some miles away and he proposes to purchase lands nearer home (n). So too it has been held that a managing member has no right to sell the whole or part of

(h^1) Per Sundara Aiyar J. in *Vembu* v *Srinivasa* (1912) 23 M L J, 638, 642, *Krishna Chandra Chowdhury* v *Ratan Ram Pal* (1915) 20 C W N, 645, *Ram Nath* v *Chiranji Lal* (1934) 57 All, 605 F B; *Chhotey Lal* v. *Dalip Narain* (1938) 17 Pat, 386

(i) (1935) 59 Bom., 525 F B.

(j) (1935) 59 Bom, 525, 544 F B *supra*, *Jadosingh* v *Nathusingh* (1926) 48 All, 592 (sale of inconveniently situated, incumbered and unprofitable property and the purchase in its stead of property which was undeniably a sound investment), *Markandey* v. *Badansingh* A.I.R. 1933 All, 568 (sale of scattered lands of inferior quality and investment of price in purchase of better lands); sale of unproductive land and investment of proceeds in family business is a benefit to the estate. *Jagmohan* v. *Prag Ahir* (1925) 47 All, 452, see also *Jagat Narain* v *Mathuradas* (1928) 50 All, 969 F B. *Laljisingh* v. *Muchkund* A.I.R. 1934 Pat, 699, but see *Ram Bilas* v *Ramyad* (1920) 5 P L J, 622, *Manna Lal* v *Karusingh* (1919) 39 C L J, 256, A.I.R. 1919 P.C., 108, 13 M.L.W., 652

(k) *Hemraj* v. *Nathu* (1935) 59 Bom., 525, 544 F B.

(l) *Nagindas* v. *Mahomed Yusuf* (1922) 46 Bom, 312.

(m) *Ratnam* v. *Govindarajulu* (1880) 2 Mad., 339.

(n) *Ganesa* v. *Amirthasami* (1918) M.W.N., 892; *Mayakone* v. *Periaswami* (1937) 2 M L J, 622, but see *Beni Madho* v. *Chunderprasad* (1924) 3 Pat., 451; *Shaikh Jan* v. *Bikoo* (1928) 7 Pat., 798;

the joint estate for the purpose of so investing it as to bring in a larger income (*o*). Nor can a manager start the business of a rice mill with a view to giving more income to the family (*p*). This would however stand on a different footing as it involves the starting of a new business with all its risks. The sale of an inconvenient and expensive property for an advantageous price would be for the benefit of the family. The expression will certainly exclude cases of speculative developments of family estates (*q*). As was said by the Patna High Court, actual compelling necessity is not the sole test of the validity of an alienation by the manager. When it can be shown that the transaction was one which was clearly beneficial to the interest of the family as a whole, the transaction is valid (*r*).

Narayan Rao v. *Mulchand* A.I R 1933 Nag., 109. Even where the family land is sold for the purpose of purchasing other land, Kumaraswami Sastri J. says: "The sale or mortgage of ancestral lands to purchase other lands can only be justified if there was clear benefit to the family as in *Re Krishnaswami Doss Reddi* (1912) M.W N, 167; *Subramania Nadan* v. *Ramaswami Nadan* (1913) 25 M.L.J., 563; *Adikesavan* v. *Gurunatha* (1917) M W N., 171, 40 Mad, 338 and having regard to the ease with which such recitals can be made by an improvident father in order to raise money, I think Courts ought to be slow to find necessity unless on clear proof that the transaction was one manifestly for the benefit of the family": *Ganesa* v. *Amirthasami* (1918) M W N., 892, 895; *Subramania Chetty* v. *Chidambara* (1921) 41 M.L J., 459; *Lajja Ram* v. *Abdul Rahim* A.I.R. 1928 Lah., 437.

(*o*) *Palaniappa* v. *Devasikhamony* (1917) 44 I.A, 147, 40 Mad., 709, 719; *Vishnu* v. *Ramachandra* A.I.R. 1923 Bom., 453; *Hemraj* v. *Nathu* (1935) 59 Bom, 525 F.B.

(*p*) *Nataraja* v. *Lakshmana* A.I R. 1937 Mad., 195.

(*q*) *Krishnachandra Choudhuri* v. *Ramratan Pal* (1915) 20 C.W.N., 645 (where the sale of an item was upheld); *Ishani Dasi* v. *Ganeshchandra Rakshit* (1918) 23 C.W.N, 858, 860.

(*r*) *Ram Bilas* v. *Ramyad* (1920) 5 P.L.J., 622; *Sheik Jan* v. *Bhikoo* (1928) 7 Pat., 798; *Chhotey Lal* v. *Dalip Narain* (1938) 17 Pat., 386. An alienation solely for the purpose of pre-empting another property is not a benefit, *Shankar* v. *Bechu* (1925) 47 All, 381; *Kishen Sahai* v. *Raghunath* (1929) 51 All., 473, *Amrej* v. *Shambu* (1933) 55 All., 1 F.B.; but see *Dhara Singh* v. *Bharatsingh* A.I.R. 1936 All., 613; *Sohanlal* v. *Zorawarsingh* A.I R. 1937 All, 219; nor a deed of exchange for defeating a claim of pre-emption, *Balzor* v. *Raghunandan* (1932) 54 All., 85. An alienation for providing funds to carry on a speculative litigation is not for the benefit of the estate; *Bhagwan* v. *Mahadeo* (1923) 45 All., 390. An alienation for repurchasing or acquiring mortgage rights in the estate of a separated brother is not a benefit: *Hans Raj* v. *Khushalsingh* (1933) 14 Lah., 162. To avert the possibility of a stranger coming into the joint family property by his purchase at a Court auction is not a legal necessity: *Sabhachand* v. *Sambhoo* A.I.R., 1937 Bom., 182. Subscribing to a chit fund is no legal necessity: *Natesa* v. *Sahasranama* (1927) 53 M.L.J., 550. An alienation to recover property sold for arrears of road cess is not a benefit: *Srimohan Jha* v. *Brijbehary* (1909) 36 Cal., 753.

Indispensable duties.

§ 369. The third ground upon which the authority of the managing member, whether a father or other coparcener, to make an alienation of family property rests, is where indispensable duties such as the obsequies of the father and the like require it (*s*). The Mitakshara indeed confines it to cases where indispensable duties make the alienation unavoidable. The phrase "and the like" in the Mitakshara I, 1, 29 refers to annual *sraddhas*, the ceremony of *Upanayanam*, the marriage of coparceners and of girls born in the family and all other religious ceremonies (*t*) Alienations for the purpose of meeting the expenses of or discharging the debts contracted for these ceremonies would be justified on the ground of family necessity In addition, it has been held that gifts for pious purposes are, within reasonable limits, valid when made by the father or other manager The head of the family, it has been held, is competent to alienate a small portion of the joint property, by way of a provision for a permanent shrine for a family idol, or to an idol in a public temple (*u*). In *Gangi Reddi* v. *Tammi Reddi*, the Judicial Committee held that a dedication of a portion of the family property for the purpose of a religious charity (in this case, it was a choultry—satram or Dharmasala) may be validly made by the karta without the consent of the other members, if the property allotted be small as compared with the total means of the family "But the appropriation or alienation must be made by the manager by an act *inter vivos*, and must not be an alienation *de futuro* by will" (*v*). But the distinction is real between what may be regarded from the Hindu point

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(*s*) Mit, I, 1, 28, 29 The above is the explanation of the Mitakshara on the text of Brihaspati referring to 'pious purposes'.

(*t*) *Vaikuntam* v *Kallapiran* (1903) 26 Mad, 497, (*Grihapravesam* ceremony and *Rithusanthi* ceremony which are auxiliary to the marriage), *Churaman* v *Gopee* (1910) 37 Cal, 1 (*Gauna* ceremony).

(*u*) *Gopalchand* v. *Babu Kunwar* (1843) 5 S D A, 24, *Raghunath* v. *Govind* (1886) 8 All, 76, *Sri Thakurji* v *Nanda Ahir* (1921) 43 All, 560, *Ramalinga* v. *Sivachidambara* (1919) 42 Mad, 440; *Audyappa* v *Muthulakshmi* A I R 1925 Mad, 1281, *Karam* v. *Surendar* A I R 1931 Lah, 289 But a gift to a worshipper or archaka of an idol is invalid; *Kalu* v. *Barsu* (1895) 19 Bom., 803.

(*v*) (1927) 54 I A., 136, 140, 50 Mad., 421, 425; *Laltaprasad* v. *Sri Mahadeoji* (1920) 42 All, 461 Neither the text of Brihaspati nor the Mitakshara draws any distinction between a donation and a mortgage or sale of family property made by the father or other managing member Just as a sale or mortgage prevents the operation of survivorship, when authorised, a gift by will which is only a gift to take effect upon the death of the testator for an authorised purpose would seem to be valid. See *Amarchandra* v. *Saradamayee Debi* (1930) 57 Cal, 39 (Father's direction to his son to make a gift to his daughter was held to be valid).

of view as a customary obligatory duty and a duty which, however meritorious, in purely optional or personal (*w*).

Gift through affection.

§ 370. Gifts to brides on occasions of marriage are very common and various Hindu texts impose a moral obligation on the father or other relatives to make them (*x*). These gifts usually take the form of jewels or other movable property. It has been held that a gift, by a father to his daughter or to her husband for the benefit of both on the occasion of her marriage, of a small portion of ancestral immovable property is valid (*y*). As Subrahmanya Aiyar, J., says, 'a gift of a small extent of land (*bhudanam*) on such an occasion is a customary indispensable duty where the family can afford it' (*z*). Even after marriage, a gift can be made to a daughter by way of marriage portion either by her father or after him, by her brother (*a*). In *Churaman Sahu* v. *Gopi Sahu*, the Calcutta High Court held that it would be competent to a managing member, as it is to a widow, to make a valid gift of a reasonable portion of immovable property of the family to a daughter born in the family on the occasion of her *gowna* ceremony (*b*). The Bombay High Court has held that a father cannot make a gift even of a small portion of joint family immovable property to his daughter, though she was looking after him in his old days (*c*). This would be right if it merely rested on the view that a gift of affection (*prasadadana*) which is mentioned in the Mitakshara I, 1, 27, could only be made of ancestral movable property and not of ancestral immovable property. But where the gift is in discharge of the moral obligation to provide a marriage portion as in the Madras cases, it would come under the Mitakshara I, 1, 29, as a gift in discharge of an indispensable

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(*w*) *Rathnam* v. *Sivasubramania* (1893) 16 Mad., 353 (The gift of a silver vehicle to a pagoda was held invalid both on the ground that it was not an indispensable duty and on the ground that the gift was by will).

(*x*) Manu, IX, 194, Narada, XIII, 8; Yajn, II, 143, 144; Vishnu, XVII, 18; Mit., II, xi, 4-5.

(*y*) *Ramaswami Aiyar* v. *Vengiduswami Aiyar* (1899) 22 Mad., 113, *Kudutamma* v. *Narasimha* (1907) 17 M.L.J., 528; *Sundararamayya* v. *Sitamma* (1912) 35 Mad., 628, 21 M.L.J., 695; for the judgment of Krishnaswami Aiyar J. in that case, see 21 M.L.J., 701; *Subba Naicker, In re* (1915) 2 M.L.W., 754; *Sithamahalakshmamma* v. *Kotayya* (1936) 71 M.L.J., 259.

(*z*) (1899) 22 Mad., 113, *supra; Vettor Ammal* v. *Poochi Ammal* (1912) 22 M.L.J., 321.

(*a*) (1912) 22 M.L.J., 321 *supra.*

(*b*) (1910) 37 Cal., 1. See Appx. I.

(*c*) *Jinnappa Mahadevappa* v. *Chimmava* (1935) 59 Bom., 459.

duty. In *Ramalinga Annavi* v. *Narayana*, the Judicial Committee evidently regarded the gift of a small share of immovable property to a daughter as within the authority of a karta (*d*).

Burden of proof.

§ 371. Where a sale or mortgage is made by a father, the burden of proof is upon the alienee to show that the alienation is either for an antecedent debt or was made for legal necessity or the benefit of the family. Where it is proved that the alienation is for an antecedent debt, it is for the sons to show that the debt was contracted to the knowledge of the lender for immoral or illegal purposes (*e*), for it is strictly not a case of alienation by a managing member for a legal necessity or for the benefit of the estate.

Where an alienation of joint family property is made by a manager, the burden of proof lies upon the person who claims the benefit of the alienation to establish one of two things: (1) the transaction was in point of fact jusified by legal necessity or was for the benefit of the joint estate or (2) he had made reasonable and *bona fide* inquiry as to the existence of the necessity and satisfied himself that the manager was acting for the benefit of the estate. For, a lender of money may reasonably be expected to prove the circumstances connected with his own particular loan, but cannot reasonably be expected to know, or come prepared with proof of, the antecedent economy and good conduct of the owner of the joint family estate. The presumption proper to be made will vary with circumstances, and must be regulated by, and dependent on them. Thus, where the mortgagee himself, with whom the transaction took place, is setting up a charge in his favour made by one whose title to alienate he necessarily knew to be limited and qualified, he may be reasonably expected to allege and prove facts presumably better known to him than to the infant heir, namely, those facts which embody the representations made to him of the alleged needs of the estate, and the motives influencing his immediate loan(*e*[1]). It is obvious, however, that it might be unreasonable to require such proof from one not an original party, after a lapse of time and enjoyment, and apparent acquiescence (*f*). Where

(*d*) *Ramalinga Annavi* v. *Narayana* (1922) 49 I A, 168, 173, 45 Mad., 489.

(*e*) *Satnarain* v. *Beharilal* (1924) 52 I.A, 22, 30, 6 Lah., 1.

(*e*[1]) The representations by the manager accompanying the loan are part of the *res gestae* and evidence against those whom the manager represents.

(*f*) *Murugesam Pillai* v. *Manickavasaka* (1917) 44 I.A., 98, 40 Mad., 402; *Hunoomanpersaud's* case (1856) 6 M.I.A., 393.

a new security is substituted for an older one, or where the consideration for the older one was an old precedent debt of an ancestor not previously questioned, a presumption in favour of the validity of the transaction would, after a lapse of time and in proper cases be reasonable (*g*).

Recitals of necessity.

§ 372. Recitals in mortgages or deeds of sale with regard to the existence of necessity for an alienation have never been treated as evidence by themselves of the fact. To substantiate the allegation, there must be some evidence *aliunde* (*h*). As Lord Buckmaster observed: "It is well established that such recitals cannot by themselves be relied upon for the purpose of proving the assertions of fact which they contain. Indeed it is obvious that if such proof were permitted the rights of reversioners could always be defeated by the insertion of carefully prepared recitals. Under ordinary circumstances and apart from statute, recitals in deeds can only be evidence as between the parties to the conveyance and those who claim under them" (*i*).

(*g*) *Hunoomanpersaud* v. *Mt. Bhabooee* (1856) 6 M.I.A., 393, 418-420, *Tandavaraya* v. *Valli* (1863) 1 M.H.C, 98; *Vadali* v. *Manda* (1865) 2 M.H.C., 407; *Saravana* v. *Muttayi* (1871) 6 M.H.C., 371; *Lalla Bunseedhur* v. *Koonwur Bindeserree* (1866) 10 M.I.A., 454, 471, *Maheshwar Syud Tasoowar* v. *Koonj Beharee* (1870) 3 N.-W.P., 8; *Chowdhry* v. *Brojo Soondur* (1872) 18 W.R., 77; *Sikher Chund* v. *Dalputty* (1880) 5 Cal., 363; *Makundi* v. *Sarabsukh* (1884) 6 All., 417; *Lal Singh* v. *Deo Narain* (1886) 8 All., 279; *Gurusami* v. *Ganapathia* (1882) 5 Mad., 337; *Anant Ram* v. *Collector of Etah* (1918) 40 All., 171, P.C.; *Sri Thakur Ramkrishna* v. *Ratanchand* (1931) 58 I.A., 173, 53 All., 190, *Soorendro Pershad* v. *Nundun Misser* (1874) 21 W.R., 196, *Dalibai* v. *Gopibai* (1902) 26 Bom., 433; *Kandhialal* v. *Muna* (1898) 20 All., 135, *In re Dattatraya Govind* (1932) 56 Bom., 519; *Raj Kishore* v. *Madan Gopal* (1932) 13 Lah., 491; *Dwarka Ram* v. *Bakshi Parnaw* (1935) 14 Pat., 595; *Girdharilal* v. *Mehr.* A.I.R. 1935 Lah., 42; *Guruswami Nadar* v. *Gopalasami* (1919) 42 Mad., 629 (as to trade debts).

(*h*) *Brijlal* v. *Inda Kunwar* (1914) 36 All., 187, P.C.; *Muhammad Nuh* v. *Brij Bihari Lal* (1924) 46 All, 656, *Biswanath* v. *Kayastha Trading Corporation* (1929) 8 Pat., 450; *Debendranath* v. *Nagendranath* (1933) 60 Cal., 1158; *Ramineedi* v. *Janakiramayya* (1914) M.W.N., 874; *Padam Singh* v. *Reotisaram* A.I.R. 1929 All., 481; *Gaje Singh* v. *Mt. Uchhaba* A.I.R. 1929 All., 223; *Sohan Lal* v. *Zorawar Singh* A.I.R. 1937 All., 219.

(*i*) *Banga Chandra* v. *Jagat Kishore* (1916) 43 I.A., 249, 252, 44 Cal., 186, *Ram Narain* v. *Nandrani* (1928) 50 All., 823; *Thakar Singh* v. *Mt. Uttam* (1929) 10 Lah., 613; *Dwarka Ram* v. *Bakshi Parnaw* (1935) 14 Pat., 595; *Hazara* v. *Dina* A.I.R. 1933 Lah., 796; *Puttoo Lal* v. *Raghubir* (1935) 9 Luck., 237, A.I.R. 1933 Oudh., 535; *Aukula Sanyasi* v. *Ramachandra* (1926) 51 M.L.J., 73; *Chandrakisor* v. *Kumar Upendra Chandra* A.I.R. 1923 Cal., 563. The mere non-recital in a deed of sale of the legal necessity for the sale does not vitiate the deed. The necessity may be proved by other evidence.

Where the deeds were challenged at the time or near the date of their execution, so that independent evidence would be available, the recitals would deserve but slight consideration, and certainly should not be accepted as proof of the facts. But, as time goes by, and all the original parties to the transaction and all those who could have given evidence on the relevant points have grown old or passed away, a recital consistent with the probability and circumstances of the case, assumes greater importance, and cannot lightly be set aside; for it should be remembered that the actual proof of the necessity which justified the deed is not essential to establish its validity. It is only necessary that a representation should have been made to the purchaser that such necessity existed, and that he should have acted honestly and made proper enquiry to satisfy himself of its truth. The recital is clear evidence of the representation, and, if the circumstances are such as to justify a reasonable belief that an enquiry would have confirmed its truth, then when proof of actual enquiry has become impossible, the recital, coupled with such circumstances, would be sufficient evidence to support the deed. To hold otherwise would result in deciding that a title becomes weaker as it grows older, so that a transaction—perfectly honest and legitimate when it took place—would ultimately be incapable of justification merely owing to the passage of time (*j*).

Lapse of time.

§ 373. Lapse of time does not affect the question of onus of proof except in so far as it might give rise to a presumption of acquiescence or save the alienee from adverse inferences arising from the scanty proof offered (*k*). But having regard to the lapse of time since the transaction took place, it will not be reasonable to expect such full and detailed evidence as to the state of things which gave rise to the alienation in question as in the case of alienations made at more or less recent dates. In such circumstances, presumptions are permissible to fill in the details which have been obliterated by time (*l*).

There is no difference between the burden of proof when it is desired to support a mortgage made by a manager of a

(*j*) (1916) 43 I A, 249, 44 Cal., 186 *supra*; *Anant Ram* v. *Collector of Etah* (1918) 40 All, 171 P.C.

(*k*) *Raveneshwar Prasad Singh* v. *Chandiprasadsingh* (1911) 38 Cal., 721, 738 affirmed in 43 Cal, 417 P C.

(*l*) *Chintamanibhatla* v *Rani of Wadhwan* (1919) 47 I A., 6, 10, 43 Mad., 541; *Rudaraju Venkayamma* v. *Sitaramaraju* (1938) 1 M.L.J., 157, *Thimmanna* v. *Rama Bhatta* A.I.R. 1938 Mad., 300.

joint estate and that which is required to support the mortgage made, for example, by a widow who has only a similar limited power of disposition (*m*).

Proof of payment

§ 374. Where it is once established that there was a debt which ought to be paid, and which could not be paid without a loan or sale, if the validity of the transaction is disputed on the ground that the debt had previously been discharged or reduced, the burden of making out this case rests upon the person who sets it up. Payment is an affirmative fact which cannot be assumed, merely on account of the antiquity of the debt (*n*).

Rate of interest.

§ 375. When money is borrowed on the security of the family property at a high rate of interest or upon onerous terms, it is incumbent upon those who support the transaction to show not only that there was a necessity to borrow, but also that it was not unreasonable to borrow at some such high rate and upon some such terms, and if it is not shown that there was a necessity to borrow at the rate and upon the terms contained in the mortgage, that rate and those terms cannot stand (*o*). The Court will affirm the transaction, but will reduce the rate of interest or otherwise give relief from the terms held to be unduly oppressive (*p*). On a plea of no legal necessity for a loan, it is open to the defendant to say that the rate of interest is excessive (*q*). But it cannot be held *apriori* that a provision for compound interest at a rate by no means uncommon in this

(*m*) *Anantram* v. *Collector of Etah* (1918) 40 All., 171, 175 P.C.

(*n*) *Cavaly Venkata* v. *Collector of Masulipatam* (1867) 11 M.I.A., 619, 633.

(*o*) *Radhakishun* v. *Jagsahu* (1924) 51 I.A., 278, 4 Pat., 19, *Sunder Mull* v. *Satyakinker* (1928) 55 I.A., 85, 7 Pat., 294; *Mahadeo* v. *Bissessar* (1923) 2 Pat., 488, *Parmeshwar* v *Rajkishore* (1924) 3 Pat., 829, *Kamta Prasad* v *Durga Dat* A.I.R. 1935 Pat., 368, *Markanda* v. *Bidyanath* A.I.R. 1935 Pat., 499; *Nazir Begam* v. *Rao Rughunath Singh* 46 I.A., 145, 41 All., 571; *Hurronath Roy Chowdhuri* v. *Rundhursingh* 18 I.A., 1, 18 Cal., 311, *Ram Bujawan* v. *Nathu Ram* (1923) 50 I.A., 14, 2 Pat., 285, *Nand Ram* v. *Bhupal Singh* (1912) 34 All., 126; *Bhikhi Sahu* v. *Kodai Pande* (1919) 41 All., 523; *Ram Khelawan* v. *Ram Naresh* (1919) 41 All., 609; *Durga Prasad* v. *Jewdhari* (1935) 62 Cal., 733.

(*p*) (1923) 50 I.A., 14, 2 Pat., 285 *supra* (compound interest at 3% per mensem reduced to simple interest at 1% per mensem); (1924) 51 I.A., 278, 4 Pat., 19 *supra* (24% compound interest with half-yearly rests reduced to 24% simple interest); (1935) 62 Cal., 733 *supra* (18% compound interest with nine monthly rests reduced to 18% simple interest); *Harihar* v. *Lacchman* A.I.R. 1934 Oudh, 246, 9 Luck., 657 (2% compound interest per mensem reduced to 2% simple interest); *Suraj Baksh* v. *Kedar Nath* A.I.R. 1932 Oudh, 66, 7 Luck., 505.

(*q*) (1923) 50 I.A., 14, 22, 2 Pat., 285, 297, *supra*.

country is so improvident or excessive as to throw upon the mortgagee the onus of justifying it even in the absence of a plea by the defendants (*r*). "Compound interest at a moderate rate may not necessarily be oppressive and similarly compound interest with infrequent rests may not be oppressive, where compound interest coupled with a high rate of interest and with frequent rests might be in excess of any authority which the kartas could have" (*s*). A manager of a joint family has authority to borrow upon reasonable commercial terms. These terms are relative to the time and the place and must be understood as a comprehensive and convenient expression for such terms as can be freely arranged between the borrower and the lender under the circumstances of the particular case. It has no reference to the current rate of interest upon mercantile transactions (*t*). Regard should also be had to the provisions of section 74 of the Indian Contract Act, 1872 and the provisions of the Usurious Loans Act X of 1918.

Consent.

§ 376 An alienation made by a managing member which cannot be supported upon the ground of legal necessity or benefit to the family estate will be valid where all the coparceners in the family, being adults, consent to it, as it would be valid when they all join in the alienation (*u*). This is explicitly recognised in the Mitakshara: "among unseparated kinsmen, the consent of all is indispensably requisite because no one is fully empowered to make an alienation, since the estate is in common" (*v*) In the Vivadachintamani, it is laid down: "what belongs to many may be given with their consent. Joint ancestral property may be given with the consent of all the heirs" (*w*). Any want of capacity on the part of the manager to alienate the family property may therefore be supplied by the consent of the coparceners. Such consent may

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(*r*) *Ambalavana* v *Gowri* A I R 1936 Mad, 871, *Kruthiventi Perraju* v. *Sitarama* (1925) 48 M L J, 584

(*s*) (1928) 55 I A, 85, 92, 7 Pat, 294, 302, *supra.*

(*t*) 55 I A, 85, 7 Pat, 294, 300 *supra*

(*u*) *Sadabart Prasad* v. *Foolbash Koer* (1869) 3 B L.R. F.B, 31, 42, 43, *Mahabeer Prasad* v *Ramyad* (1874) 12 B L R, 90, *Miller* v. *Runganath* (1886) 12 Cal, 389, *Chhotiram* v. *Narayandas* (1887) 11 Bom, 605, *Kandasami* v *Somaskanda* (1912) 35 Mad., 177 dissented from on another point in *Subba Goundan* v. *Krishnamachari* (1922) 45 Mad, 449; see *Brij Raj Singh* v. *Sheodansingh* (1913) 40 I A, 167, 35 All, 337; *Balappa* v *Akkubai* A.I.R. 1924 Bom., 170, *Kamla Prasad* v. *Nathuno* A I R 1922 Pat, 347.

(*v*) Mit, I, 1, 30.

(*w*) Vivadachintamani, 77, 78. This applies not only to Madras and Bombay but to the other provinces as well where a coparcener is not entitled to alienate his undivided share.

either be express, or implied from their conduct at or after the time of the transaction. Where the property is invested in trade, or in any other mercantile business, the manager of the property will be assumed to possess the authority usually exercised by persons carrying on such business (*x*). Where a joint family consists of both adult and minor coparceners, the consent of the adults to an alienation by the managing member or their joining with him in the execution of the instrument of sale or mortgage will bind their interests in the provinces of Madras and Bombay where it is open to a coparcener to alienate his undivided share for value. In the other provinces, where a coparcener cannot so alienate his interest, the consent of the adult coparceners alone, where there are minors, will not make the alienation valid even to the extent of their shares. Their consent to an alienation is not by itself sufficient evidence of legal necessity (*y*).

§ 377. An alienation made by a father, neither for an antecedent debt nor for a family necessity as well as an alienation by the managing member of a joint family made without legal necessity is not absolutely void in the sense that it is not open to the other members of the family who have not assented to the alienation at the time to assent to it subsequently. They can elect to abide by the alienation and treat it as good, though it may not be quite correct to call it "ratification" (*z*). Such ratification will be inferred where a son, with full knowledge of all the facts, takes possession of, and retains

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(*x*) *Bemola* v. *Mohun* (1880) 5 Cal., 792, *Samalbhai* v. *Someshvar* (1881) 5 Bom, 38, *In re Haroon Mahomed* (1890) 14 Bom., 189, p. 194, § 308-A.

(*y*) *Salamat Khan* v. *Bhagwat* (1930) 52 All, 499 (such consent may be useful to fill in the lacunae in the evidence); *Krishna Kumar* v. *Gopaldas* A.I.R. 1934 Oudh, 475. In *Kandasami* v. *Somaskanda* (1912) 35 Mad., 177, it is said that an assent by some alone though evidence of propriety of an alienation will not, in the face of positive proof of its impropriety suffice to pass their interests for such assent does not amount to a transfer. This is apparently due to some misconception, for an assent at the time by some only will bind their interests both on the ground of estoppel as they must be held to have joined in the alienation and on the ground that the managing member is authorised to make the alienation to the extent of their interests at least. This seems to be conceded at page 182 "If this means that there was a consent to the mortgage at the time of its execution, the appellant's interest is certainly bound".

(*z*) Compare *Rangaswami* v. *Nachiappa* (1918) 46 I.A., 72, 42 Mad., 523 The question whether and in what sense the alienation made without legal necessity is void or voidable is dealt with in §§ 404-405.

that which has been purchased with the proceeds of the property disposed of (*a*). It is not competent to a manager of a joint family and other adult coparceners to give on behalf of minor coparceners express or implied consent to a transferee of joint family property being the ostensible owner of it so as to enable a purchaser from him to claim the protection of s. 41 of the Transfer of Property Act. A sale made by a benamidar of family property to a third person will not therefore bind minor coparceners (*b*).

Right of coparcener to dispose of his share.

§ 378. So far we have been considering dispositions of the family property by which one member professed to bind the others, by selling or encumbering their shares as well as his own. We have now to examine the right of one member of a family governed by Mitakshara system to dispose of his own share. The theory of the Mitakshara law is clearly against such a right, the only exceptional right being those stated in the Mitakshara in I, 1, 27-30. Not much is to be found in the earlier writers upon the right of a coparcener to alienate his own share (§ 258). As property began more frequently to pass from hand to hand, the circumstances which would justify an alienation began to be defined. The texts of Vyasa and Brihaspati already referred to (*c*) do not deal with any alienation by a coparcener of his own share. So Narada mentions joint property among the eight kinds of things that may not be given, though he expressly authorizes divided brothers to dispose of their shares as they like (*d*). And the author of the Vivada Chintamani, while commenting on, and approving, these texts, gives as his reason, "for none has any right over them according to common sense". "The assent of all the heirs is required for a gift of joint ancestral property whether movable or immovable" (*e*). The Mitakshara and Mayukha, in laying down the right of alienation are evidently dealing with the case of the father as representing the entire family (*f*). The idea of any individual dealing with his own interest while the family was joint could not have occurred to them,

(*a*) *Gangabai* v. *Vamanaji* (1866) 2 Bom. H.C, 301, *per curiam*, *Modhoo Dyal* v. *Kolbur* (1868) B.L.R. Supp. Vol., 1018, 9 W.R., 511.

(*b*) *Shankar* v. *Daooji Misir* (1931) 58 I.A, 206, 53 All., 290.

(*c*) Mit., I, 1, 27, 28, 30.

(*d*) Nar., IV, 4, 5; XIII, 42-43; Brih, Dig., I, 403; Daksha, Dig., I, 409; Yaj., II, 175.

(*e*) Vivada Chintamani, pp. 72, 77, 78.

(*f*) Mit., I, 1, 27; V. May., IV, 1, 3, 5.

for any recognition of the right to alienate without a partition would necessarily have the effect of introducing strangers into the coparcenary, without the consent of its members and defeating the right of survivorship, which they would otherwise possess (*g*).

Share may be alienated for value.

§ 379. It is probable that the first inroad upon the strict law took place in enforcing debts by way of execution. We have already seen that Hindu law ascribed great sanctity to the obligation of a debt, and, in the case of a father, enabled him to defeat the rights of his sons, through the medium of his creditors, though it denied him the power to do so by an express alienation (§ 323). It would be a natural transition to extend this principle to all coparceners, so far as to allow a creditor to seize the interest of any one in the joint property as a satisfaction of his separate debt.

In Madras.

Since the decision, however, of the cases of *Virasvami* v. *Ayyaswami* (*h*), of *Peddamuthulaty* v. *Timma Reddy* (*i*), *Palanivelappa* v. *Mannaru* (*j*) and *Rayacharlu* v. *Venkataramaniah* (*k*), it has been the settled law in the Presidency of Madras that one coparcener may dispose of undivided ancestral estate, even by contract and conveyance, to the extent of his own share and *a fortiori* that such share may be seized and sold in execution for his separate debt.

In Bombay.

To the same effect the law was settled for the province of Bombay as is shown in the cases of *Damodhar* v.

(*g*) The same view is taken by W. MacNaughten (1 W. MacN., 5); but a different view was held by Mr Ellis (2 Stra. H L., 350). Mr. Colebrooke apparently considered that a gift by one co-heir of his own share would be certainly invalid, and that a sale or mortgage would in strictness be also illegal; but that in the latter case "equity would require redress to be afforded to the purchaser, by enforcing partition of the whole or of a sufficient portion of it, so as to make amends to the purchaser out of the vendor's share" (2 Stra. H.L., 344, 349, 433, 439). This opinion was adopted by Sir Thomas Strange in his book, and acted on by him from the Bench· 1 Stra. H.L., 200, 202.

(*h*) (1863) 1 Mad H.C., 471.

(*i*) (1864) 2 Mad. H.C., 270; *Suraj Bunsi's* case (1879) 6 I.A. 88, 102, 5 Cal., 148.

(*j*) *Ib.*, 416.

(*k*) (1866) 4 Mad. H.C., 60. The earliest case decided in Madras was one before Sir Thomas Strange in 1813: *Ramasamy* v. *Seshachella* 2 N.C., 234 (240) (74). This principle was followed by the Sudder Court in three cases in 1859 and 1860: *Ramkutti* v. *Kalaturaiyan* Mad. Dec. of 1859, 270: *Kanakasabhaiya* v. *Seshachella* Mad. Dec. of 1860, 17; *Sundara* v. *Tegaraja ib.*, 67.

Damodar (*l*), *Vasudev* v. *Venkatesh* (*m*), *Fekirappa* v. *Chanapa* (*n*), *Pandurang* v. *Bhaskar* (*o*), *Udaram* v. *Ranu*(*p*) and *Vrandavandas* v. *Yamunabai* (*q*). After some fluctuations of opinion it has been finally established in all the provinces, since the decision of the Judicial Committee in 1873 in *Deen Dyal* v. *Jugdip Narain*, that "the purchaser of an undivided property at an execution sale *during the life of the debtor* for his separate debt does acquire his share in such property with the power of ascertaining and realising it by a partition" (*r*). It was but a step from holding that the share of one member can be sold under a decree to hold that he can sell it himself. In 1879, in *Suraj Bunsi* v. *Sheo Persaud* (*s*), the Privy Council observed: "There can be little doubt that all such alienations, whether voluntary or compulsory, are inconsistent with the strict theory of a joint and undivided Hindu family, and the law as established in Madras and Bombay has been one of gradual growth, founded upon the equity which a purchaser for value has, to be allowed to stand in his vendor's shoes, and to work out his rights by means of a partition" (*t*).

Otherwise in Bengal.

§ 380. In 1869, in the leading case of *Sadabart Prasad* v. *Foolbash Koer*, it was decided by a Full Bench of the Calcutta High Court, in accordance with the current of authorities in that province for nearly half a century, that a member of a joint Hindu family had no authority without the consent of his co-sharers, to mortgage his undivided share in a portion of the joint family property, in order to raise money on his own account and not for the benefit of the family (*u*). In 1878 in *Mahabeer Persad* v. *Ramyad*, Phear, J., held that under the Mitakshara law so long as a Hindu family was undivided, no member of the family had any separate proprietary right in the property which he could alien or encumber. "The property under such circumstances belongs to all the members

(*l*) (1863) 1 Bom H.C, 182.

(*m*) (1873) 10 Bom H C, 139

(*n*) *Ib*, 162

(*o*) (1874) 11 Bom H C, 72.

(*p*) (1875) 11 Bom. H C., 76.

(*q*) (1875) 12 Bom H C, 229.

(*r*) (1877) 4 I.A, 247, 3 Cal., 198, (1879) 6 I A, 88, 103, 5 Cal., 148. But attachment during the debtor's lifetime is enough.

(*s*) (1879) 6 I.A., 88, 5 Cal., 148, 166.

(*t*) See 1 Stra H L, 1st ed, 179, and App Vol II. pp 277 and 282.

(*u*) (1869) 3 Beng. L.R. F.B., 31.

of the family jointly, as to a corporation, and no one of the individual members has any share in it, which he can deal with as his property" (*v*). In 1890, in *Madho Parshad* v. *Mehrban Singh*, a case from Oudh, where a Hindu governed by the Mitakshara law, without the consent of his coparcener had sold his undivided share in the family estate for his own benefit and received the purchase money for his own use, the Privy Council held that on his death, his surviving coparcener was entitled to the said share by survivorship and to recover the same from the purchaser and that the latter had no equity or charge thereon against the survivor in respect of his purchase money (*w*). In 1893, in *Balgobind Das* v. *Narain Lal*, a case from Benares, the Privy Council laid down as the settled law of the Mitakshara, as administered in Bengal and the North-West Provinces (now the United Provinces), that a Hindu cannot, without the consent of his coparceners, sell or mortgage his undivided share in the ancestral estate for his own benefit (*x*). In 1917, in *Lachhman Prasad* v. *Sarnam Singh*, a case from the United Provinces, Lord Haldane, delivering the judgment of the Judicial Committee, held that a mortgage of the property of a Mitakshara joint family by its karta, unless necessity or an antecedent debt of the father is proved, is void; the transaction itself gives to the mortgagee no rights against the karta's interest in the joint family property (*y*).

and in Northern India.

§ 381. The result of these and other authorities is that according to the law of the Mitakshara as administered in the provinces of Madras (*z*) and Bombay (*a*) and the Central Provinces including Berar (*b*), a coparcener in an undivided family may sell, mortgage or otherwise alienate for value, his undivided interest in coparcenary property without the consent of the other coparceners. In all the other Provinces, a coparcener

Law as settled in different provinces.

(*v*) (1878) 12 Beng. L.R., 90, 94.

(*w*) (1891) 17 I.A., 194, 18 Cal., 157.

(*x*) (1893) 20 I.A., 116, 15 All., 339.

(*y*) (1917) 44 I.A., 163, 39 All., 500.

(*z*) *Aiyyagari* v. *Aiyyagari* (1902) 25 Mad., 690, 703 F.B.; *Chinnu Pillai* v. *Kalimuthu* (1912) 35 Mad, 47 F.B.; *Subba* v. *Venkatrami* (1915) 38 Mad., 1187, 1191; *Nanjundaswami* v. *Kanagaraju* (1919) 42 Mad., 154.

(*a*) *Rangayana* v. *Ganapabhatta* (1891) 15 Bom., 673; *Pandu* v. *Goma Ramji* (1919) 43 Bom., 472; *Pandurang Narayan* v. *Bhagwandas* (1920) 44 Bom., 341; *Gundayya* v. *Shrinivas* A.I.R. 1937 Bom., 51.

(*b*) *Syed Kasam* v. *Jorawar* (1922) 49 I.A., 358, 50 Cal., 84; *Ganpatrao* v. *Kanhyalal* A.I.R. 1934 Nag., 132; see *Ramkisan* v. *Damodar* A.I.R. 1934 Nag., 108.

cannot sell, mortgage or otherwise alienate for value his undivided interest in the joint family property without the consent of the other coparceners (*c*) and a father who is a co-sharer with a minor son cannot give such a consent on behalf of his minor son (*d*).

An alienation by a coparcener made without the consent of the other coparceners has been held to be only voidable at the option of the other coparceners, the alienating coparcener himself not being competent to impeach it (*e*).

In all the provinces in India, the undivided interest of a coparcener in joint family property may, *during his lifetime* be seized and sold in execution of a decree against him for his own debt. Provided the attachment was made before his death, it is immaterial whether the sale is before or after death (*f*).

Gift invalid.

§ 382. It is now equally well settled in all the Provinces that a gift or devise by a coparcener in a Mitakshara family of his undivided interest is wholly invalid The exceptional cases as recognised by the Mitakshara where it is open to the father or managing member to make a gift of ancestral movable or immovable property have been already noticed (§§355, 369, 370). A coparcener cannot make a gift of his undivided interest in the family property, movable or immovable, either to a

(*c*) *Lakshmi Chand* v *Anandi* (1926) 53 I A, 123, 132, 48 All., 113 (Benares school), *Chamaili* v *Ramprasad* (1880) 2 All, 267; *Rama Nand* v *Gobindsingh* (1883) 5 All, 384, *Bhagirathi* v *Sheobhik* (1898) 20 All, 325, *Chandradeo* v *Mataprasad* (1909) 31 All, 176 F B, *Kali Shankar* v *Nawabsingh* (1909) 31 All, 507, *Anant Ram* v *Collector of Etah* (1918) 40 All, 171 P C; *Ram Sahai* v. *Parbhu Dayal* (1921) 43 All, 655, *Chandar* v. *Dampat* (1894) 16 All, 369 (consent is necessary even if a coparcener surrenders his interest in favour of a coparcener), *Ghasitey Mal* v *Harprasad* A I R 1937 All, 99, *Manna Lal* v. *Karusingh* (1920) 1 P L T, 6, 13 M L W. 652 P C, A I R 1919 P C 108, *Jwala Prasad* v *Protap* (1916) 1 P L J, 497, *Amar Dayal* v *Harpershad* (1920) 5 P L J, 605, *Ram Bilas* v. *Ramyad* (1920) 5 P L J, 622, *Mathura* v *Rajkumar* (1921) 6 P L J, 526, *Mahindra* v *Sitaram* A.I R. 1935 Pat, 349, *Ralla Ram* v *Atmaram* (1933) 14 Lah, 584, *Angaraj* v *Ram Rup* (1931) 6 Luck, 158, A I R 1930 Oudh, 284, *Puttoo Lal* v. *Ragubir Prasad* (1934) 9 Luck, 237, A I R 1933 Oudh, 535.

(*d*) *Lakshmi Chand* v *Anandi* (1926) 53 I A, 123, 132, approving the dictum of Sir John Wallis C J. in *Subbarami* v. *Ramamma* (1920) 43 Mad., 824

(*e*) *Muhammad Muzammil Ullah* v. *Mithu Lal* (1911) 33 All, 783 F B, *Bakhshi Ram* v *Liladhar* (1913) 35 All, 353, *Tota Ram* v. *Hargobind* (1913) 36 All, 141; *Durga Prasad* v. *Bhajan* (1920) 42 All., 50, *Jagesar* v. *Deo Dat* (1923) 45 All., 654, *Sarju Prasad* v. *Mangal Singh* (1925) 47 All, 490; *Madan Lal* v *Gajendra Pal* (1929) 51 All, 575, *Madan Lal* v. *Chiddu* (1931) 53 All., 21 F.B.; *Kharag Narain* v. *Janki Rai* (1937) 16 Pat. 230.

(*f*) *Deen Dyal* v. *Jugdeep Narain* (1877) 4 I.A., 247, 3 Cal. 198.

stranger or to a relative except for purposes warranted by special texts (*g*). In *Radhakant Lal* v. *Nazma Begum*, gifts of a part of the joint family estate made by a Hindu in favour of two of his concubines and the daughter of one of them were held to be invalid as against his sons and grandsons even in respect of his own interest (*h*).

In *Vitla Butten* v. *Yamenamma*, the right of devise was denied to a coparcener in respect of his undivided interest. The Court observed: "At the moment of death, the right of survivorship is in conflict with the right by devise. Then the title by survivorship, being the prior title, takes precedence to the exclusion of that by devise" (*i*) In *Lakshman Dada Naik* v. *Ramchandra*, the Judicial Committee observed: "Their Lordships are not disposed to extend the doctrine of the alienability by a coparcener of his undivided share without the consent of his co-sharers beyond the decided cases . . . . The question is not so much whether an admitted principle of Hindu law shall be carried out to its apparently logical consequences, as what are the limits of an exceptional doctrine established by modern jurisprudence. . . . . The principles upon which the Madras Court has decided against the power of alienation by will are sound, and sufficient to support that decision" (*j*). It is therefore settled that an undivided coparcener cannot make a gift of his share, or dispose of it by will (*k*).

Devise invalid.

(*g*) *Baba* v. *Timma* (1884) 7 Mad, 357 F B., *Ponnusami* v. *Thatha* (1886) 9 Mad., 273; *Ramanna* v. *Venkata* (1888) 11 Mad, 246. In *Rottala Runganatham Chetty* v. *Pulicat Ramasami Chetty* (1904) 27 Mad, 162, 166, a Full Bench of the Madras High Court observed: "It has now been definitely settled by judicial decisions that it is incompetent to an undivided member of a Hindu family, to alienate by way of gift his undivided share or any portion thereof and that such alienation is void *in toto*, and this principle cannot be evaded by the undivided member professing to make an alienation for value, when such value is manifestly inadequate and inequitable. In such a case, the transaction can be upheld against the family, in respect of the alienor's interest in the joint family property, only to the extent of the value received." See also *Venkatapathi* v. *Pappia* (1928) 51 Mad., 824.

(*h*) (1918) 45 Cal, 733, 746, 747 P.C.

(*i*) (1874) 8 M H C., 6, 12; *Lakshmi Chand* v. *Anandi* (1926) 53 I.A., 123, 48 All., 313; (approving 8 M.H.C., 46). See *Venkatanarayana Pillai* v. *Subbammal* (1915) 43 I.A., 20, 39 Mad., 107.

(*j*) (1880) 7 I.A., 181, 195, 5 Bom., 48.

(*k*) *Ponnusami* v. *Thatha* (1886) 9 Mad., 273 (gift); *Ramanna* v. *Venkata* (1888) 11 Mad., 246 (gift); *Rottala* v. *Pulicat* (1904) 27 Mad., 162 (gift); *Gangubai* v. *Ramanna* (1866) 3 Bom., H.C., A.C.J., 66; *Udaram* v. *Ranu* (1875) 11 Bom. H.C., 76; *Vrandavandas* v. *Yamuna* (1875) 12 Bom. H.C., 229 (gift); *Kalu* v. *Barsu* (1895) 19 Bom., 803 (gift); *Sitaram* v. *Harihar* (1911) 35 Bom, 169 (gift); *Parvatibai* v. *Vishnavanath* (1915) 39 Bom., 593 (will), *Mt Lalita Devi* v. *Ishar Das* (1933) 14 Lah., 178 (will).

Now that it is an established principle of Hindu law that it is open to a coparcener by unilateral declaration of intention to sever in interest from the other coparceners, the rule that a coparcener cannot make a gift, or a devise of his undivided interest has become to some extent mitigated in its severity. In *Narayana Rao* v. *Purushothama Rao,* it was held that a coparcener in an undivided family has only to send a registered notice to the other coparceners expressing his desire to become divided in interest from them so as to be able to make a gift or devise of his undivided interest and it will not make any difference in respect of the validity of the will made by him if the notice sent by him before the execution of the will is received by the other coparceners after his death (*l*).

Family arrangement.

In *Lakshmi Chand* v. *Anandi,* two undivided brothers, executed a document described as an agreement by way of will which provided that if either party died without male issue, his widow should take a life interest in a moiety of the whole estate. It was held by the Privy Council that the widow of the brother who died without male issue would as against the other brother be entitled to her husband's moiety, treating the will as evidence of a family arrangement contemporaneously made and acted upon, since it was open to a coparcener to dispose of his share with the consent of the other (*m*).

Renunciation.

§ 383. A gift by a coparcener of his entire undivided interest in favour of the other coparcener or coparceners will be valid whether it is regarded as one made with the consent of the other or others or as a renunciation of his interest in favour of all (*n*). But a gift or renunciation of his interest by one coparcener in favour of one of several coparceners can be valid neither as a gift

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(*l*) (1938) 1 M L J, 45 following *Rama Aiyar* v *Meenakshiammal* (1930) 33 M L W, 384 See also *Venkateswara Pattar* v *Mankayammal* (1935) 69 M L J, 410, 421

(*m*) (1926) 53 I A, 123, 48 All, 313, following *Brijraj Singh* v. *Sheodansingh* (1913) 40 I.A, 161, 35 All, 337, *Venkoba Sah* v. *Ranganayaki* (1936) 71 M L J, 454, *Babu Singh* v *Mt Lal Kuer* A I R. 1933, All, 830, *Seethiah* v *Mutyalu* A I R, 1931, Mad, 106, see *Radha Ram* v. *Gangaram* A I R., 1935, Lah, 661.

(*n*) *Thangavelu Pillai* v. *Purshottam Reddi* (1914) 27 M L J., 272, *Alluri Venkatapathi Raju* v. *Dantaluri Venkatanarasimha Raju* (1936) 63 I A, 397, [1937] Mad, 1, *Chandar Kishore* v *Dampat* (1894) 16 All, 369. Where one of two coparceners paid all family debts out of his separate property and the other coparcener conveyed to the former for his services a moiety of his share at the partition of the family properties, it was held that on equitable principles the alienation was unassailable, *Ananthachari* v. *Krishnaswami* A.I R. 1938 Mad., 102.

nor as a renunciation. In *Alluri Venkatapathi Raju* v. *Venkatanarasimha Raju,* the Privy Council held that a coparcener's renunciation of his interest merely extinguishes his interest in the joint estate and its only effect is to reduce the number of the persons to whom shares will be allotted if and when a division of the estate takes place (*o*). A renunciation by a coparcener is not an alienation of his interest in favour of the others (*p*) (§ 454).

Right of purchasers.

Dayabhaga law.

§ 384. Next as to the rights of purchasers of a coparcener's interest either at an execution sale or at a private sale. Under the Dayabhaga law where the coparceners hold in quasi-severalty, each member has a right before partition to mark out his own share, and to hold it to the exclusion of the others. This doctrine was carried to the extent of holding that the purchaser at a Court sale of the rights of one member was entitled to be put into physical possession even of a part of the family house (*q*). These decisions which were prior to section 44 of the Transfer of Property Act are no longer law. That section disentitles such a purchaser to joint possession or common or part enjoyment of the dwelling house (*r*).

Mitakshara law.

§ 385. But it is otherwise in cases under the Mitakshara law, where no member has a right, without express agreement, to say that any specific portion is exclusively his. Consequently, the purchaser at a Court auction cannot claim to

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(*o*) (1936) 63 I.A., 397, [1937] Mad., 1; *Mukund* v. *Balkrishna* (1927) 54 I.A., 413, 52 Bom., 8; *Anand Rao* v. *Vasant Rao* (1907) 9 Bom. L.R., 595 P.C. affirming (1904) 6 Bom. L.R., 925; see also *Shivaj Rao* v. *Vasant Rao* (1909) 33 Bom., 267; *Karamsingh* v. *Surendarsingh* A.I.R., 1931 Lah., 289.

(*p*) In *Peddayya* v. *Ramalingam* (1888) 11 Mad., 406, it was held that such a renunciation may be made in favour of any one coparcener and need not be in favour of all and that it would increase the share of the coparcener in whose favour it was made. It was also observed in that case that according to the Smritis, the renunciation operates as an alienation of one's coparcenary interest in favour of the others. This was approved in a dictum in *Thangavelu Pillai* v. *Purshottam Reddi* (1914) 27 M.L.J., 272. These dicta are not good law especially after the decision of the Privy Council in *Alluri Venkatapathi* v. *Dantuluri Venkatanarasimha* (1936) 63 I.A., 397, [1937] Mad., 1; *Tulsi Bai* v. *Haji Baksh* A.I.R. 1938 Lah., 478. In *Gundayya Hanmant Naik* v. *Shriniwas Narayan Naik* A.I.R. 1937 Bom., 51 there being only two coparceners the gift by one in favour of the other was held valid. It would be either a valid renunciation or a gift with the consent of the other.

(*q*) *Ramtanoo* v. *Ishurchunder,* S. D. of 1857, 1585; *Koonwur* v. *Shama Soonduree* (1865) 2 W.R. (Mis.), 30; *Eshan Chunder* v. *Nund Coomar* (1867) 8 W.R., 239.

(*r*) *Kshirode* v *Saroda* (1910) 12 C.L.J., 525, *Girijakanta* v. *Mohim Chandra* (1915) 20 C.W.N., 675.

be put into possession of any definite piece of property (*s*). Accordingly, the Judicial Committee held that the proper decree to be passed in a suit in which the purchaser has not obtained possession would be an order declaring that the purchaser acquired the undivided share (specifying the same) of the judgment debtor in the property with such power of ascertaining the extent of such share by means of a partition as the judgment debtor possessed in his lifetime and confirming the possession of the other coparceners subject to such proceedings to enforce his rights as the purchaser might take. And where the purchaser has obtained possession they held that the plaintiff coparcener should obtain possession of the whole of the family property with a declaration that the purchaser had acquired the interest of the co-sharer and was entitled to take proceedings to have that interest ascertained by partition (*t*).

Alienee acquires only equity.

§ 386. Where the transfer is of an undivided interest in the whole of the family property the transferee will get whatever may be allotted to the transferor's share in a suit for partition (*u*). A coparcener may alienate either his undivided share in the whole of the family property or his undivided share in certain specific family property or the whole of a specific item of the family property (*v*). In all these cases, the alienee does not acquire an interest in the property so as to become a tenant-in-common with the members of the family entitled to possession but only an equity to stand in his vendor's shoes and to work out his rights by means of a partition (*w*). The vendee's suit to enforce the sale by partition is not technically a suit for

(*s*) *Kalee* v *Choitun* (1874) 22 W R, 214, *Kallapa* v *Venkatesh* (1878) 2 Bom, 676, *Manjaya* v *Shanmuga* (1915) 38 Mad, 684, *Pandu Vithoji* v. *Goma Ramji* (1919) 43 Bom, 472

(*t*) *Suraj Bunsi Koer* v *Sheo Prasad* (1880) 6 I A, 88, 5 Cal, 148, at 174, *Hurdi Narain* v. *Rudra Prakash* (1883) 11 I.A, 26, 10 Cal., 626, 637, *Medni Prasad* v *Nand Keshwar* (1923) 2 Pat, 386

(*u*) *Aiyyagari* v. *Aiyyagari* (1902) 25 Mad, 690, 718 F B.

(*v*) (1902) 25 Mad, 690, 718, *Venkatachella* v *Chinnaiya* (1870) 5 M H.C.R, 166.

(*w*) *Suraj Bunsi Koer* v. *Sheo Pershad* (1879) 6 I.A., 88, 5 Cal., 148, *Manjaya* v *Shanmuga* (1915) 38 Mad, 684, *Maharaja of Bobbili* v. *Venkataramanjulu* (1916) 39 Mad, 265, dissenting from dicta to the contrary in *Aiyyagari* v *Aiyyagari* (1902) 25 Mad, 690, *Chinnu Pillai* v *Kalimuthu* (1912) 35 Mad, 47 F B and *Subba Row* v *Ananthanarayana* (1912) 23 M L J., 64; *Kotabalabhadra Patro* v. *Khetra Doss* (1916) 31 M L J, 275, *Subba Goundan* v *Krishnamachari* (1922) 45 Mad, 449, 460, *Ganesh Row* v *Tulja Ram Row* (1914) 26 M.L J., 460, 466; but see per Sadasiva Ayyar, J., *Soundararajan* v. *Arunachalam Chetty* (1916) 39 Mad., 159, 172 F.B.

partition in the sense of the Mitakshara law; and the decree which he may obtain enforcing the transfer, either in whole or in part, by a partition of the family property will not by itself break up the joint ownership of the members of the family in the remaining property nor the corporate character of the family (*x*). In dividing the family properties the Court will, no doubt, set apart for the alienating coparcener's share the property alienated if that can be done without any injustice to the other coparceners, and such property, if it is so set apart, may be given to the transferee of the interest of such coparcener. But this is only an equity and the alienee is not, as of right, entitled to have the property so allotted. If such property is not so set apart, then the alienee would be entitled to recover that property which was allotted to his vendor for his share, in substitution for the property that was alienated in his favour (*y*).

Auction purchaser.

§ 387. But the purchaser at a court sale, it has been held in *Sabapathi* v. *Thandavaroya* (*z*) is not entitled to the properties which the alienor got at a subsequent partition, if they were not comprised in the sale certificate, in substitution for the properties specified in it. And in *Dhadha Sahib* v. *Muhammad Sultan Sahib*, it was further held that even though a vendee of specific lands from a coparcener of a Hindu family may be entitled to lands of equal value out of the lands allotted to his vendor in a subsequent partition in the family, a vendee from the first vendee has no such right, his only remedy being to get damages from his vendor (*a*). The grounds of decision in *Sabapathi* v. *Thandavaroya* (*z*) are that there is no warranty of title in a Court sale and that there is no privity of contract between an auction purchaser and a judgment debtor. This would seem to be taking too narrow a view. In *Abdul Aziz* v. *Appayasami Naicker*, the Judicial Committee laid down that the rights of parties to a contract contained in the certificate of sale are to be judged of by that law by which they may be presumed to

(*x*) Per Bashyam Ayyangar, J., in (1902) 25 Mad, 690, 718 *supra*.

(*y*) Per Sankaran Nair, J., in *Manjaya* v. *Shanmuga* (1915) 38 Mad., 684, 687; (1902) 25 Mad., 690, 718-719 F.B. *supra; Chinnu Pillai* v. *Kalimuthu* (1912) 35 Mad, 47 F.B.; *Hem Chunder Ghose* v. *Thako Moni Debi* (1893) 20 Cal., 533; *Amolakram* v. *Chandansingh* (1902) 24 All., 483, *Narayanbin Babaji* v. *Nathaji Durgaji* (1904) 28 Bom., 201; *Pandurang* v. *Bhasker* (1874) 11 B.H.C.R., 72; *Udaram* v. *Ranu* (1874) 11 B.H.C.R., 76; *Dhulabhai Dabhai* v. *Lala Dhula* (1922) 46 Bom., 28; *Gurlingappa* v. *Saburamappa* A.I.R., 1931, Bom., 218.

(*z*) *Sabapathi Pillai* v. *Thandavaroya Odayar* (1920) 43 Mad., 309; *Chidambaragauda* v. *Channappa*, A.I.R., 1934, Bom., 329.

(*a*) (1921) 44 Mad., 167.

have bound themselves (*b*). Neither the purchaser at a Court sale nor a purchaser at a private sale acquires any interest in the specific property; both acquire only an equity which is the same in the one case as in the other, that is, an equity to stand in their alienor's shoes and to work out their rights by means of a partition (*c*). The equity depends upon the alienation being one for value and not upon any contractual nexus. The right to get properties which fell to an alienor at a partition is the primary and indeed the only right which an alienee has, though the Court may at a partition allot to him the properties which he purchased at a Court sale or at a private sale if it could be conveniently done.

Alienee's suit for partition.

§ 388. The alienee's suit for partition must be one for the partition of the entire property and not for partition of any specific interest for he acquires no interest therein and the coparcener who alienated had himself no such interest. He cannot sue for partition and allotment to him of his share of the property so alienated (*d*), nor is he entitled to any mesne profits in respect of his share between the date of his purchase and the date of his suit for partition (*e*). The coparceners objecting to the alienation may, without bringing a suit for general partition, sue for a decree for their shares in the property alienated by the coparcener (*f*). The distinction rests upon the ground that in a suit for partition

Coparcener's suit.

(*b*) (1903) 31 I A, 1, 9, 27 Mad, 131

(*c*) *Suraj Bunsi Koer* v *Sheo Pershad* (1880) 6 I A, 88, 5 Cal, 148, *Manjayya v. Shanmuga* (1915) 38 Mad, 684, *Maharaja of Bobbili* v *Venkataramanjulu* (1916) 39 Mad, 265.

(*d*) 38 Mad, 684, 687 *supra*, *Venkatarama* v *Meera Labai* (1890) 13 Mad, 275, *Palani* v *Masakonan* (1897) 20 Mad, 243, *Pandurang* v. *Bhaskar* 11 Bom. H.C., 72, *Udaram* v. *Ranu* (1875) 11 Bom H C, 76, *Murarrao* v. *Sitaram* (1899) 23 Bom, 184, *Shivmurteppa* v. *Virappa* (1900) 24 Bom, 128, *Ishrappa* v *Krishna* (1922) 46 Bom, 925.

(*e*) (1916) 39 Mad, 265 *supra*, *Trimbak Ganesh* v. *Pandurang* (1920) 44 Bom, 621. It would be otherwise if the coparcener is found to have become divided in status *Sivaramamurthi* v *Venkayya* (1934) 57 Mad, 667, *Vanjapuri Goundan* v *Pachamuthu* (1918) 35 M L J., 609

(*f*) *Ram Charan* v *Ajudhia Prasad* (1906) 28 All, 50, *Chinna Sanyasi* v *Suriya Razu* (1882) 5 Mad, 196; *Subramanya* v *Padmanabha* (1896) 19 Mad, 267, *Iburamsa Rowthan* v. *Thiruvenkataswami* (1910) 34 Mad, 269 F.B, *Manjaya* v. *Shanmuga* (1915) 38 Mad, 684 F B.; *Souri* v *Pachia* (1926) 49 Mad., 483, 487, *Hanmandas* v. *Valabhdas* (1919) 43 Bom, 17. An alienee from one coparcener may however sue for partial partition an alienee from another coparcener: (1910) 34 Mad, 269 F.B, *Suranna* v *Subbarayudu* (1933) 65 M L J, 769; *Kandaswami* v *Venkatarama* (1933) 65 M.L.J., 696; *Naro Gopal* v. *Paragouda* (1917) 41 Bom, 347, 355.

by the purchaser, an account of the whole estate must be taken in order to see what interest, if any, the alienor possesses (*g*); but as the coparceners may wish to remain undivided amongst themselves, they are entitled to confine the suit between themselves and the stranger purchaser to the property in dispute.

Status unaffected by alienation.

§ 389. An alienation by a coparcener does not put an end to the coparcenary; whether he alienates the whole or part of his interest in family property he will continue to be an undivided member with rights of survivorship between himself and the others in respect of all the family property (g^1). This view receives support from the decision of the Privy Council in *Ramkishore* v. *Jainarayan* where it was held that it was open to the coparceners to recover possession of the property wrongfully alienated on the footing that they were entitled to the estate as a joint undivided

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(*g*) In *Tarinicharan* v *Debendralal De* (1935) 62 Cal., 655, decided by a single judge, it has been held that "the purchaser of a small portion of the joint family property from one of the co-owners is entitled under the law to get a partition only of the land purchased by him. In such cases a suit for partial partition will lie, for to give effect to the contrary view would be to affirm the principle that a plaintiff can institute a suit for partition in respect of property, in which he has no interest at all". This does not appear to be a Mitakshara case A somewhat similar decision was given in *Ram Mohan* v. *Mulchand* (1906) 28 All., 39, which overlooks the principle that the alienee of an item in a general suit for partition may not get the specific property at all In *Shyam Sunder* v *Jagarnath* (1923) 2 Pat, 925, it was held that a suit against an alienee of a portion of the property by one coparcener to recover only his share of the property without impleading the other coparceners as parties is not maintainable.

(g^1) *Aiyyagari* v *Aiyyagari* (1902) 25 Mad., 690 F.B.; *Manjaya* v. *Shanmuga* (1915) 38 Mad., 684, per Wallis, C. J., in *Maharaja of Bobbili* v *Venkataramanjulu* (1916) 39 Mad., 265, 267, 268, *Venkatarayudu* v *Sivaramakrishnayya* (1934) 58 Mad, 126, 136, *Lakshmanan Chettiar* v. *Srinivasaiengar* A.I.R., 1937, Mad, 131; *Jagannadha Rao* v. *Ramanna*, A I.R., 1937, Mad., 461; *Gurlingapa* v. *Nandapa* (1897) 21 Bom, 797 In *Krishnaswami* v. *Rajagopala* (1895) 18 Mad., 73, the question was whether when a coparcener sells his undivided share and when a surplus is left after paying his debts from the sale proceeds, that surplus is coparcenary property subject to the right of survivorship vesting in other coparceners or his self-acquired property devolving upon his demise on his childless widow. Muttusami Ayyar and Best, JJ., held that it is taken by survivorship. Whether the alienee is in any sense and to any extent a tenant-in-common or not, it is difficult to see how by the mere fact of an alienation, the alienor ceases to be a coparcener and becomes separate in interest. An alienation of a specific item or of less than his share in the entire family property will not by itself amount to a severance in interest. But where the alienation is of his undivided interest in the entire family property, there will be disruption and severance by conduct though it will not be a unilateral declaration of his intention to sever in interest (§ 455). It will be different where from the terms of the sale or mortgage and the surrounding circumstances, an intention to sever can be clearly inferred.

estate (*h*). The Judicial Committee considered that in a suit for recovery of property by the coparceners, it would be competent to the Court to make the relief granted to the coparceners conditional on their assenting to a partition so far as regards the alienor's interest in the estate in order to give effect to any right to which the alienee, standing in the shoes of the alienor, would be entitled to work out by means of a partition This view has been followed in *Davud Beevi* v *Radhakrishna Aiyar* (*i*) and in *Ramasami* v *Venkatarama* (*j*). A stricter view has been taken in *Subba Goundan* v *Krishnamachari* (*k*) and in *Kandasami* v *Velayutha* (*l*). The former appears to be the better view as it avoids multiplicity of actions.

Alienee's rights.

§ 390. The view taken by the Madras High Court that as the purchaser from a coparcener is not a tenant-in-common with the coparceners in the family, he is not entitled to joint possession or to mesne profits from the date of the alienation appears so far as the principles of Hindu law are concerned to be the sounder view and is in consonance with the Privy Council decisions, in *Deen Dyal's* case, *Suraj Bunsi's* case and *Hurdi Narain's* case (*m*) and also with the decision in *Ramkishore* v *Jainarayan* (*n*).

The Bombay High Court has however laid down in *Bhau* v *Budha Manaku* three principles as regards the rights and remedies of alienees and coparceners (*o*) (1) A

(*h*) (1913) 40 I A., 213, 40 Cal, 966

(*i*) (1923) 44 M.L J., 309

(*j*) (1923) 46 Mad, 815.

(*k*) (1922) 45 Mad, 449—Kumaraswami Sastri, J, considered that to allow the alienee to claim in the coparcener's suit for possession would be to recognise a counter-claim The Privy Council has intimated in *Currimbhoy* v *Creet* (1932) 60 I A, 297, 60 Cal, 980, that a counter-claim does not exist in the mofussil But the decision of the Privy Council in *Ramkishore* v *Jainarayan* (1913) 40 I A, 213, 40 Cal., 966 was that the relief to the coparceners should be conditional on their assenting to a partition, *i e*, they should be put upon terms. It would not be the decreeing of a counter-claim.

(*l*) (1927) 50 Mad, 320. See also *Hanmandas* v *Valabhdas* (1919) 43 Bom., 17, 25-26

(*m*) (1877) 4 I A, 247, 3 Cal, 198, (1879) 6 I A., 88, 5 Cal, 148, (1883) 11 I A, 26, 10 Cal, 626.

(*n*) (1913) 40 I A, 213, 40 Cal, 966 The view taken by Kumaraswami Sastri, J, in *Subba Goundan* v *Krishnamachari* (1922) 45 Mad., 449 that the alienee is not liable for mesne profits till repudiation is erroneous See §§ 404-405 It is also contrary to the decision in *Maharaja of Bobbili* v. *Venkataramanjulu* (1916) 39 Mad., 265, and to the decisions mentioned in note (*g*[1]) *supra.*

(*o*) (1926) 50 Bom., 204, 206; for a different view see *Hanmandas* v. *Valabhdas* (1919) 43 Bom., 17.

stranger purchaser of the undivided share of a coparcener in a joint Hindu family if out of possession should not be given joint possession but should be left to his remedy of a suit for partition (*p*). (2) On the other hand, a coparcener, who has been excluded, may obtain joint possession with such a purchaser, who has obtained possession of the joint family property (*q*). (3) The purchaser in possession need not be ejected in a suit for recovery of possession brought by an excluded coparcener but can be declared to be entitled to hold (pending a partition) as a tenant-in-common with the other coparceners (*r*). It is obvious that the third rule is exactly the contrary of the rule laid down by the Privy Council in the cases already referred to (*s*). Fawcett, J., in *Bhau* v. *Budha Manaku*, distinguishes the decisions of the Privy Council as dealing with Court sales of a coparcener's share in Bengal, where the law as to the right of a coparcener to alienate his undivided share is different from that in Bombay and Madras (*t*). It is plain however that in all the provinces, as the law allows a coparcener's undivided interest to be sold in an execution sale, the rights of a purchaser at an execution sale cannot depend upon the fact that in Madras and Bombay an alienee at a private sale can work out his equity on a partition. Whether the sale is a court sale or a private sale, the alienee has only an equity and there can be no distinction on this question which is not a question of the Hindu law of the Maharashtra school but "is an exception recognised by modern jurisprudence" (*u*). And *Ramkishore Kedarnath* v. *Jainarayan* was a case from the Central Provinces where the coparcener's interest can be alienated at a private sale and the decision there was in connection with a private alienation and not an execution-sale (*v*). The third rule laid down by the Bombay High Court does not therefore appear to be consistent either with authority or principle.

(*p*) *Balaji Anant* v. *Ganesh Janardan* (1881) 5 Bom., 499, *Pandu Vithoji* v. *Goma Ramji* (1918) 43 Bom., 472; *Ishrappa* v. *Krishna* (1922) 46 Bom., 925.

(*q*) *Bhiku* v *Puttu* (1905) 8 Bom. L.R., 99 and the cases therein cited.

(*r*) *Babaji* v. *Vasudev* (1876) 1 Bom., 95, *Kallapa* v. *Venkatesh* (1878) 2 Bom., 676; *Dugappa* v. *Venkatram* (1880) 5 Bom., 493; (1926) 50 Bom., 204 *supra*, *Achut Sitaram* v. *Shivajirao* (1937) 39 Bom. L.R., 224, A.I.R., 1937, Bom., 244.

(*s*) See the cases noted in note (*m*) *supra*.

(*t*) (1926) 50 Bom., 204, 207.

(*u*) *Lakshman Dada Naik* v. *Ramchandra* (1881) 7 I.A., 181, 5 Bom., 48.

(*v*) (1913) 40 I.A., 213, 40 Cal., 966.

Section 44, T. P. Act.

§ 391. In this connection a difficulty is created by s. 44 of the Transfer of Property Act. That section runs as follows:—"Where one of two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred. Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part-enjoyment of the house". The section now applies to Hindus by virtue of the Transfer of Property (Amendment) Act, 1929, which omitted the words 'Hindu or Buddhist' in the concluding part of section 2 of the principal Act The decisions of the Madras High Court in *Venkatarama* v *Meera Labai* (*w*) and in *Kota Balabhadra* v. *Khetra Das* (*x*) that section 44 could not override the Hindu law were before the amendment and can no longer hold good.

The language of the section, as its second sentence indicates, will cover the case of a Hindu undivided family. The words "subject to the conditions and liabilities affecting at the date of the transfer, the share or interest so transferred" cannot altogether take away the transferee's right to joint possession conferred by the section itself, but can only subject it to restrictions and equities It would therefore seem that while the transferee of a share of a dwelling-house belonging to an undivided family is not entitled to joint possession, a transferee of a share of other immovable property is entitled to joint possession and enjoyment, he would be tenant-in-common entitled to mesne profits, if he is kept out of possession.

Alienee takes subject to equities.

§ 392. It has been held that as the purchaser of a coparcener's interest gets only an equity to enforce a partition, he takes the share upon partition subject to all the

(*w*) (1890) 13 Mad, 275.

(*x*) (1916) 31 M.L.J., 275.

liabilities in the hands of the vendor, as for example a liability to pay the alienor's father's debts (*y*).

In *Bhagwan Bhau* v. *Krishnaji*, it was held that where a coparcener agrees to sell his interest and dies before the completion of the sale, the vendee is entitled to specific performance of the agreement (*z*). Such an agreement under the Hindu law would of course not be enforceable against the coparceners who take the property by survivorship, but the decision was rightly rested on the second illustration to clause (*c*) of section 27 of the Specific Relief Act

Extent of the share alienated.

§ 393 The share which an alienee of a coparcener's interest acquires by the alienation is that to which his alienor was entitled at the date of the alienation (*a*). While the quantum of interest which the alienee acquires is to be ascertained as at the date of the alienation, the properties of the family in which he is to get his share are as usual ascertained as on the date of the suit for partition (*b*).

Rights of a mortgagee from a coparcener.

Where one of two or more coparceners in an undivided Hindu family or one of two or more co-sharers, as for instance, under the Dayabhaga law, mortgages his undivided share in the joint estate or some of the properties held jointly, the mortgagee takes the security subject to the right of the other coparceners to enforce a partition and thereby to convert what was an undivided share of the whole into a defined portion held in severalty (*c*).

If the mortgaged properties are allotted at a subsequent partition to the coparceners or co-sharers other than the mortgagors, they take the allotted properties, in the absence of fraud, free from the mortgage, the mortgagee can therefore proceed only against the properties allotted to the mortgagor in substitution of his undivided share, whether they are in

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(*y*) *Udaram* v *Ranu* (1875) 11 Bom H C, 76, *Narayan* v *Nathaji* (1904) 28 Bom., 201, *Venkureddi* v *Venkureddi* (1927) 50 Mad., 535 F.B.

(*z*) (1920) 44 Bom., 967, *Ramappa* v. *Yellappa* (1928) 52 Bom, 307.

(*a*) *Naro Gopal* v *Paragauda* (1917) 41 Bom., 347, dissenting from *Gurlingapa* v. *Nandapa* (1897) 21 Bom., 797. *Aiyyagari* v. *Aiyyagari* (1902) 25 Mad, 690 F.B.; *Chinnu Pillai* v. *Kalimuthu* (1912) 35 Mad., 47 F.B.; *Kasi Visveswara Rao* v. *Varahanarasimha* A.I.R., 1937, Mad., 631. On this point the decision in *Rangasami* v. *Krishnayyan* (1891) 14 Mad., 408, F.B, is no longer good law. The decision in *Muthukumara Sathapathiar* v *Sivanarayana* (1933) 56 Mad., 534 is contrary to the Full Bench decision in 35 Mad., 47 and was not followed in A.I.R, 1937, Mad., 631, *supra*.

(*b*) (1933) 56 Mad., 534, *supra*.

the possession of the mortgagor or of an alienee from him (*c*).

§ 391. Both in Madras and in Bombay, it is settled that an actual alienation for value is enforceable to the same extent by suit after the death of the alienor as it would have been by suit during his life (*d*).

§ 395. In provinces other than Madras and Bombay, where the stricter rule of law, that it is not open to a coparcener to alienate without the consent of the other coparceners, is enforced, the question how far an alienee has any equity has been the subject of considerable discussion. In *Mahabeer Persad* v. *Ramyad*, it was held that the alienee had an equity which may be enforced by charging the share of the alienor for the repayment of the price paid (*e*). This received a qualified approval in *Deen Dyal's* case (*f*) and was subsequently discussed in *Madho Parshad* v. *Mehrban Singh* (*g*) and was acted upon in some cases (*h*). But the decisions of the Judicial Committee in *Lachhman Prasad* v. *Sarnam Singh* (*i*) and in *Anant Ram* v *Collector of Etah* (*j*) would seem in effect to restore the stricter doctrine of the Mitakshara Where the law does not allow a coparcener to alienate his undivided share without the consent of the other coparceners, it is difficult to see how a representation that he has such a power which must be a representation on a

(*c*) *Bijnath Lall* v *Ramoodeen Choudry* (1873) 1 I A, 106; *Mohammad Afzal Khan* v *Abdul Rahman* (1932) 59 I A, 405, 13 Lah., 702, *Muthia Raja* v *Appala Raja* (1911) 34 Mad, 175, distinguishing *Lakshman* v *Gopal* (1899) 23 Bom, 385 as a case where the partition was in fraud of the mortgagee *Amolak Ram* v *Chandansingh* (1902) 24 All, 483, *Hem Chunder Ghose* v *Thako Moni Debi* (1893) 20 Cal., 533, *Shahebzada Mahomed Kazim Shah* v *Hills* (1908) 35 Cal, 388 F B, *Hakim Lal* v *Ram Lal* (1907) 6 C L J, 46, *Joy Sankari Gupta* v *Bharat Chandra* (1899) 26 Cal, 434, *Nagendra Mohan* v *Pyari Mohan* (1916) 43 Cal., 103, *Thakur Raghunandan Sahay* v *Thakur Dripa* (1929) 8 Pat, 258, *Amar Singh* v *Bhagwan Das* (1933) 14 Lah, 749 *Mohan Lal* v *Wadhwa Singh* A I R, 1934, Lah, 660, *Rama Aiyar* v *Bhagvathi* (1936) 70 M L J., 506, *Manickavelu Chetty* v. *Sateedan Sowcar* (1937) M W N, 1340

(*d*) *Alamelu* v *Rangasami* (1884) 7 Mad, 588, *Rangasami* v. *Krishnayyan* (1891) 14 Mad, 408 F B, *Aiyyagari* v *Aiyyagari* (1902) 25 Mad, 690 F. B, *Palaniandy* v. *Veramalai* (1908) 15 M L J, 486.

(*e*) (1878) 12 B L.R., 90.

(*f*) (1877) 4 I.A, 247, 3 Cal, 198.

(*g*) (1898) 17 I A., 194, 18 Cal., 157

(*h*) e g. *Jamuna Parshad* v *Ganga Parshad* (1892) 19 Cal, 401.

(*i*) (1917) 44 I A, 163, 39 All., 500. Lord Haldane said "Now, whatever may happen when there are special circumstances such as there were in the case referred to (12 B.L.R, 90), that is not the general law".

(*j*) (1918) 40 All., 171 P.C., 44 I.C., 290.

point of law, can raise an equity. A representation to amount to an estoppel must be a representation of an existing fact (*k*). A representation of the alienor that he has the consent of the other members, which the hearer must know, if he reflects, not to be true or which merely puts him on enquiry, does not found an estoppel (*l*). In no case can such an equity be enforced when the coparcener who made the representation is dead. Immediately on this event, his share passes by survivorship to persons who are not liable for the debts and obligations of the deceased (*m*).

Remedies against alienation.

§ 396. The remedies possessed by one member of a family against alienations made by another member, depend, of course, upon the view taken by the Courts of the validity of such alienations. According to the law administered in Madras and Bombay, such alienations, whatever they may profess to convey, are valid to the extent of the alienor's own interest in the property. But though, consequently, no suit can be maintained for the absolute cancelment of such an alienation, a member of the coparcenary can sue and obtain a decree for possession of the whole property, leaving the alienee to establish his right to the share alienated to him by a separate suit for partition (*n*). But when the alienee takes exclusive possession of any specific portion of the joint property, he will be liable to be turned out at the suit of the other coparceners (*o*). Even where there has been no dispossession, if one member of an undivided family has disposed of the family property to a greater extent than the law entitles him to do, the other members have a right to have the transaction declared void, except as to the transferor's share in Madras, Bombay and the Central Provinces, and, *in toto* in the other provinces (*p*).

A fortiori, a sale which was an absolute fraud upon the family, and known by the purchaser to be such, would be rescinded by all the Courts, as the equity by means of which it can be worked out, would absolutely fail (*q*).

(*k*) *Jorden* v. *Money* (1854) 5 H.L.C., 185; 10 E.R., 868; 13 Hals. 2nd ed., p. 471.

(*l*) Ashburner on Equity, 2nd Edition, p. 449.

(*m*) *ante* § 346; (1890) 17 I.A., 194, 18 Cal., 157 *supra*.

(*n*) See *ante* §§ 385, 388.

(*o*) *Venkatachella* v. *Chinnayya* (1870) 5 M.H.C., 166.

(*p*) *Kanukurty* v. *Venkataramdas*, 4 Mad., Jur., 251; *Kanth Narain* v. *Prem Lall*, 3 W.R., 102; *Raja Ram Tewary* v. *Luchmun*, 8 W.R., 15; *Chinna Sanyasi* v. *Suriya* (1882) 5 Mad., 196.

(*q*) *Ravji Janardan* v. *Gangadharbhat* (1880) 4 Bom., 29; *Sadashiv* v. *Dhakubai* (1881) 5 Bom., 450.

Limitation.

§ 397. The period of limitation is twelve years from the date of alienation under article 126 of the Indian Limitation Act, 1908, for a suit by a son to set aside an alienation by a father of ancestral property whether movable or immovable. A similar period of twelve years for a suit to recover possession of immovable property alienated by a managing member or other coparcener, not being the father, is provided by article 144 of the Act(*r*). These articles apply only where the alienee has been in possession. A suit for a mere declaration is governed by article 120 of the Limitation Act which provides a period of six years from the date when the right to sue accrues (*s*)

Where a suit to set aside a father's alienation by sons who were in existence at the date of alienation is barred, it is equally barred as to sons who were born subsequent to the alienation, for they do not acquire a fresh cause of action (*t*). Conflicting views have been expressed on the question whether when a suit to set aside an alienation by an elder son is barred, a suit by a younger son is also barred under sections 6 and 7 of the Limitation Act. In *Jawahir Singh* v *Udai Parkash*, the Privy Council held that though a suit to set aside an alienation by the elder of the two sons would be barred on the ground that he had attained majority more than three years before the suit, a suit by the younger son, within three years of his majority to recover possession of the property would not be barred (*u*)

(*r*) See *Bunwari Lal* v *Daya Sunkar* (1909) 13 C W N, 815

(*s*) *Chintaman* v *Bhagvan* A I R, 1928, Bom, 383

(*t*) *Ranodip Singh* v *Parmeshwar* (1925) 52 I A, 69, 47 All, 165, *Shahamad* v *Salabat* (1927) 8 Lah, 19, *Ram Krishen* v *Baldeo Koeri* A I R, 1925, All, 247, *Thakur Prasad* v *Gulab Kunwar* A I R, 1925, All, 563, *Viswesuara* v *Surya Rao* (1936) 59 Mad, 667, *Ranganatha* v. *Ramaswami* (1935) 58 Mad, 886 F B (alienation by father, when child was *en ventre sa mere*)

(*u*) (1926) 53 I A, 36, 48 All, 152 See also *Lal Bahadur* v. *Ambika Prasad* (1925) 52 I A, 443, 450, 451, 47 All, 795, where it was held that even though the suit was barred against one son, it was not barred against the other In 53, I A, 36, the High Court had made a decree in favour of the younger son only in respect of two thirds of the property, excluding the share of the elder son whose right was barred The Privy Council approved the decision in *Ganga Dayal* v. *Mani Ram* (1908) 31 All, 156, and disapproved of *Vigneswara* v. *Bapayya* (1893) 16 Mad, 436 and *Doraisami* v *Nondisami* (1915) 38 Mad, 118 F B, but see *Surayya* v *Subbamma* (1927) 53 M L J, 677; *Jaddu Padhi* v *Chokkapu Boddu* A I R, 1934, Mad, 469 Where two minor coparceners are concerned, a suit to set aside an alienation by a guardian, governed by article 44 of the Limitation Act may, as the alienation is strictly voidable only and not void, stand on a different footing, *Ankamma* v *Kamesuaramma* (1935) 68 M L J, 87.

Where a son brings a suit to set aside an alienation of ancestral property within the meaning of article 126 of the Limitation Act, he brings it in his character as son and not in his character as managing member. The right of the manager to represent the coparcenary as a whole cannot extend to his representing the rights of individual coparceners to challenge alienations made by one or more members of the coparcenary. Where several coparceners are entitled to set aside an alienation, the view that if the managing member is barred from bringing the suit, the other coparceners are also barred is open to doubt. Where an alienation by a father or a managing member is invalid, no succeeding managing member can, by his sole consent, ratify that alienation. He cannot therefore give a discharge in respect of such an alienation without the concurrence of the others as required by section 7 of the Limitation Act, though he undoubtedly has a power to enter into a *bona fide* reasonable compromise. The touchstone of the power to give a discharge is, as in other cases, family necessity or benefit to the estate.

Right to object.

§ 398. Alienations by a sole surviving member of a coparcenary are of course valid, for the joint family property is at his absolute disposal as there is no one who has a joint interest with him in it either by joint acquisition, or by birth. Therefore, a son or other coparcener cannot object to alienations validly made by his father or other managing member before he was born or begotten, because he could only by birth obtain an interest in property which had not validly passed out of the family before he comes into legal existence (*v*). If at the time of the alienation there was no one in existence whose assent was necessary (*w*), or if those who were then in existence consented, a coparcener not in existence at that date cannot object on the ground that there was no necessity for the transaction (*x*). A coparcener who is in his mother's womb

(*v*) *Venkataramani* v. *Subramania* A.I.R., 1928, Mad., 945; *Bholanath* v. *Kartick* (1907) 34 Cal, 372; *Chuttan Lal* v. *Kallu* (1911) 33 All., 283; *Suraj Prasad* v. *Makhan Lal* (1922) 44 All., 382; *Partab Singh* v. *Bohra Nathu Ram* (1923) 45 All., 49; *Lal Bahadur* v. *Ambika Prasad* (1925) 52 I.A., 443, 47 All., 795; *Hitendra Narayan Singh* v. *Sukhdeb Prasad Jha* (1929) 8 Pat., 558.

(*w*) *Narain Das* v. *Har Dyal* (1913) 35 All., 571; *Bishwanath Prasad Sahu* v. *Gajadhar Prasad Sahu* (1918) 3 P.L.J., 168.

(*x*) *Jado* v. *Ranee* (1873) 5 N.W.P., 113; *Raja Ram Tewary* v. *Luchmun* (1867) 8 W.R., 16, 21; *Girdharee Lall* v. *Kantoo Lall* (1874) 1 I.A., 32; 14 B.L.R., 187; A mere right to bring a suit, or to make a representation to Government for the enlargement of a grant, on the ground of fraud, is not such a right as vests in a son by birth, *Chaudri Ujagar* v. *Chaudri Pitam* (1881) 8 I.A., 190; sub-nominee, *Ujagar* v.

at the time of the alienation and afterwards comes into separate existence is in law deemed to be in existence at the time of alienation as much as one born before it and is equally entitled to challenge the alienation (*y*).

Where an alienation was made by a father or other manager, without necessity, and without the consent of sons or other coparceners then living, it would not only be invalid against them, but also against any son or coparcener born before they had ratified the transaction: and no consent given by them after his birth would render it binding upon him (*z*). The reason of the thing is not of course that the unborn son had any right in the family property at the time of the alienation, but that on his birth he acquires a share in the family property as it then stands If a previous alienation of any portion of the family property was validated by consent or failure to set it aside in time on the part of the other members of the family then in existence, the property in which he acquires a share at birth is diminished to the extent of the portion thus alienated. If the alienation was invalid, he acquires a share in the whole property including the portion purported to be alienated because it was bad and did not in law diminish the corpus of the joint family property (*a*)

Pitam (1881) 4 All, 120 Where the father had contracted to sell family land, of which he was not in possession, as soon as he obtained possession, and after the contract, but before possession, a son was born, it was held that a decree for specific performance was not binding on the son, who had not been made a party to the suit The Court held that the same decision would have been proper in the case of a son born after contract for sale, but before actual transfer: *Ponnambala* v *Sundarappayyar* (1897) 20 Mad, 354

(*y*) *Minakshi* v *Virappa* (1885) 8 Mad, 89, *Ramanna* v *Venkata* (1888) 11 Mad, 246, *Sabapathi* v *Somasundaram* (1893) 16 Mad, 76; *Deo Narain Singh* v *Gangasingh* (1915) 37 All., 162, *Sri Datla Venkatasubba Raju Guru* v *Gatham Venkatrayudu* (1914) 27 M L J, 580, *Mannava Ramarao* v *Venkatasubbayya* A I R, 1937, Mad, 274, 278, *Bala Anna* v *Akubai* (1926) 50 Bom, 722, 728; *Dwarka Das* v. *Krishan Kishore* (1921) 2 Lah, 114

(*z*) *Hurodoot* v *Veer Narain* (1869) 11 W R, 480, *Tulsiram* v. *Babu* (1911) 33 All, 654, 656, *Bunwari Lal* v. *Daya Sankar* (1909) 13 C W N, 815, *Hazari Mull* v *Abani Nath* (1912) 17 C W N, 280, *Bhup Kunwar* v *Balbir Sahai* (1921) 44 All, 190, *Chandramani* v *Jambeswara* A I R., 1931, Mad, 550, *Mansingh* v. *Karan Singh* A I R, 1924, Nag, 200, *Gunaji* v *Ramchandra* A I R., 1926, Nag., 360; *Jinwarsa Gangasa* v *Gunwantroo* A I R, 1936, Nag, 34; see also *Jwala Prasad* v *Maharajah Pratap Udainath* (1916) 1 P L J, 497

(*a*) This passage is cited with approval in *In the matter of Amirthalinga Thevan*, A I R, 1928, Mad, 986, 990, 28 M L.W., 634; *Lachhmi Narain* v *Kishen Kishore* (1916) 38 All, 126, also in *Bhup Kunwar* v. *Balbirsahai* (1922) 44 All., 190, 195, *Jinwarsa* v. *Gunwant Rao* A I R., 1936, Nag, 34.

The rule has been laid down in a number of cases (*b*) and Mookerjee, J., treated it as well settled in *Hazari Mull* v. *Abani Nath* (*c*). It is also supported by the decision of the Privy Council in *Ramkishore* v. *Jainarayan* (*d*). In that case, out of four sons who sued to set aside an alienation of ancestral property, three were born subsequent to the father's disposition in favour of the alleged adopted son, Jainarayan, whose joint possession commenced in 1887. The Court of the Judicial Commissioner had held that Jainarayan's adverse possession which ran from 1887 barred the rights of the three younger sons who were born subsequent to it. Reversing that decision, their Lordships of the Privy Council said: "It was, however, conceded before this Board and as their Lordships think, *rightly conceded*, that if the first plaintiff succeeds in the suit, his younger brothers born before a partition of the estate will be entitled to share in the relief" (*e*).

An alienation which is invalid when it is made on account of the existence of other coparceners becomes unassailable on the death of all of them if no new coparcener is born or begotten before their death.

Any son born to the alienor, after the death of the other coparceners can, on his birth, only acquire an interest in his father's estate and as that estate was validly carried away from the family before his birth, he is not entitled to challenge the alienation. Accordingly in *Visweswara* v. *Surya*, where a father and his son constituted a coparcenary and an alienation by the former was invalid as made without necessity and without the consent of the son then living, it was held that a son born after the death of the non-alienating coparcener was not entitled to impeach the alienation (*f*).

§ 399. An observation of the Privy Council in *Lal Bahadur* v. *Ambica Prasad* would seem to confine the right to challenge alienations of family property to the coparceners alive at the date of the alienation and to deny such a right to a coparcener who though born subsequent to the aliena- Lal Bahadur v. Ambica Prasad.

(*b*) *Raja Ram Tewary* v. *Luchmun* (1867) 8 W.R., 15; *Hurodoot* v. *Beer Narain* (1869) 11 W.R, 480, *Bholanath* v. *Kartick* (1907) 34 Cal., 372; *Bunwari Lal* v. *Dayasankar* (1909) 13 C.W.N., 815, 822; *Tulshiram* v. *Babu* (1911) 33 All., 654; *Ponnambala* v. *Sundarappayyar* (1897) 20 Mad., 354; *Chandramani* v. *Jambeswara* A I.R, 1931, Mad., 550, *Dwarka Das* v. *Krishna Kishore* (1921) 2 Lah, 114, 120.

(*c*) (1912) 17 C.W.N, 280, 285.

(*d*) (1913) 40 I.A., 213, 40 Cal., 966.

(*e*) (1913) 40 I.A, 213, 40 Cal., 966, 980.

(*f*) (1936) 59 Mad., 667.

tion acquires an interest in the coparcenary property before the death of the objecting or non-alienating coparceners. In that case, Ram Din and Pateshwari, two brothers and joint managers of the family mortgaged portions of family property in 1895. In 1904, the properties were sold in discharge of the amounts due to the mortgagee. The sale of 1904 was itself clearly for the antecedent debts due under the mortgage of 1895 and was therefore valid as explained in *Brij Narain*'s case Ram Din had two sons in 1895 who were minors The grandsons, who were the plaintiffs subsequently born, sued to set aside the sale in 1919. Their Lordships said: "The respondents, plaintiffs in the suit are the sons of Awadh Behari (the elder son of Ram Din). In 1895, they were still unborn This, as will later appear, is one of the most important facts in this case It follows from it that these two mortgage deeds have always been binding on the respondents The only joint family estate to an interest in which they succeeded was an estate which to the extent of these two mortgages had already been alienated" (f^1).

The point was not considered and it may not be right to regard the observation as a decision on the question. It would be against the whole current of Indian authorities which were neither referred to nor considered and cannot therefore be deemed to be overruled. If, however, the observation means that coparceners born in the family subsequent to an alienation before the death of the other coparceners who could challenge it, have no right to the property and consequently no right to challenge the alienation, it would conflict with what was said by the Board in *Ramkishore* v. *Jainarayan* (f^2) as well as with the cardinal principle of Hindu law. The coparcenary which is interested in the property, not validly alienated, is continually enlarged by births as it is diminished by deaths Where A makes an invalid alienation of the family property, his son B is entitled to object to it, not because he is in existence but as he is equally interested in it The property is not effectively carried away from the family except to the extent of the father's share in provinces in which he could alienate. B's son C born after the alienation would have an equal right along with his father in the family property which would comprise *ex-hypothesi* the property which was wrongfully alienated and therefore still remained in law as part of the

(f^1) (1925) 52 I A, 443, 445, 47 All, 795, 797.
(f^2) (1913) 40 I A, 213, 40 Cal, 966

joint family property. It is difficult to see how, if the suit by the grandson is within the period of limitation, as determined in accordance with the decision in *Ranodip Singh* v. *Parameshwar* (*g*), his right to the property is lost. The right to challenge an alienation is only by reason of the interest in the family property and it is a right in every member of the coparcenary for the time being. As long as that right exists in the coparcenary, it would seem to be immaterial whether the grandson was alive at the date of the alienation or born subsequently.

Adopted son.

§ 400. An adopted son stands in exactly the same position as a natural born son and has the same right to object to his father's alienations but his right to challenge an alienation arises only from the date of his adoption. An alienation made before his adoption is consequently valid whether it is a sale, mortgage or gift. So too a bequest by one of family property is valid as against a son adopted after his death (*h*).

Equities on setting aside alienation.

§ 401. According to the recent decisions of the Privy Council, an alienation may be upheld in its entirety though the necessity was only partial, in other words, even though the whole consideration received was not for necessary purposes or for the discharge of antecedent debts (*i*). Where an alienation made by a father or other managing member is set aside on the ground that there was no such necessity, complete or partial as will justify it, it is made conditional on the refund to the alienee of such part of the consideration as is shown to have been advanced by him for necessary purposes or for the discharge of antecedent debts or as is proved to have been carried to the joint family assets (*j*) or applied in paying off charges upon the property (*k*). In the leading case

(*g*) (1925) 52 I.A., 69, 47 All, 165, see *ante* § 396.

(*h*) *Krishnamurthi* v. *Krishnamurthi* (1927) 54 I A, 248, 262, 50 Mad, 508, 518; *Kalyanasundaram Pillai* v. *Karuppa Mooppanar* (1927) 54 I.A., 89, 50 Mad., 193 (gift before adoption); *Veeranna* v. *Sayamma* (1929) 52 Mad., 398; *Sudanund* v. *Soorjoomonee* (1869) 11 W.R., 436; *Rambhat* v. *Lakshman* (1881) 5 Bom., 630, an adopted son's rights date from adoption, see *ante* §§ 204, 206.

(*i*) See *ante* § 367, *Ram Sunder* v. *Lachhmi Narain* (1929) 57 M.L.J., 7 P C.

(*j*) *Srinivasa Aiyangar* v. *Kuppuswami Ayiengar* (1921) 44 Mad., 801, 802, 803.

(*k*) *Nagappa* v. *Brahadambal* (1935) 62 I.A., 70, 58 Mad, 350. In *Marappa Gaundan* v. *Rangasami Gaundan* (1900) 23 Mad., 89, it was held that though a portion of the consideration was applied in discharge of a mortgage debt binding on the others, the mortgagee, being a volunteer, could not, as against them, claim a charge on their shares. See this case explained in *Venkatapathy* v. *Pappiah* (1928) 51 Mad., 824.

of *Modhoo* v. *Kolbur*, Peacock, C.J. laid down that "in the absence of proof of circumstances which would give the purchaser an equitable right to compel a refund from the son, the latter would be entitled to recover without refunding the purchase money or any part of it. . . . . We ought to add that if it is proved to the satisfaction of the Court that the purchase money was carried to the assets of the joint estate, and that the son had the benefit of his share of it, he could not recover his share of the estate without refunding his share of the purchase money; so if it should be proved that the sale was effected for the purpose of paying off a valid incumbrance on the estate which was binding upon the son, and the purchase money was employed in freeing the estate from the incumbrance, the purchaser would be entitled to stand in the place of the incumbrancer, notwithstanding the incumbrance might be such that the incumbrancer could not have compelled the immediate discharge of it; and that the decree for the recovery by the son of the ancestral property, or of his share of it, as the case might be, would be good, but should be subject to such right of the purchaser to stand in the place of the incumbrancer It appears to me, however, that the onus lies upon the defendant to show that the purchase money was so applied. I do not concur with the decision which has been referred to (*l*), in which it is said that 'in the absence of evidence to the contrary, it must be assumed that the price received by the father became a part of the assets of the joint family'. If the father was not entitled to raise the money by sale of the estate, and the son is entitled to set aside that sale, the onus lies on the person who contends that the son is bound to refund the purchase money before he can recover the estate, to show that the son had the benefit of his share of that purchase money. If it should appear that he consented to take the benefit of the purchase money with a knowledge of the facts, it would be evidence of his acquiescence in the sale" (*m*). The rule laid down

(*l*) *Muddun Gopal* v. *Ram Buksh* (1863) 6 W R, 71.

(*m*) *Modhoo* v *Kolbur* (1869) B L R, Sup, Vol. (Full Bench Rulings) 1018, 9 W R, 511, followed in *Honooman Dutt Roy* v. *Bhagbut Kishen* (1872) 8 B L R, 358, 15 W R (F B) 6, *Makundi* v. *Sarabsukh* (1884) 6 All, 417, *Tejpal* v *Ganga* (1903) 25 All., 59; *Moulvie Mahomed Shumsool* v. *Shewukram* (1874) 2 I A, 7, 17, 14 B L R, 226, *Ajit Singh* v. *Bijai Bahadur* (1884) 11 I A., 211, 11 Cal., 61; *Wenlock* v *River Dee Co* (1887) 19 Q B D., 155, *Gangabai* v. *Vamanji* (1864) 2 Bom. H C., 301.

in *Modhoo* v. *Kolbur* is still good law (*n*).

Alienation by father.

Where an alienation by the father is set aside at the instance of the sons on the ground that it is neither for necessity nor for antecedent debts, the sons are entitled to have it set aside without its being made a condition that they should refund the consideration paid by the alienee to the father. For until the sale is set aside and the purchaser becomes entitled to a refund of the consideration, there is no debt of the father in existence which can be regarded as an antecedent debt and which his son would be under an obligation to discharge (*o*). In Calcutta however it has been held that if an alienation were not made for an antecedent debt, the sons could only set it aside on paying the full purchase money, this being a debt for which their father would be liable to the purchaser as for failure of consideration on the sale being cancelled, and for which in consequence their share of the property would be ultimately responsible (*p*). This view is opposed to the Full Bench decision in *Modho* v. *Kolbur* (*q*) and to the decisions of the Privy Council which require that there must in strictness be an antecedent debt to support a father's alienation (*r*).

(*n*) Per Wallis, C.J., in *Srinivasa* v. *Kuppuswami* (1921) 44 Mad., 801, 803 dissenting from the view of Mitter, J., in *Koer Hasmat Rai* v. *Sundardas* (1885) 11 Cal., 396 that the Full Bench decision in *Modhoo* v. *Kolbur* (1868) 9 W.R., 511 is virtually overruled by the Privy Council decision in *Girdharee Lall* v. *Kantoo Lall* (1874) 1 I.A., 321.

(*o*) *Srinivasa Ayyangar* v. *Kuppuswami Ayyangar* (1921) 44 Mad., 801; *Virabhadra* v. *Guruvenkata* (1899) 22 Mad., 312, referring to the words 'on payment' in *Sabapathi* v. *Somasundaram* (1893) 16 Mad., 76 at 79 as a printer's error, *Madangopal* v. *Satiprasad* (1917) 39 All., 485; *Kilaru Kottayya* v. *Polavarapu Durgaya* (1918) 35 M.L.J., 451, *Daya Ram* v. *Har Charan Das* (1927) 8 Lah., 678, *Badham* v. *Madho Ram* (1921) 2 Lah., 338; *Chandra Deo Singh* v. *Mata Prasad* (1909) 31 All., 176. In *Jokhu Gosain* v. *Ganesh Singh* A.I.R. 1928 Pat, 54, the Patna High Court, following *Koer Hasmat Rai* v. *Sundardas* (1885) 11 Cal., 386 and distinguishing *Srinivasa* v. *Kuppuswami* (1921) 44 Mad., 801, held that where joint property is sold by father and it is proved that the purchase money was carried to the assets of the joint estate and the son had the benefit of his share of it, the son cannot recover his share of the estate without refunding his share of the purchase money. Both in 11 Cal., 386, *supra* and in A.I.R., 1928, Pat., 54, *supra* the sons chose to confine their remedy to their own shares excluding their father's share.

(*p*) *Koer Hasmat Rai* v. *Sunder Das* (1885) 11 Cal., 396. This is dissented from in *Madan Gopal* v. *Sati Prasad* (1917) 39 All., 485; (1921) 44 Mad., 801 *supra.*

(*q*) (1868) 9 W.R., 511.

(*r*) *Brij Narain* v. *Mangal Prasad* (1923) 51 I.A., 129, 46 All., 95; *Sahu Ram Chandra* v. *Bhup Singh* (1917) 44 I.A., 126, 39 All., 437; *Chet Ram* v. *Ram Singh* (1922) 49 I.A., 228, 44 All., 368.

Alienation by a manager.

§ 402. So too, an alienation by a managing member, which is not for necessity can be set aside unconditionally at the instance of the other coparceners; for where the sale was made to discharge the personal debt of the alienor, there can be no equity on the part of the other coparceners, not being the sons of the alienor to refund the purchase money. The fact of the person being an innocent purchaser for value at an auction would make no difference. He had every opportunity of making enquiry, and must have known the extreme danger of purchasing an interest which had been originally bought from a single member of a joint undivided family under the Mitakshara law (*s*).

Necessity for offer to refund.

§ 403. A suit to set aside an alienation will not fail on the mere ground of the absence of an offer to refund such part of the consideration as may be binding upon the plaintiff (*t*).

Alienation without necessity void or voidable?

§ 404. The question whether an alienation made by a father or other manager which is neither for a legal necessity nor for the discharge of an antecedent debt, is void or voidable has given rise to conflicting judicial opinions (u). Such an alienation must on principle be invalid as against the other members of the family from its inception though they can elect to abide by it. The possession of a purchaser under an unauthorised alienation by the manager will be wrongful unless it is assented to or 'ratified' by the other coparceners. In provinces where the alienor's own share is bound, it will be wrongful as to the shares of the other coparceners. If all that is meant by the proposition that such an alienation is voidable, is that it is not so absolutely void as to be incapable of being assented to or 'ratified' by the other

(s) *Nathu Lal* v. *Chodi Sahi* (1869) 4 B L R, A C J, 15, 19, *cf. Alodhan Kuar* v. *Naurangi Singh* A I R. 1938 Pat, 194 (widow).

(t) *Bhagwat Dayal* v *Debi Dayal* (1908) 35 I A, 48, 35 Cal, 420, *Paparayudu* v. *Rattamma* (1914) 37 Mad, 275, dissenting from *Singam Setti* v. *Draupadi* (1908) 31 Mad, 153, *Arunachala* v *Kuppanada* (1913) M W N, 866; but see *Dinanath Ghosh* v. *Hrishikesh Pal* (1914) 18 C.W.N., 1303.

(u) *Kandaswami* v. *Somaskanda* (1912) 35 Mad, 177 (void), *In the matter of Amirthalinga Thevan* A I.R, 1928, Mad, 986 (void); *In re Appavu Naicken* A I R, 1931, Mad, 377 (void), *Purushotama* v. *Brundavana, ib*, 597 (void), *Subba Goundan* v. *Krishnamachari* (1922) 45 Mad, 449 (voidable), *Ramasami Ayyar* v *Venkatarama Ayyar* (1923) 46 Mad, 815, 822 (voidable); *Visweswara Rao* v. *Suryarao* (1936) 59 Mad, 667, 675 (voidable); *Bhrigu Nath* v. *Narsingh* (1917) 39 All, 61 (voidable); *Jagesar* v. *Deo Dat* (1923) 45 All, 654 (voidable); *Imperial Bank* v. *Mt. Mayadevi* (1935) 16 Lah., 714 (voidable but a creditor cannot repudiate it); see also *Ramakottayya* v. *Viraraghavayya* (1929) 52 Mad., 556 F.B, 562.

coparceners, it would be correct though the terminology may not perhaps be happy. But some of the decisions seem to go further than that; starting from the position that it is voidable, they seek to attach to it legal incidents which are not warranted.

Mesne profits.

§ 405. It has been held that a purchaser under an invalid alienation is not bound to account for mesne profits from the date of the wrongful sale to him but only from the date of the repudiation of the sale by the other coparceners (*v*). In other words, the possession of the alienee is lawful till the coparceners disaffirm the transaction. But the distinction between an alienation which in law is valid until it is rescinded and an alienation which is invalid unless approved or 'ratified' by the other coparceners is a real one. For instance, a *bona fide* purchaser for value without notice will obtain, in the former case, before rescission, a better title than his alienor; but in the latter case, before the repudiation by the coparceners or the reversioners, his title will share the infirmity of his alienor's. The analogy of the widow's alienation has been applied to the case of alienations by the manager. But even in such a case, it has been held in *Bijoy Gopal* v. *Krishna Mahishi* that the reversioner "may think fit to affirm it, or he may at his pleasure treat it as a nullity without the intervention of any Court, and he shows his election to do the latter by commencing an action to recover possession of the property. There is, in fact, nothing for the Court either to set aside or cancel as a condition precedent to the right of action of the reversionary heir" (*w*). It was pointed out in that case that it was not necessary for the reversioners to pray for a declaration that the alienation by the widow was inoperative as against them. They may merely claim possession leaving it to the defendants to plead and prove circumstances of necessity.

In *Bhagwat Dayal* v. *Debi Dayal*, the reversioners who sued to recover possession of property which had been

(*v*) (1922) 45 Mad., 445 *supra;* (1923) 46 Mad., 815, 822 *supra*. *Deivachilai Aiyangar* v. *Venkatachariar* (1925) 49 M.L.J., 317, 321; (1917) 39 All., 61, *supra; Gangabisan* v. *Vallabhdas* (1924) 48 Bom., 428.

(*w*) (1907) 34 I.A., 87, 92, 34 Cal., 329, 333 explaining *Modhu Sudan* v. *Rooke* (1897) 24 I.A., 164, 25 Cal., 1; *Rangasami* v. *Nachiappa* (1919) 46 I.A., 72, 42 Mad., 523. The observations in *Ramgouda* v. *Bhausaheb* (1927) 54 I.A., 396, 52 Bom., 1, mean only what is stated in *Bijoy Gopal* v. *Krishna Mahishi*. The observation in *Hanuman Kamut* v. *Hanuman* (1892) 18 I.A., 158, 19 Cal., 123, that "the sale was not necessarily void, but was only voidable if objection were taken to it by the other members of the joint family" was made in a different context and does not carry the matter further.

sold by a widow without necessity, were held entitled to the usual decree for mesne profits. Their Lordships observed: "As the deeds of sale are not good as such, the claim for mesne profits is well founded" (*x*). The possession of the alienee is adverse from the date of the alienation under article 144 of the Limitation Act and not from the date when the coparcener chooses to repudiate it Even in the case of a sale induced by fraud which is strictly valid until rescinded, it was held by the Judicial Committee that the person who elects to avoid it will be entitled to mesne profits from the date of the sale(*y*). In *Banwari Lal* v. *Mahesh*, the Privy Council distinguished between a case where the sale is set aside unconditionally and a case where it is set aside on terms and held that in the former case, the son would be entitled to the usual decree for mesne profits, though in that case as part of the consideration was applied for proper purposes, the deeds were set aside on payment of sums due to the alienee and therefore the alienee was deemed to be in lawful possession till they were set aside (*z*). The sounder view appears to be that, in the absence of any special equity depending on the particular facts (*a*), the coparceners or reversioners who seek to set aside an alienation by the managing member or the widow, as the case may be, will be entitled to mesne profits from the date when they become entitled to possession and their cause of action to recover possession of the property arises (*b*).

Compensation for improvements.

§ 406. The question whether an alienee would be entitled to compensation for improvements under section 51 of the Transfer of Property Act would depend upon whether he made the improvements believing in good faith that he was absolutely entitled to the property. The section can not be

(*x*) *Bhagwat Dayal Singh* v *Debi Dayal* (1908) 35 I A., 48, 57, 35 Cal, 420, 430

(*y*) *Satgur Prasad* v *Mahant Har Narain Das* (1932) 59 I A, 147, A I.R. 1932 P C., 89. No decree of court setting aside an invalid alienation by a coparcener is necessary nor will a suit to recover possession of property by a coparcener be governed by article 91 of the Limitation Act

(*z*) (1919) 45 I.A, 284, 41 All., 63

(*a*) See for an instance of a special equity, *Ram Charan Lonia* v *Bhagwandas* (1926) 53 I A, 142, 48 All, 443, where the Judicial Committee treated an invalid sale as a usufructuary mortgage.

(*b*) The observation of Stone, J, in *Visweswara* v. *Surya* (1936) 59 Mad., 667, 675 that "it is preferable to regard such an alienation as perfect unless and until it is set aside" appears to be erroneous though it is open to the coparceners as reversioners to elect to abide by the alienation and treat it as good.

applied to a purchaser from a father or other managing member who had notice of the existence of the other coparceners and their interests in the property and omitted to make any enquiry as to the circumstances justifying the sale (*c*).

Where the purchaser acts *bona fide* after making reasonable enquiries, the purchase itself will be protected. The section will therefore apply both to a case where he purchases in good faith but has either no notice of the existence of the interests of the other coparceners or having such notice, fails to make proper enquiries as to the necessity for the sale and to a case where he is a transferee in good faith from the original alienee (*c*[1]).

Suit by alienee.

§ 107. Where the suit is brought, not by a member of the family to set aside a sale or mortgage, but by the alienee who has taken a title which his alienor had no power to grant, he cannot enforce it against any member of the family who is entitled to dispute the act of that alienor. Nor can he obtain a decree with a condition annexed, that it is only to be executed in case the defendant fails to make him compensation. His claim for compensation, if he has any, must be founded on special equities arising from circumstances applicable to the persons from whom compensation is claimed (*d*). Where an alienee stands by an alienation which is only partially valid, he must be content with the alienor's share. If he wishes to repudiate the transaction altogether his only remedy is by suit against the vendor for the return of the price paid on the ground that the consideration for the same has failed (*e*).

Suits by coparceners.

When an objecting coparcener sues to set aside an alienation, the following rules are, according to the Madras High Court in *Venkatapathi* v. *Pappia Nayakar* (*f*), applicable:—

(1) Where the whole of the consideration, even after being allotted to the alienor's share only, is grossly inadequate, the whole transaction may be set aside

(*c*) *Ramappa* v. *Yellappa* (1928) 52 Bom., 307; *Kandarpa Nath* v. *Jogendra Nath* (1910) 12 C.L.J., 391; *Nandi* v. *Sarup Lal* (1917) 39 All., 463, *Hansraj* v. *Sommi* (1922) 44 All., 665, *Vrijbhukandas* v *Dayaram* (1908) 32 Bom, 32; *Suleman* v. *Venkatraju* A.I.R. 1925 Mad., 670; *Siddappa* v. *Narasappa* 1915 M.W.N., 631.

(*c*[1]) *Narayanaswami* v. *Rama Ayyar* (1930) 57 I.A., 305, 53 Mad., 692; *Kidar Nath* v. *Mathu Mal* (1913) 40 Cal., 555 P.C.; *Shiddappa* v. *Pandurang* (1923) 47 Bom., 696. See *post* § 680.

(*d*) *Nizamuddin* v. *Anandi Prasad* (1896) 18 All., 373.

(*e*) *Marappa Goundan* v. *Rangasami Goundan* (1900) 23 Mad., 89.

(*f*) (1928) 51 Mad., 824.

making the consideration proved a charge on the family property (*g*). (2) Where the whole consideration is not grossly inadequate, and can be regarded as the price of the alienor's share but is less than the value of such share, the transaction may be upheld as the sale of the alienor's share only, and the other members who question the transaction are entitled to recover their shares of the property without being subjected to any other equity. In such a case, if the members are divided and the alienor leaves other heirs than the members who question the transaction, his heirs may have a right to contribution (*h*). (3) Where the consideration proved exceeds the value of the alienor's share, the transaction may be upheld as a sale of the alienor's share only and for the excess, a charge may be given over the shares of the other members.

If the alienation is one by way of mortgage or charge, the security will be limited to the amount found to be binding (*i*).

Agreement against alienation.

§ 408. An agreement by one coparcener not to alienate his share to any one except his coparcener has been held to be valid and enforceable (*j*). Such an agreement however cannot bind the purchaser for value without notice of it (*k*), nor can it be valid as against a purchaser at a sale in execution of a decree (*l*)

Sale complete without possession.

§ 409. A sale by a father or managing member will be valid and complete without delivery of possession even as against a subsequent sale by the alienor followed by delivery of possession It was supposed at one time that a sale will be invalid if the vendor cannot and does not give possession and that this was in accordance with the texts of Hindu law These texts were examined by the Madras High Court in *Lakshmi* v. *Narasimha* (*m*). It is now settled by a decision of the Judicial Committee that delivery of possession is not necessary to complete the title by sale· "Their Lordships see no reason why a gift or contract of

(*g*) *Rottala Runganatham Chetty* v *Pulicat Ramaswami Chetty* (1904) 27 Mad, 162

(*h*) *Marappa* v. *Rangasami* (1900) 23 Mad, 89

(*i*) *Bhagwat Dayal* v *Debi Dayal* (1908) 35 I A, 48, 35 Cal, 420

(*j*) *Lakshmi* v *Tori* (1878) 1 All, 618. See *Lachmin* v *Koteshar* (1880) 2 All, 826

(*k*) *Kanna Pisharodi* v *Kombi Achen* (1885) 8 Mad, 381; *Ali Hasan* v. *Dhirja* (1882) 4 All, 518. *Trimbak* v. *Sakharam* (1892) 16 Bom, 599.

(*l*) *Golak Nath* v. *Mathura* (1893) 20 Cal, 273

(*m*) (1866) 3 M H.C., 40, 46 affirmed in (1869) 13 M I.A., 113.

sale of property, whether movable or immovable, if it is not of a nature which makes the giving effect to it contrary to public policy, should not operate to give to the donee or purchaser a right to obtain possession. This appears to be consistent with Hindu law. On the principle contended for by the respondent, so long as he prevents the true owner from taking possession, however violently or wrongfully, that owner cannot make any title to a grantee" (*n*).

Mortgage.

As to mortgages, Narada says: "Pledges are declared to be of two kinds, movable and immovable pledges; both are valid when there is actual enjoyment and not otherwise" (*o*). It is evident that Narada was referring to cases where possession ought to follow the pledge as naturally it would.

Transfers now governed by statute.

§ 410. Sales, mortgages, leases, exchanges and gifts as well as assignments of actionable claims are as to many matters now governed by the provisions of the Transfer of Property Act where it is in force, and as to their form and requirements, by the specific provisions in that Act and in the Indian Registration Act, 1908. The second chapter of the Transfer of Property Act containing the general provisions regulating all transfers of property *inter vivos* has now become applicable also to Hindus (*p*). To the extent to which the provisions in that Act are in conflict with Hindu law, the former will prevail.

(*n*) *Kalidas* v. *Kanhaya Lall* (1888) 11 I A, 118, 11 Cal, 121, followed in *Mahomed Baksh* v. *Hosseini Bibi* (1888) 15 I.A., 81, 15 Cal, 684, *Narainchunder* v. *Dataram* (1882) 8 Cal, 597, 610, overruling *Dinonath* v. *Auluckmoni* (1881) 7 Cal., 753, *Modun Mohun* v. *Futtarunissa* (1886) 13 Cal., 297, *Ugarchand* v. *Madapa Somanna* (1885) 9 Bom., 324.

(*o*) Narada I, 139 (Vol. XXXIII, 77).

(*p*) Section 3 of the Transfer of Property (Amendment) Act (XX of 1929). Section 61 has also repealed the saving as to Hindus and Buddhists in Section 129 of the Transfer of Property Act.

CHAPTER XI.

PARTITION.

Division of subject

§ 411. The modern law of partition may be divided into five heads: *first*, the property to be divided; *secondly*, the persons entitled to share; *thirdly*, what constitutes a partition; *fourthly*, the mode of division and *fifthly*, the reopening of partition (*a*). Lastly, the subject of reunion has also to be dealt with.

Coparcenary property alone divisible.

§ 412 FIRST.—The property to be divided is *ex vi termini* the property which has been previously held as joint property in coparcenary (*b*).

An adverse claim by title paramount against a portion of the property, is no obstacle to the division of the whole including that portion, where the family is in possession of it (*c*). Property in possession of the family under a permanent lease is partible, though the lease itself is liable to be cancelled or forfeited in certain contingencies (*d*) Where properties are allotted to a member on partition, and he is subsequently evicted from them by an adverse claimant, the partition is liable to be reopened in so far as is necessary to apportion the loss occasioned thereby (*e*).

Separate property indivisible.

Separate property of a member or members of the family cannot be the subject of partition amongst all the copar-

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(*a*) Partition in ancient Hindu law has already been dealt with in the chapter on 'Early Law of Property' (ch vii) and in treating of the 'Joint Family' (ch. viii), much of what is usually discussed under the law of partition has been anticipated.

(*b*) As to what is coparcenary property, see *ante* §§ 275-278, the right to a partition exists not only when there is unity of possession and unity of title but also of properties of which persons are in joint possession under different titles, *Bhagwat Sahai* v *Bepin Behari Mitter* (1910) 37 I A., 198, 37 Cal, 918, dissenting from *Mukunda Lal* v. *Lehuraux* (1893) 20 Cal, 379 and approving *Hemadrinath* v. *Ramani Kanta* (1897) 24 Cal, 575 F.B., *In re Ganga Sagor, Ananda Mohun* (1929) 33 C W N, 1190, 1192.

(*c*) *Sundar* v *Parbati* (1889) 16 I A, 186, 12 All, 51

(*d*) *Salimullah* v. *Probhat Chandra Sen* (1916) 43 Cal, 1118, following *Bhagwat Sahai* v *Bepin Behari Mitter* (1910) 37 I.A., 198, 37 Cal, 918.

(*e*) *Ganeshi Lal* v *Babu Lal* (1918) 40 All, 374, following *Maruti* v. *Rama* (1897) 21 Bom, 333; *Ramakotayya* v. *Sundara Ramayya* (1931) 54 Mad, 883

ceners in the family (*f*); but property may be the joint property of two or more coparceners whether they form a branch or not and will be divisible amongst themselves though not between themselves and the members of the wider coparcenary (*g*).

Impartible property.

§ 413. An intermediate species of property comprises properties which by custom or tenure, by crown grant or by statute are descendible to a single heir and are indivisible among the members of the family, in other words, impartible estates which are the ancestral property of the joint family. They are dealt with in a subsequent chapter (Ch. XIX).

Property indivisible from its nature.

§ 414. Certain kinds of property are declared to be indivisible from their nature, such as apparel, carriages, riding-horses, ornaments, dressed food, water, pasture ground and roads, female slaves, houses or gardens, utensils, necessary implements of learning or of art, documents evidencing a title to property, rights of way, and rights to wells or water (*h*). The ground of the exception seems to have been that they were things which could not be divided *in specie*, that they were

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(*f*) As to the several categories of separate property, see *ante* §§ 285, 275, 278, Mitakshara, I, 4; Daya Bhaga, VI, 1, V. May., IV, 7 In Bengal, where a division is made during the life of the father, the father has a moiety of the goods acquired by his son at the charge of the estate; the son who made the acquisition has two shares, and the rest take one a-piece But if the father's estate has not been used, he has two shares, the acquirer as many, and the rest are excluded from participation. Daya Bhaga, II, § 71, per Peacock, C.J, *Uma Sundari* v. *Dwarkanath* 2 B L R. (A.C J), 287, 11 W.R, 72

(*g*) *Periasami* v. *Periaswami* (1878) 5 I.A., 61, 74, 1 Mad, 312; for instance, property which is allotted at a previous partition to a member will of course be indivisible as between himself and the separated members, but will be divisible between himself and his own descendants though the partition would not deprive the separated members or their descendants of such future rights of succession as they might afterwards have to that property, treating it as separate property *quoad* them. The doubt that was once raised whether a son could compel his father to partition ancestral movable property was long ago settled in the son's favour ; *Lakshman Dada Naik* v. *Ramachandra* (1881) 7 I.A., 181, 5 Bom, 48; *Jugmohandas* v. *Mangaldas* (1886) 10 Bom, 528, 578.

(*h*) "A dress, a vehicle, ornaments, cooked food, water and female slaves, property destined for pious uses and sacrifices, and a pasture ground, they declare to be indivisible", Manu, IX, 219; Mitakshara, I, 4, §§ 16-27; Daya Bhaga, VI, 2, §§ 23-30; Smritichandrika, VII, 39-47, Viramit, Ch. VII, 2-4 (Setlur's ed, 458-460), Dig. II, 471; "Water, or a reservoir of it, as a well or the like, not being divisible, must not be distributed by means of the value; but is to be used by the co-heirs by turns", Mit. I, iv, 21. "The common way or road of ingress and egress to and from the house, garden or the like is also indivisible", Mit. I, iv, 25; *Govind* v. *Trimbak* (1912) 36 Bom., 275; *Nathubai* v. *Bai Hansgouri* (1912) 36 Bom., 379; *Shantaram* v. *Waman* (1923) 47 Bom., 389. Dr. Buhler's translation of the term "*Yogakshemam*" which occurs in Manu IX, 219 and in Mit I, iv, 23 is 'property

originally of small value and specially appropriated to the individual members of the family; consequently, that if each were left in possession of his own, the value held by one would be balanced by a corresponding value in the hands of another. But as property of this sort increased in value, the strict letter of the texts was explained away, and it was established that, where things were indivisible by their nature. they must either be enjoyed by the heirs in turns or jointly, as a well or a bridge; or sold, and their value distributed, or retained by one co-sharer exclusively, while the value of what he retained was adjusted by the appropriation of corresponding values to the others (*i*).

Idols and places of worship.

Where part of the property consists of idols and places of worship, which are valuable from their endowments, or from the respect attaching to their possessor, the members will be decreed to hold them by turns, the period of tenure being in proportion to their shares in the corpus of the property (*j*). In the case of family idols, the Bombay High Court directed on a partition that the senior member should take possession of them and the property appertaining to them, with liberty to the other members to have access to them for the purpose of worship (*k*). Where there was a joint right of performing the worship of an idol, partition was

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destined for pious uses and sacrifices' and it rests upon the explanation given in the Mit I, iv, 23 and adopted by Haradatta and Nandapandita in the parallel passages of Gautama and Vishnu. For the different explanations given by the commentators of Manu, see Dr Buhler's note on Manu IX, 219 See Smritichandrika VII, 40, Katyayana cited in the Smritichandrika VII, 47 expressly declares "Whatever is visible in the shape of houses, fields and quadrupeds shall be divided".

(*i*) Brihaspati gives as stated by the Smritichandrika (VII, 41) a rational mode of distribution "Those by whom clothes and the like articles have been declared indivisible have not decided properly The wealth of the rich depends on clothes and ornaments Such wealth when withheld from partition will yield no profit, but neither can it be allotted to a single coparcener. Therefore it has to be divided with some skill or else it would be useless Clothes and ornaments are divided by distributing the proceeds after selling them, a written bond concerning a debt is divided after recovering the sum lent, prepared food is divided by an exchange for an equal amount of unprepared food". "The water of a well or pool shall be drawn according to need" "Fields and embankments shall be divided according to their several shares A common road or pasture ground shall be always used by co-heirs in due proportion to their several shares". Brih, XXV, 79-82, 84.

(*j*) The passage is cited with approval by Rangnekar, J., in *Dattatreya* v. *Prabakhar* A I R, 1937, Bom., 202.

(*k*) *Damodar Das* v *Uttamram* (1893) 17 Bom., 271; A I.R., 1937, Bom., 202, *supra.*

decreed by directing the joint owners to perform the worship by turns (*l*).

Dwelling-house.

A partition of a dwelling-house will be decreed if insisted on, but the Court will, if possible, try to effect such an arrangement as will leave it entire in the hands of one or more of the coparceners (*m*). In another case the Court said: "The principle in these cases of partition is that if a property can be partitioned without destroying the intrinsic value of the whole property, or of the shares, such partition ought to be made. If, on the contrary, no partition can be made without destroying the intrinsic value, then a money compensation should be given instead of the share which would fall to the plaintiff by partition" (*n*).

Property available for division.

§ 415. Normally the assets actually existing at the date of the disruption of the joint status are the properties available for division (*o*). Before the division of the joint estate is made, it is necessary to make provision for the liabilities of the joint estate (*p*), such as (1) the debts due or claims against the family; (2) charges on account of maintenance of disqualified heirs, of female members and of others who are entitled to be maintained (*q*); (3) marriages and such other family ceremonies as have to be provided for (*r*).

(*l*) *Mitta Kunth Audicarry* v. *Neerunjan Audicarry* (1874) 14 Beng L.R., 166, approved in *Pramotha Nath Mullick* v. *Pradyumna Kumar Mullick* (1925) 52 I.A., 245, 260; 52 Cal., 809 (where an idol was consecrated as a household deity and a thakurbari was dedicated to it); *Madan Mohun* v. *Rakhal Chandra Saha* (1930) 57 Cal., 570.

(*m*) *Rajcoomaree* v. *Gopal* (1878) 3 Cal, 514; *Sachindra Kumar Goswami* v. *Hem Chunder* (1930) 35 C.W.N., 151; A.I.R., 1937, Bom., 202, *supra*.

(*n*) *Ashanullah* v. *Kali Kinkur* (1885) 10 Cal., 675; *Debendra Nath* v. *Hari Das* (1910) 15 C.W.N., 552.

(*o*) Yajn., II, 117; Narada, XIII, 32; "what is left of the father's property, when the father's obligations have been discharged and when the father's debts have been paid, shall be divided by the brothers in order that the father may not continue a debtor". Yajnavalkya, II, §§ 124, 125; Mitakshara, I, 7, §§ 3-5; Daya Bhaga, i, § 47, III, 2, §§ 38-42; V. May., IV, 4, § 4; IV, 6, § 1, 2; V, 4, § 14; W & B, 786-792. See as to the eight ceremonies, Dig, II, 301; Appendix, I; Kautilya's Arthasastra, Shamasastri's trans., pp., 198-9; *Pranjivandas* v. *Ichharan* (1915) 39 Bom., 734.

(*p*) Under this head come all the complicated questions discussed, in Chapters IX and X as to whether transactions entered into by one member of the family bind the whole.

(*q*) *Mt. Bholibai* v. *Dwarka Das* (1924) 5 Lah., 375 (a coparcener is entitled to reimbursement before partition of expenses incurred for common purposes).

(*r*) *Vaikuntam* v. *Kallapiran* (1900) 23 Mad., 512.

Father's debts.

Where the division takes place between the father and the sons, provision must be made for the discharge of the father's debts, neither illegal nor immoral, as well as for other family debts (*s*). It has been held that a coparcener who is unmarried at the date of the severance in interest is not entitled at the partition to have a provision made for his marriage expenses, even where he marries before the decree in the suit for partition is made (*t*) This proceeds not on the view that marriage is not an obligatory *samskara*, but on the ground that when a severance takes place in a joint family, a claim for the expenses of a prospective marriage of a sharer cannot be a liability of the joint estate In the case of an unmarried brother, he has his share to look to and in the case of an unmarried son or grandson it is a liability of his branch (*u*).

No provision for coparcener's marriage expenses

(*s*) *Sat Narain* v *Das* (1936) 63 I A, 397, 17 Lah, 644, *Venkureddi* v. *Venkureddi* (1927) 50 Mad, 535 F B

(*t*) *Ramalinga* v *Narayana* (1922) 49 I A, 168, 45 Mad, 489 reversing (1916) 39 Mad, 587, *Venkatarayudu* v *Sivarama* (1935) 58 Mad, 126 holding *Srinivasa* v *Thiruvengada* (1915) 38 Mad, 556 and *Gopalan* v *Venkataraghavalu* (1917) 40 Mad, 632 as overruled by 49 I A, 168, *Pranjivan* v *Motiram* A I R, 1927, Bom, 651 holding *Jairam* v *Nathu* (1906) 31 Bom, 54 as overruled, *Ganesh* v *Shrinivas* A I R, 1928, Bom, 211

(*u*) By parity of reasoning, it would follow that no provision need be made for the expenses of initiatory ceremonies of coparceners when a severance in interest has taken place But the Mitakshara I, vii, 4, expressly says "By the brethren who make a partition after the decease of their father, the uninitiated brothers should be initiated *at the charge of the whole estate*". See also Narada XIII, 33, Brih. XXV, 21, *Jairam* v *Nathu* (1907) 31 Bom, 54, which so far as it relates to thread or initiatory ceremonies is not overruled by the decision in *Ramalinga* v *Narayana* (1922) 49 I A, 168 See *Pranjivan* v. *Motiram*, A I R, 1927, Bom, 651 Whether the sacramental rites referred to in Yajn, II, 124 include marriage has been the subject of difference of opinion amongst the commentators The Balakrida of Visvarupa (page 246), the Viramitrodayatika and the Madanaparijata take the rites as ending with marriage only (Jha. H L S, II, 389-391). The Smritichandrika would have it that the ceremonies are those commencing with *Jatakarma* and ending with *Upanayana* and points out that while in the case of unmarried daughters the word 'ceremonies' denotes marriage as there is no *Upanayana* for them, in the case of unmarried brother it does not include marriage, for marriage, etc, are not ceremonies that must *without fail* be performed. (Smritichandrika, IV, 43-44), *Kameswara Sastri* v *Veeracharlu* (1911) 34 Mad, 422; see *ante* § 135 The Vivadachintamani and the Ratnakara also say that the ceremonies must be taken as ending with *Upanayanam* The Mitakshara is silent but Balambhatta takes the initiatory ceremonies to include marriage (S H L B page 398, Setlur edn, 659) Kautilya's Arthasastra requires the marriage expenses of the unmarried brothers and sisters to be met from the joint estate before partition (Ganapathi Sastri's edn, Bk, II, p. 33, Shamasastri, 198; Jha, H L S, 11, 397). As to a daughter, Narada says· "They shall maintain her upto the time of her marriage, afterwards let her husband keep her" (XIII, 27).

Provision for marriage expenses of sisters.

Provision however should be made for the marriage expenses of unmarried sisters (*v*). Yajnavalkya says: "Uninitiated sisters should have their ceremonies performed by those brothers who have already been initiated, giving them a quarter of one's own share"(*w*). The Smritichandrika as well as the Dayabhaga are equally clear that the separated brothers must provide a fund for the marriage expenses of their unmarried sisters (*x*). The rule in the Mitakshara that the unmarried sisters are entitled to a share of the inheritance after the death of their father has been cut down to a provision for marriage expenses and maintenance till marriage.

Provision for funeral expenses of mother.

So also, where a partition takes place between sons, provision must be made for the funeral expenses of their mother (*y*).

Mode of taking accounts.

§ 416. When all these are set aside, an account must be taken of the entire family property in the hands of all the different members. In general this account is simply an enquiry into the existing assets (*z*). No charge is to be made against any member of the family, because he has received a larger share of the family income than another, provided he has received it for legitimate family purposes (*a*). Nor can the manager be charged with gains which he might have made, or savings which he might have effected, nor even with extravagance or waste which he has committed, unless

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(*v*) *Subbayya* v. *Anantaramayya* (1930) 53 Mad., 84; *Ramakrishna* v. *Parameswara* (1931) M.W.N, 215, but see *Jairam* v. *Nathu* (1907) 31 Bom., 54, regarded as overruled in respect of marriage expenses of coparceners by the decision in 49 I.A., 168 in *Pranjiwan* v *Motiram* A.I.R., 1927, Bom., 651. See *ante* § 135.

(*w*) Yajn., II, 124; Mandlik, 217, "Sisters also who are not already married must be disposed of in marriage by the brethren contributing a fourth part out of their own allotments". Mit. I, VII, 6.

(*x*) Smritichandrika, IV, 18-22; Dayabhaga, III, II, 39. So too, the Vivadachintamani and the Ratnakara (Mandlik, 217) The Viramitrodaya says: "Hence in a partition after the death of the father, the maiden sisters are entitled to get shares out of the paternal property and not that they are only to be disposed of in marriage" (II, 1, 21, Setlur ed., 338).

(*y*) *Vrijbhukandas* v *Bai Parvati* (1908) 32 Bom., 26, *Vaidyanatha* v. *Ayyaswami* (1909) 32 Mad., 191.

(*z*) *Perrazu* v. *Subbarayudu* (1921) 48 I.A., 280, 44 Mad, 656; *Tammireddi* v. *Gangireddi* (1922) 45 Mad, 281; *Sukhdeo* v. *Basdeo* (1935) 57 All, 949, 956; *Jugmohundas* v. *Mangaldas* (1886) 10 Bom, 528; *Parameshwar* v. *Gobind* (1916) 43 Cal, 459; *Balakrishna* v. *Muthuswami* (1909) 32 Mad., 271; *Ramnath* v. *Goturam* (1920) 44 Bom., 179; *Jyotibai* v. *Lakshmeshwar* (1929) 8 Pat., 818; *Narendra Nath* v. *Abani Kumar* (1937) 42 C W N, 77; *Vaikuntam Pillai* v *Avudiappa* A.I.R., 1937, Mad., 127. See *ante* § 299.

(*a*) *Abhay Chandra* v. *Pyari Mohun* (1870) 5 B.L.R., 347 F.B.

it amounts to actual misappropriation (*b*). Where advances are made to any member for his separate and exclusive purpose for which he would have no right whatever to call upon the family purse, or to discharge his own personal debts, contracted for his own exclusive benefit without the authority of the other members and there is no intention of making a present of them to him, the moneys advanced might be treated as joint family funds in his hands which are to be brought into the hotchpot at the division (*c*). Alienations made by a coparcener, for his own benefit, of his interest in family property in provinces where he is competent to do so, should however be taken into account by including the property alienated in the partition and debiting it to the alienor (*d*) Similarly, it has been held that where a member separates from a joint family taking his share, the other members remaining united, the shares due, at a subsequent partition, to the various branches must be determined not *rebus sic stantibus* but only after taking into account the earlier division and deducting from the share of the branch to which the separating member belonged the share which was first assigned to him (*e*).

Improvements. Money laid out by one member of the family upon the improvement or repair of the property, or for any other object of common benefit, would constitute a debt to him from the rest of the family only if the money which he

(*b*) *Parmeshwar Dube* v *Gobind Dube* (1916) 43 Cal, 459, *Balakrishna Iyer* v *Muthusami Iyer* (1909) 32 Mad, 271 See also *Ramnath Chhoturam* v. *Goturam Radhakisan*, 44 Bom, 179, *Perrazu* v. *Arumilli Subbarayadu* (1921) 48 I A., 280, 44 Mad, 656 and also cases noted in note (*z*) *supra*

(*c*) *Damodardas* v *Uttamram* (1893) 17 Bom, 271, *Vellayappa* v. *Krishna Moothan* (1918) 34 M L J, 32, The Supreme Court of Bengal, in a Dayabhaga case, observed in a judgment which is contained in *Soorjeemoney Dasee* v *Denobundo* (1857) 6 M I A, 526, 540 "We apprehend that at the present day when personal luxury has increased and the change of manners has somewhat modified the relations of the members of the joint Hindu family, it is by no means unusual that in the common khatta book, accounts of the separate expenditure of each member are opened and kept against him, and that on a partition, even in the absence of fraud or exclusion, those accounts enter into the general account on which the final partition and allotment are made". Anantakrishna Aiyar, J, apparently cites this with approval in *Narayana Sah* v. *Sankar Sah* (1930) 53 Mad, 1, 25 F.B., but that view is opposed to the very conception of the Mitakshara coparcenary and is against all the later decisions under the Dayabhaga law. Of course, in a trading family a usage to that effect might exist or where all adult coparceners are agreed, such a mode of keeping accounts might in exceptional cases give rise to an implied agreement.

(*d*) *Ayyagari* v. *Ayyagari* (1902) 25 Mad, 690, 717 F B ; *Narayana Sah* v. *Sankar Sah* (1930) 53 Mad, 1, 25 F.B.

(*e*) (1930) 53 Mad., 1 F B., *supra* following *Manjanatha* v. *Narayana* (1882) 5 Mad., 362 and dissenting from *Pranjivandas* v. *Iccha Ram* (1915) 39 Bom, 734.

had expended were advanced out of his separate property, without an intention of making a present of it to the family. He would then be entitled to reimbursement for his outlay as well on partition as before it (*f*).

Right to an account.

A member who seeks partition is entitled to an account of the family property as it stands at the date of partition, but is not entitled to open up past accounts or to claim relief against past inequality of enjoyment of the family property (*g*). If he alleges and proves past acts of fraud or misappropriation on the part of the manager the rule would not apply. He would be entitled to a full account for the whole period of management, the object in such a case being to ascertain not merely what the family property available for distribution is, but what it should be but for such acts of fraud, misappropriation or reckless waste; and in no case does it mean that the other members of the family are bound to accept the word of the karta as to what the divisible properties are. For particular properties which are proved to have come into his hands, the manager is bound to account and it is not enough for him to say that he has no longer got those assets (*h*). Cases may also occur where the enquiry as to what the family property is at the time of partition may necessarily involve the taking of past accounts and in such cases, the other members are entitled to ask for and the Court can order an account to be taken of the joint properties. But the taking of such accounts must proceed on the footing that its object is not to call upon the manager to justify past transactions, but to ascertain what is the joint property actually in his hands

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(*f*) *Muttuswamy* v. *Subbiramaniya* (1863) 1 Mad H.C., 309; *Mt. Bholi Bai* v. *Dwarka Das* (1924) 5 Lah., 375; *Satrucherla Ramabhadra* v. *S Viiabhadra* (1899) 26 I A, 167, 22 Mad, 470, compare *Kazim Ali* v. *Sadiq Ali* A.I.R. 1938 P.C., 169.

(*g*) *Tammireddi* v. *Gangireddi* (1922) 45 Mad., 281 (reversed on another point in 54 I.A, 136), *Krishnayya* v. *Guravayya* (1921) 41 M.L.J., 503, *The Official Assignee of Madras* v. *Rajabadar* (1924) 46 M.L J, 145, *Narendra Nath* v. *Abani Kumar* (1937) 42 C.W.N., 77; *Vaikuntam* v. *Avudiappa* A.I.R 1937 Mad, 127, see *ante* § 299.

(*h*) *ibid* "Capital moneys proved to have come into the hands of a manager must be considered as available for partition in the absence of some evidence showing what has happened to them. Misappropriation (of family property) means nothing more than the expenditure of the money on other than justifiable family expenses", 46 M.L.J, 145, 147, 148 *supra*, where a manager tried to secrete outstandings by taking fraudulent renewals in the names of third parties he was ordered to account, 41 M.L.J., 503, 510, *supra*, where a manager did not satisfactorily account for a large hoard of gold coins, he was made accountable practically on the basis of *omnia praesumuntur contra spoliatorem; Venkata Narasimha* v. *Bhashyakarlu* (1902) 29 I.A., 76, 25 Mad., 367.

at the time of partition (*i*). As from the date when the right to partition accrues, however, the manager will be bound to render an account of the same nature as would be demanded from a trustee or agent The time from which such an account can be demanded would seem to be the date of the severance. It will be the date of the first unequivocal declaration by a member of the family of his desire to enforce a partition (*j*) So, if a member of a joint family is wrongfully excluded from the enjoyment of the family property and subsequently establishes his position as a member, his right of action accrues at the date of his exclusion, and he will be entitled as from that time to an account such as would have to be rendered by a trustee

Mesne profits.

§ 417. No member can have any claim to mesne profits previous to partition, because it is assumed that all surplus profits have, from time to time, been applied for the family benefit or added to the family property It is now well established that when a coparcener sues for partition, the court will not ordinarily award him mesne profits for any period prior to the institution of his suit (*k*). Until a severance in status is effected, no member of the coparcenary has a defined share, and consequently he can put forward no claim for mesne profits or for any share of income from the joint family properties The moment a severance takes place, whether by mutual agreement, or by unilateral declaration of intention or otherwise, the right to claim mesne profits as from that moment arises (*l*) Accordingly, where a suit for partition is brought, the plaintiff is entitled to mesne profits as from the date of suit Where a member of the family has been entirely excluded from the enjoyment of the property, or where it has been held by a member of the family who

(*i*) *Parmeshwar Dube* v *Gobind Dube* (1916) 43 Cal, 459; *Ramnath Chhoturam* v *Goturam Radhakisan* (1920) 44 Bom, 179

(*j*) *Suraj Narain* v *Iqbal Narain* (1913) 40 I A, 40, 35 All, 80; *Girja Bai* v *Sadashiv Dhundiraj* (1916) 43 I A, 151, 43 Cal, 1031 The contrary view expressed in *Ramnath Chhoturam* v *Goturam Radhakisan* (1920) 44 Bom, 179 appears to be irreconcilable in principle with the Privy Council decisions

(*k*) *Pirthi Pal* v *Jawahir Singh* (1887) 14 I A, 37, 14 Cal, 493; *Shankar* v *Hardeo* (1889) 16 I A, 71, 16 Cal, 397 For the right of an alienee from a coparcener, see *Maharaja of Bobbili* v. *Venkataramanjulu Naidu* (1916) 39 Mad, 265, *Manjayya* v *Shanmuga* (1915) 38 Mad, 684 As an alienation does not effect a severance by itself, the alienee is in no better position. *Trimbak Ganesh* v. *Pandurang Gharojee* (1920) 44 Bom., 621; see however section 44 of the Transfer of Property Act. See *ante* § 405.

(*l*) *Vanjapuri Goundan* v. *Pachamuthu Goundan* (1918) 35 M L J., 609, *Ramakrishna* v. *Parameswara* A.I R. 1938 Mad, 424 (interest on mesne profits).

claimed a right to treat it as his exclusive property, mesne profits, even for the period prior to the institution of the suit, if it is not barred, may be allowed (*m*). The same rule applies, where, by family arrangement, the property is held in specific and definite shares, the enjoyment of which has been disturbed (*n*).

Coparceners.

§ 418. SECONDLY, THE PERSONS ENTITLED TO SHARE.— Any coparcener may sue for a partition, and every coparcener is entitled to a share upon partition (*o*). But some persons were till the recent Hindu Women's Rights to Property Act, entitled to a share upon a partition who could not sue for it themselves.

Son during life of father.

Under the Dayabhaga law the son has no right to demand a partition of property held by his father during the life of the latter because he has no vested interest in it. The Mitakshara, on the other hand, expressly declares the right (*p*).

Grandson and great-grandson.

The right of a son, a grandson and a great-grandson (*q*) under Mitakshara law to a partition of movable and immovable property in the possession of a father, against his consent as well as the right of every other coparcener to demand a partition against the managing member or other coparceners is well established in all the provinces (*r*). In Bombay, however, this rule has been subject to the

(*m*) *Per curiam, Konnerav* v. *Gurrav* (1881) 5 Bom., 589, 595; *Venkata* v. *Narayya* (1879) 7 I.A., 38, 51, 2 Mad., 128, *Venkata* v. *Rajagopala* (1892) 9 I.A., 125, 5 Mad., 236, *Krishna* v. *Subbanna* (1884) 7 Mad., 564; *Bhairav* v. *Sitaram* (1895) 19 Bom., 532; *Annamalai* v. *Palaniappa* A.I.R., 1935, Mad., 266: Where a member of a family who is divided in status from others is in enjoyment of some portion of the family properties, while others enjoy other portions, he is not in law excluded or ousted from those other portions, so as to disentitle him to his share of those portions, however long their enjoyment by others; *Kumarappa* v. *Saminatha* (1918) 42 Mad., 431, dissenting from *Vishnu* v. *Ganesh* (1897) 21 Bom., 325.

(*n*) *Shankar Baksh* v. *Hardeo Baksh* (1889) 16 I.A., 71, 16 Cal., 397.

(*o*) As to the persons who are coparceners, see *ante* §§ 266, 267.

(*p*) Mit., I, v, 8.

(*q*) West and Buhler, p. 622, see *Masit Ullah* v. *Damodara Prasad* (1926) 53 I.A., 204, 48 All., 518; *Suraj Bunsi Koer* v. *Sheo Prasad* (1879) 6 I.A., 88, 5 Cal., 148.

(*r*) *Nagalinga* v. *Subbiramaniya* (1862) 1 Mad. H.C., 77; *Subba Aiyar* v. *Ganesa* (1895) 18 Mad., 179; *Laljeet* v. *Rajcoomar* (1873) 12 B.L.R., 373, 20 W.R., 336; *Kalipershad* v. *Ramcharan* (1876) 1 All., 159 F.B.; *Jogul Kishore* v. *Shib Sahai* (1883) 5 All., 430 F.B.; *per curiam, Moro Visvanath* v. *Ganesh* (1873) 10 Bom. H.C., 444, 463; *Jugmohundas* v. *Mangaldas* (1886) 10 Bom., 528, 578; *Rameshwar Prosad Singh* v. *Lachmi Prasad Singh* (1906) 31 Cal., 111; *Digamba* v. *Dhanraj* (1922) 1 Pat., 361.

qualification laid down by the majority of a Full Bench of the Bombay High Court, in accordance with their interpretation of the Mitakshara (I, v. 3), that a son is not entitled to ask for a partition in the lifetime of his father, without his consent, when the father is not separated from his father or brothers and nephews (*s*).

Sons born after partition.

§ 419. Regarding the rights of a son born to a father in a Mitakshara family after a partition had taken place between the father and his other sons, different views are expressed by the Sanskrit writers. According to Vishnu and Yajnavalkya, the partition is to be opened up again, in order to give the after-born son the share which he would have had if he had been in existence at the time (*t*). According to Manu, Gautama, Narada and Brihaspati, the after-born son is to receive the share of the father alone, but if the father had reunited with his divided sons, he is to share with them (*u*) The Mitakshara reconciles the conflict by saying that the latter texts lay down the general rule, while the former are limited to the case of a son who was in his mother's womb at the time of partition (*v*). It is now settled that where a father has, at a partition with his sons, reserved a share for himself, a son begotten after partition is not entitled to have the partition reopened, but is exclusively entitled both to the father's share and to his separate or self-acquired property (*w*).

(*s*) *Apaji* v *Ramchandra* (1892) 16 Bom, 29 F B. (Telang, J., dissenting), see the dictum in *Rai Bishenchand* v *Asmaida Koer* (1884) 11 I A, 164, 179, 6 All, 560, 574 "There can be no partition directly between grandfather and grandson whilst the father is alive"; *Jivabai* v *Vadilal* (1905) 7 Bom L R, 232, *Bhupal* v *Tatanappa* (1922) 46 Bom, 435, the view of Telang, J, is the sounder view, the passage in the Mitakshara has been rightly interpreted in *Subbu* v. *Ganesha* (1895) 18 Mad, 179, 182 "The first part of the placitum states the objection and the answer is contained in the text of Yajnavalkya" In the Punjab, the son cannot by custom enforce partition during the father's lifetime *Nihal Chand* v *Mohun Lal* (1932) 13 Lah, 455, *Punjab National Bank, Ltd* v *Jagdish* A I R, 1936, Lah, 390, 163 I C, 114

(*t*) Vishnu, XVII, 3, Yajn. II, 122

(*u*) Manu, IX, 216, Gaut, XXVIII, 29, Nar, XIII, 44, Brih, XXV, 18, 19. A similar view is taken by Jimutavahana, Daya Bh, I, 45; VII, 10, and Raghunandana, II, 30, 31, 36

(*v*) Mit, I, vi, 1-12, Daya Bh, VII, 4, V May, IV. 4, 35-37; Viramit. p. 92, 94. Apararka, Smritichandrika (Ch. XIII, 1-11), Kulluka, Vivadaratnakara, Vivadachintamani, Madanaparijata and the Sarasvativilasa (II, 29) take the same view as the Mitakshara Jha, H L S, II, 125-129, 347-352.

(*w*) *Nawal Singh* v. *Bhagwan* (1882) 4 All., 427; See the subject discussed, *Krishna* v *Sami* (1886) 9 Mad., 64; *Narasimha* v. *Veerabhadra* (1894) 17 Mad, 287.

Son *en ventre sa mere.*

A son who was in his mother's womb at the time of partition but was born subsequent to it, is however entitled to reopen the partition and to receive a share equal to that of his brothers. For, a son in the womb is in point of law in existence. If the pregnancy is known at the time, the distribution should be deferred till its result is ascertained, or the distribution may take place and a share equal to that of a son may be provisionally reserved so as to be allotted to the after-born son, if any. If the pregnancy is not known, and a son is afterwards born, a re-distribution must take place of the estate as it then stands (*x*).

After born son.

§ 420. If the father had divided the whole property among his sons, retaining no share for himself, then the sons, with whom partition was made, must allot from their shares a portion equal to their own to an after-born son (*y*). This proceeds on the principle that the unborn son cannot be deprived of his share in the paternal estate by a prior partition. But the application of this principle is expressly limited to the case of partition between father and sons, and there is no warrant for its extension to a son born to a separated coparcener, other than the father of the family, after partition (*z*). Where the father had three sons, of whom two were minors, and he made a partition of the property into three shares, of which one was handed over to the eldest son, and the father retained in his own hands the other shares on behalf of the minors, and subsequently he had another son who sued for one-fourth share of the whole property, it was held that the suit failed against the eldest son, but was maintainable against the father and the two younger sons, who were living jointly with him and with each other (*a*). In this case there had in fact been no partition except between the eldest son and the rest of the family who remained joint.

(*x*) *Yekeyamian* v. *Agniswarian* (1870) 4 Mad. H.C., 307; *per Peacock*, C J, *Kalidas* v. *Krishan* (1869) 2 B.L R. (F.B.), pp. 118-121; *Hanmant* v. *Bhimacharya* (1888) 12 Bom., 105, 108-9.

(*y*) 1 W. MacN., 47; *Chengama* v. *Munisami* (1897) 20 Mad., 75: "The word 'income' in Yajnavalkya's text on which the Mit. in I, vi, 8 and 9 bases its conclusion on this point, undoubtedly includes accretions made to the shares taken on partition and gives to the after-born son a right to obtain his allotment out of the subsequent additions also."

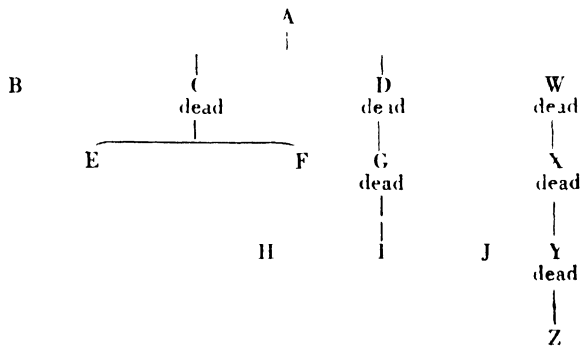
(*z*) *Shivajirao* v. *Vasantrao* (1909) 33 Bom., 267; the passage is cited with approval in *Kusum Kumari* v. *Dasarathi* (1921) 34 C.L.J., 323.

(*a*) *Ganpat Venkatesh* v. *Gopalrao* (1899) 23 Bom., 636.

The son begotten after partition will be a coparcener with his father and will take the father's property to the exclusion of his separated brothers after the father's death If he becomes separate during the father's lifetime, he will be entitled to his share The Vivadaratnakara says: "A son born after the (other) sons have become separated from the father, shall take the entire share of the father, when the father is dead, when the father is living, he shall get only a share out of the father's wealth (should he separate from the father)" (*b*). So also where the father reunites with the divided sons, the after-born son would be a coparcener with them, entitled to his share (*c*)

Right of representation.

§ 421 Under Mitakshara law, the right to a share passes by survivorship among the remaining coparceners, subject to the rule that where any deceased coparcener leaves male issue, they represent the rights of their ancestor to a partition (*d*) For instance, suppose A dies, leaving a son B, two grandsons E and F, three great-grandsons H, I, J, and one great-great-grandson Z. The last named will take nothing, being beyond the fourth degree of descent (§ 267).



The share of his ancestor W will pass by survivorship to the other brothers, B, C, D, and their descendants, and

(*b*) Vivadaratnakara, G C Sarkar's trans Ch XIV, 2, p 50, Jha, H.L S, II, 348 A different view of the Mitakshara is expressed by Sir Barnes Peacock, C J, in *Kalidas* v *Krishan* (1869) 2 Beng L R, 103 F.B, 120, a Dayabhaga case, which is not consistent with the Mitakshara doctrine of right by birth or with the text of the Mitakshara referring to the case of the father's reunion or with the express statement in the Vivadaratnakara See *ante* § 352 and note (*j*) to it.

(*c*) As the Mitakshara says "The son, born subsequently to the separation, must, after the death of his father, share the goods with those who re-united themselves with the father after the partition" (I, vi, 7).

(*d*) It must always be remembered that what passes is not a share, as in Bengal, but the right to have a share in partition, Viramit, III, i, 13. "no specific share at all".

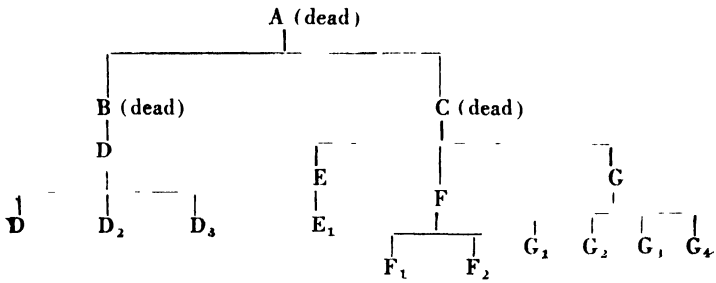
enlarge their interests accordingly. Hence B, C and D will each be entitled to one-third, E and F will take the third belonging to C, and H, I, J will take D's third. Each class will take *per stirpes* as regards every other class, but the members of the class take *per capita* as regards each other. This rule applies equally whether the sons are all by the same wife, or by different wives (*e*). But if W had effected a partition with A, then, on his death, his fourth would have passed at once to Z, supposing X and Y to have predeceased him.

Representation arises on death of ancestor.

(*e*) According to Yajnavalkya, "among grandsons by different fathers, the allotment of shares is according to the fathers" (II, 121). Brihaspati says "Their sons, whether unequal or equal in number are declared to be the heirs of the shares of the respective fathers" (XXV, 14). Mitakshara, I, 5, § 1; V. May., IV, 4, §§ 20-22, Smritichandrika VIII, §§ 1-16, Katyayana, Dig., II, 241; Devala, *ib.*, 242, 243, Narada, XIII, § 25; 1 Stra. H.L., 205; 2 Stra. H.L., 351-357, *Manjanatha* v. *Narayana* (1882) 5 Mad., 362; *Moro Visvanath* v. *Ganesh* (1873) 10 Bom. H.C., 444; *Rajnarain Singh* v. *Heeralal* (1878) 5 Cal., 142, *Debi Prasad* v. *Thakur Dial* (1875) 1 All, 105 F B; Kautilya says in his Arthasastra, "Division of ancestral property amongst descendants from the same ancestor shall take place calculated according to fathers". (Dr. Shamasastri, 197).

In some families, however, a custom called *Patnibhaga* prevails of dividing according to mothers, so that if A had two sons by his wife B, and three sons by C, the property would be divided into moieties, one going to the sons by B, and the other to the sons by C. Brihaspati refers to it: XXV, 15; *Sumrun* v *Khedun* 2 S D, 116 (147) Such a custom has been upheld in the case of Nattukottai Chettis of a few villages in the Ramnad District, *Palaniappa Chettiar* v. *Alagan Chetty* (1921) 48 I.A., 539, 44 Mad, 740.

The following illustration of the principle of representation is taken from Sir E. J Trevelyan's 'Hindu Law' (3rd ed., p. 369): "The family having descended from two brothers, one half-share must be



allotted to each branch. As to B's branch, D and his sons, D_1, D_2 and D_3, are each entitled to ¼ of ½, *i.e.*, ⅛. As to C's branch, each of the sub-branches composed of C's sons, E, F and G, with their sons respectively, will be entitled to 1|3 of ½, *i.e.*, 1|6, so E and E_1 will each get ½ of 1|6, *i.e.*, 1|12, F, F_1 and F_2 will each get 1|3 of 1|6, *i.e.*, 1|18; G, G_1, G_2, G_3 and G_4 will each get 1|5 of 1|6, *i.e.*, 1|30. This illustration will apply to the Bengal school except that under that school the sons do not take during the lifetime of their fathers".

Dayabhaga law.

§ 422. These principles require some modification where the case arises in Bengal A son can never demand a partition of property held by his father, but as soon as A, in the above diagram, died, his property would descend to his sons and their descendants, and would be divisible among them in the same manner as above stated If any coparcener dies without male issue, but leaving a widow, a daughter, or daughter's sons, his share will descend to them, and will not lapse into the shares of the other members as it would do under the Mitakshara law, apart from the recent Act (*f*). The principles of this line of succession will be discussed in Ch. XIII It is sufficient here to say that representation does not extend beyond daughters Daughters of the same class inherit to their father *per stirpes* But daughter's sons do not take as heirs to their mother, but as heirs to their grandfather Consequently no daughter's sons take at all, until all the eligible daughters are dead; and such sons, where they do inherit, take *per capita* and not *per stirpes* That is to say, if a man has two daughters, A and B, of whom A has one son, and B has five, on the death of the last daughter the six sons will take equally (*g*).

Adopted son.

§ 423 While an adopted son takes the same share as an aurasa son in competition with the natural born sons of his adoptive father's coparceners, he takes a reduced share in competition with the after-born sons of his adoptive father amongst the twice-born classes. That share differs in the different provinces (*h*) Among Sudras he shares equally with the after-born son in Madras, Bengal and all the other provinces except in Bombay where he gets one-fifth of the whole estate

Illegitimate sons of dwijas.

§ 424 The rights of an illegitimate son are the subject of special rules in the Mitakshara (*i*). Illegitimate sons of the three higher classes are entitled to nothing but maintenance (*j*).

(*f*) D Bh XI, 1, § 15, 47, 59, 65, 1 W MacN, 19, 22

(*g*) See *post* § 536

(*h*) This subject is fully dealt with in the chapter on 'Adoption'. See *ante* § 192.

(*i*) Yajn. II, 133-134, Mit, I, xii

(*j*) Mit, I, xii, 3, Dava Bhag, IX, 28, V May, IV, iv, 29-31, Medhatithi on Manu IX, 179 (Jha, Vol V, p 158), Vramit p 121, *Chuoturya* v. *Sahub Purhalad* (1857) 7 M I A., 18, 4 W.R. (P.C), 132, *Gajapathy* v *Gajapathy* (1865) 2 Mad H C, 369, reversed on a different point, 13 M.I A, 497, 6 B L R, 202, 14 W R. (P.C), 33; *Roshan* v *Bulwant Singh* (1900) 27 I A., 51; 22 All, 191. The same rule prevails among the Punjab Tribes, Punjab Customary Law, II, 161, *Ananthayya* v *Vishnu* (1894) 17 Mad, 160, *Vellayappa* v. *Natarajan* (1931) 58 I.A, 402, 55 Mad, 1. affg, 50 Mad., 340

Illegitimate sons of sudras.

The illegitimate son of a Sudra by a continuous concubine has the status of a son and is a member of the family (*k*). But he does not acquire at his birth a joint interest with his father in the ancestral family property (*l*). He cannot therefore enforce a partition against his father during his lifetime (*m*). If a partition is made during the father's lifetime, he may be allotted a share "by the father's choice" (*n*). But if a partition is made after the father's death, 'the brethren should make him a partaker of the moiety of a share' (*o*). He succeeds therefore under the Mitakshara law to the father's estate as a coparcener with the legitimate son with the result that on the death of the latter before partition, he becomes entitled to the whole estate by survivorship. Conversely, the legitimate son succeeds to the whole estate by survivorship on the

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(*k*) (1931) 58 I.A., 402, *supra* The illegitimate son of a Sudra by a continuous concubine (dasiputra) is not one of the eleven secondary sons mentioned by Manu as substitutes for a son taken in order to prevent the failure of funeral ceremonies He is not mentioned in Yajnavalkya's list. The term '*Saudra*' in Manu, IX, 160 refers to the Brahmin's son by his Sudra wife and not to the dasiputra born to a Sudra. As the illegitimate son was not a secondary son, he was not a member of the family. The provisions in the law books for his maintenance, or for a share, were merely due to a sense of justice and equity. It is doubtful if Vijnaneswara meant to create a special coparcenary between the illegitimate and the legitimate sons of a Sudra. The contrary is indicated by the heirs down to the daughter's son sharing with the illegitimate son The distinction between marriage and concubinage was as definitely recognised among the Sudras as amongst the Brahmins [*Ranoji* v. *Kandoji* (1885) 8 Mad., 557]. And for Sudras, marriage is the most important, if not the only *samskara* [*Kameswara Sastri* v *Veeracharlu* (1911) 34 Mad, 422, 427 per Krishnaswami Ayyar, J.]. According to the Mitakshara it is only the wedded wife that is the sapinda of her husband. Mit. on Yajn, I, 52, Vidyarnava, 95 The father and the concubine are not sapindas of each other and her son is not his sapinda in the legal sense, *Krishnayyan* v *Muttusami* (1884) 7 Mad, 407, 413 The view of Muttuswami Iyer, J, in *Thangam Pillai* v. *Suppa Pillai* (1889) 12 Mad, 401, that sapinda relationship presupposes marriage is the sounder view and not the view of Kumaraswami Sastri, J, in *Subramania* v. *Rathnavelu* (1918) 41 Mad, 44, 65 (F B.). The illegitimate son cannot therefore be regarded as a sapinda of his legitimate brother, (1899) 12 Mad, 401, *supra*. *Viswanatha* v. *Doraiswami* (1925) 48 Mad., 944, 954.

(*l*) (1931) 58 I A, 402, 55 Mad., 1, *supra*, *Jogendra Bhupathi* v. *Nityanand* (1890) 17 I.A, 128, 18 Cal, 15; *Sadu* v. *Baiza* (1880) 4 Bom, 37 F B, *Ramalinga* v *Pavedai* (1902) 25 Mad, 519, *Ram Suran* v. *Tekchand* (1901) 28 Cal, 194, 204, *Rajani Nath* v *Nitay* (1921) 48 Cal., 643 F.B., *Raju* v. *Arunagiri* (1933) 64 M L.J, 500

(*m*) (1931) 58 I A, 402, *supra*, (1890) 17 I.A, 128, *supra*, (1902) 25 Mad, 519, *supra*

(*n*) *Karuppannan* v. *Bulokam* (1900) 23 Mad, 16, *Packirisamy* v. *Doraiswami* (1931) 9 Rang., 266; Mit., I, xii, 2

(*o*) Yajn. II, 133-134, Mit. I, XII, 1-2, Dayabhaga IX, 29-30; D.K.S. VI, 32-34; V. May, IV, 4, 32, Raghunandana, II, 39-40, Dat. Chand, V, 30, 31; Jha, H L.S, II, 294-295.

death of the illegitimate brother (*p*). According to the decisions, it is only when the father dies a separated householder that an illegitimate son is entitled to inherit his estate but when a father dies an *avibhakta*, that is, undivided from his lineal ancestors, brothers or other collaterals, he can claim no share in the joint family property. For, the text laying down the special rule of inheritance provides that in the absence of legitimate brothers, the illegitimate son may inherit the whole property in default of the daughter's son of the deceased—a clear indication that the Sudra father therein contemplated was one that was divided from his ancestors and collaterals. It may therefore be taken as settled that when the father dies a member of an undivided family leaving legitimate and illegitimate sons, the latter are not entitled to claim a partition as against the father's coparceners (*q*). In *Gopalasami Chetty* v. *Arunachala*, it was held that an illegitimate son was not entitled to sue for his share of the family property against the adopted son and the brother of his father (*r*).

In *Velliyappa Chetty* v. *Nataraja*, the Privy Council approving the Madras decisions held that where the father has left no separate property and no legitimate son but was joint with his collaterals, the illegitimate son is not entitled to demand a partition of the joint family property in their hands, though he is entitled as a member of the family to maintenance out of that property (*s*). The legitimate son of an illegitimate son who predeceased the father or who died before partition with his legitimate brother is entitled to his father's share by right of representation as against his uncle and if the latter is dead, against his son or grandson (*t*).

(*p*) (1931) 58 I A, 402 approving *Ramalinga* v *Pavadai* (1902) 25 Mad, 519 and *Subramania* v *Rathnavelu* (1918) 41 Mad, 44 F B.; *Sadu* v *Baza* (1880) 4 Bom, 37, *Jogendra Bhupathi* v *Nithyanand* (1890) 17 I A, 128, 18 Cal, 15, *Sakharam* v *Shamrao* A I R, 1932, Bom, 234, (1933) 64 M L J, 500, *supra*, *Bhagwantrao* v. *Punjaram* A I R 1938 Nag, 1.

(*q*) W & B, 3rd edn, 72, (1931) 58 I A, 402, approving *Ramalinga* v *Pavadai* (1902) 25 Mad, 519, *Ranoji* v *Khandoji* (1885) 8 Mad., 557; *Parvathi* v *Thirumalai* (1887) 10 Mad, 334, *Thangam Pillai* v. *Suppa Pillai* (1889) 12 Mad, 401, *Karuppagoundan* v *Kumaraswami Goundan* (1902) 25 Mad, 429, *Gopalaswami* v *Arunachala* (1904) 27 Mad, 32, *Shome Shanker* v *Rajesar Suami* (1899) 21 All, 99; *Rathinasabapathi* v *Gopala* (1929) 56 M L J, 673.

(*r*) (1904) 27 Mad, 32 approved in (1931) 58 I A, 402, *supra*.

(*s*) (1931) 58 I A, 402, 414, *supra*

(*t*) *Ramalinga* v. *Pavadai* (1902) 25 Mad, 519, cited with approval in (1931) 58 I A, 402, *supra*. Jolly, T. L., L 185-186; W & B, 3rd edn, 72, 82, 83, 390. This right of representation has been applied by analogy.

Share on partition.

§ 425. Where a father leaves no legitimate male issue, the illegitimate son is entitled to inherit the separate estate of his father for a half share along with his widow, daughter or daughter's son and in their absence, he is entitled to the whole estate Under the Mitakshara law, the illegitimate son is entitled to half of the share which he would have taken had he been legitimate (*u*). In competition with the legitimate son therefore he would be entitled to one-fourth share of the whole estate and is entitled to an equal share with the widow, daughter or daughter's son (*v*). In *Maharaja of Kolhapur* v. *Sundaram*, where there was one adopted son and six illegitimate sons, the former was held entitled to four-sevenths and the latter to three-sevenths of the whole estate (*w*). The Dayabhaga rule based on the text of Yajnavalkya is the same: "without such consent, he shall take half a share; as Yajnavalkya directs" (*x*).

Mitakshara law.

Dayabhaga law.

Minority not a bar.

§ 426. It is now quite settled that a valid partition may be made during the minority of one or more coparceners (*y*). This follows from the admitted right of one coparcener to claim a partition. If a partition could not be made during the minority of one or more coparceners so as to bind them, a partition could hardly ever take place. Of course the interests of the minor coparcener ought to be represented by his guardian or some one acting on his behalf though the fact of his not being so represented would be no ground for opening up the partition, if a proper one in other respects (*z*). If the partition were unfair or prejudicial to the minor's interest or where there are no means of testing its validity as against him, he will be entitled on his attaining majority, by proper proceedings, to set it aside so far as

(*u*) *Kamulammal* v. *Visvanathaswami* (1923) 50 I A., 32, 46 Mad., 167.

(*v*) *ibid* For his share in competition with the widow now under the Act, see *post* § 529.

(*w*) (1925) 48 Mad., 1.

(*x*) Dayabhaga, IX, 29-31 citing Yajn. II, 134; D.K.S., VI, 32 35.

(*y*) *Balkishendas* v. *Ramnaran* (1903) 30 I.A., 139, 30 Cal., 738; *Nallappareddi* v. *Balammal* (1864) 2 M.H.C.R., 182; *Chanurappa* v. *Danava* (1894) 19 Bom., 593; *Lalbahadur* v. *Sispal* (1892) 14 All, 498; *Awadh* v. *Sitaram* (1907) 29 All., 37; *Mohansingh* v. *Mt. Gurdevi* (1931) 12 Lah., 767; *Rangasayi* v. *Nagaratnamma* (1934) 57 Mad., 95 F.B.; *Dnyaneshwar Vishnu* v. *Anant Vasudeo* (1936) 60 Bom., 736. The legality of a partition during the minority of some of the coparceners is recognised by *Baudhayana*, who says that "the shares of sons who are minors, together with the increments thereon should be placed under good protection until the majority of the owners" (II, 2, 3, 36).

(*z*) *Bhagwati Prasad* v. *Bhagwati Prasad* (1913) 35 All., 126.

regards himself (*a*). A partition effected without reserving any share for a minor is invalid as against him. In such a case, it would seem that so far as he is concerned, he will continue to be an undivided member (*b*). Where the partition is in status only, and not by metes and bounds, the minor will of course be bound as he cannot attack such a partition merely on the ground that it ought not to have been entered into when he was a minor.

Minor's suit for partition.

§ 127. A suit on behalf of a minor coparcener for partition will lie if the interests of the minor are likely to be prejudiced by the property being left in the hands of the other coparceners, as for instance, where the property is not being properly managed, or where the minor's rights are denied, or where the manager declines to provide for the minor's maintenance. The Court has a discretion in the matter and will not ordinarily pass a decree for partition in a suit brought by the next friend of a minor unless it finds that the partition is for the benefit of the minor as advancing his interests or protecting them from danger (*c*). The test always is whether a partition in the circumstances is for the benefit of the minor (*d*)

Absent members

§ 128. An absent coparcener stands on the same footing as a minor. The mere fact of his absence does not prevent partition. But it throws upon those who effect it the obligation to show that it was fair and legally conducted, and the duty of keeping the share until the return of the absent

(*a*) *Kalee Sunker* v. *Denendra* (1875) 23 W R, 68, *Damodardas* v. *Uttam Ram* (1893) 17 Bom, 271, *Chanvirappa* v. *Danava* (1894) 19 Bom, 593, *Yechuri Ramamurthi* v. *Yechuri Ramamma* (1915) 30 M L J, 308, *Naraimkutti* v. *Achuthankutti* (1918) 42 Mad, 292, 881, *Veluthakal Chirudevi* v. *Veluthakal Tarwad* (1916) 31 M L J, 879; *Paramasivam Pillai* v. *Meenakshisundaram Pillai* (1922) M W N, 732, (1934) 57 Mad., 95, 134, *supra*, *Awadh* v. *Sitaram* (1907) 29 All, 37 (where a partition deed among adults alone gave certain benefits to a minor member of the family, he can, on attaining age sue to enforce the deed, though he was no party to the partition deed)

(*b*) *Krishnabai* v. *Khangowda* (1894) 18 Bom, 197, approved in *Choudhury Ganesh* v. *Mt Jewach* (1903) 31 I A, 10, 31 Cal, 262

(*c*) *Bachoo* v. *Mankorebai* (1907) 34 I A, 107, 31 Bom, 373 affirming 29 Bom, 51, (1934) 57 Mad, 95 F B, *supra*; *Svami Ayyar* v. *Chockalingam* (1864) 1 M H C, 105, *Kamakshi Ammal* v. *Chidambara* (1866) 3 M H C R, 94, *Alamelu* v. *Arunachala* (1860) 3 M H C, 69, *Thangam Pillai* v. *Suppa Pillai* (1889) 12 Mad, 401, *Mahadev* v. *Lakshman* (1895) 19 Bom., 99, *Bachoo* v. *Khushaldoss* (1902) 4 Bom L R, 883, *Bhola Nath* v. *Ghadiram* (1907) 29 All, 373, *Shadagopa* v. *Thirumalaiswami* (1915) 30 I C, 272, *Palani* v. *Kasi* (1918) 50 I C, 552, *Sri Ranga Thatachari* v. *Srinivasa* (1927) 50 Mad, 866, *Damodar* v. *Senabutty* (1882) 8 Cal, 537, see also *Kishan Lal* v. *Lachmi Chand* A.I.R., 1937, All, 456.

(*d*) *Rangasayi* v. *Nagaratna* (1934) 57 Mad., 95, 141 F.B., *supra*.

member (*e*). The right to receive a share of property divided in a man's absence is laid down as extending to his descendants to the seventh degree. But, of course, it would now be regulated by the law of limitation (*f*).

Shares for Women.

§ 429. The interests of the women of the family, whether wives, widows, mothers or daughters, where a partition took place at the will of others were specially safeguarded by the Sanskrit writers. Yajnavalkya says: "If he (father) makes the allotments equal, his wives to whom no stridhana has been given by the husband or the father-in-law must be made partakers of equal portions" (*g*). Explaining this text, the Mitakshara says: "When the father, by his own choice, makes all his sons partakers of equal portions, his wives, to whom peculiar property had not been given by their husband or by their father-in-law, must be made participants of shares equal to those of sons. But if separate property have been given to a woman, the author subsequently directs half a share to be allotted to her: "Or if any had been given, let him assign the half" (*h*). Referring to partition after the death of the father, Yajnavalkya says: "When sons divide after the death of the father, the mother should also receive an equal share" (*i*). On this the gloss of the Mitakshara is: "Of heirs separating after the decease of the father, the mother shall take a share equal to that of a son; provided no separate property had been given to her. But if any had been received by her, she is entitled to half a share, as will be explained" (*j*). The comment of Visvarupa on the text of Yajnavalkya is: "If equal shares are allotted by the

Wife.

Widowed mother.

(*e*) 1 Stra. H.L., 206, 2 Stra. H.L, 341; Dig., II, 511.

(*f*) Daya Bhaga, VIII, D K S, IX See Act IX of 1908, sched. I, arts 127, 144 *Govind Rao* v *Rajabai* (1930) 58 I A., 106; Brih., XXV, 22-24, Vivadachintamani, 241.

(*g*) Yajn. II, 115 (Mandlik, 212), Mit. I, II, 8, I, VII, 1.

(*h*) Mit. I, II, 9

(*i*) Yajn. II, 123; Brih XXV, 64 "But on his death, the mother shall take a son's share The mothers shall share equally with the sons, the maidens shall take fourth part shares" (Jolly's trans S B E., Vol XXXIII, p 379). Mr. Colebrooke's translation of the text of Brihaspati is different, Dig. II, 244. The term '*mata*', 'mother', is intended to signify both the mother and the stepmother. Vijnanesvara in I, VII, 1 considers the term '*mata*' as standing for father's wives generally so as to include a stepmother. See Mandlik, 217 note. The Mayukha follows the Mitakshara, IV, IV, 18.

(*j*) Mit. I, VII, 2, Smritichandrika IV, 7-17; Sarasvativilasa para. 116. The Smritichandrika and the Sarasvativilasa construe the text to mean that where a mother by means of her own separate property is able to maintain herself and perform religious duties, she can take no share out of her husband's property; but where it is insufficient for such purposes, she is to take a share not equal to that of a son, but

father, the widows of his sons and grandsons and his own wives to whom no stridhana had been given by their husband or father-in-law or himself, should be made partakers of their husband's share" (*k*).

Grandmother.

Both Nilakantha and Jagannatha cite a text of Vyasa: "The sonless wives of the father are declared equal sharers; and so are all paternal grandmothers declared equal to the mother" (*l*), Nilakantha adds. "by the word '*sarvah*', all, even step-grandmothers are included".

Hindu Women's Rights to Property Act.

§ 430. By a recent Act of the Legislature, the Hindu Women's Rights to Property Act, the widow of a deceased coparcener has in the joint family property the same interest as he himself had as for a Hindu woman's estate and has the same right to claim partition and allotment of a share to her as fully as a male coparcener The Act also provides that on the death of a man governed by the Dayabhaga law leaving any property, as well as on the death of a Mitakshara Hindu leaving separate property, his widow or if there is more than one widow, all his widows together are even when he leaves male issue, entitled to the share of a son in respect of such property when he dies intestate Similar provisions are made by the Act in favour of the widow of a predeceased son and in favour of the widow of a predeceased son of a predeceased son It is clear that where he leaves more than

less than that, proportionate to her wants According to the Saraswativilasa, this was also the view of Apararka Madhava dissents from this view "What has been said by some, that the text 'The mother also shall take a share', means that she takes only what is necessary for her livelihood, is not correct, because, the words 'share' and 'equal' would then be meaningless Then it is said that if the wealth is large, she takes what is necessary for her livelihood, but if the wealth be small, she takes an equal share That too is wrong, because such a view results in want of uniformity" (Parasara Madhaviya para 36) The Viramitrodaya considers the share allotted to the wife as a gift through affection (II, 10, 19, Setlur's ed, 315, 318) The Vivadachintamani says "A share of the heritage shall be allotted with the brothers to the widows who have no offspring but are supposed to be pregnant, *to be held by them* until they severally bear sons". By 'widows' are meant, the wives of the deceased brothers A share must be given to a brother's widow who is likely to bear a son and after her delivery, that share belongs to her son, but if no son be brought forth, the said share shall be taken by her husband's brothers, 'mother' *(Janani)* means one who has male issue, 'mothers' *(Matarau)* means stepmothers who have no male issue. These females shall be equal sharers with the sons (Vivadachintamani 239, 240). Vivadaratnakara II, 15 page 7.

(*k*) Visvarupa, page 246 (Trivandrum edn.) "According to the opinion of the Misras, where a father has allotted lesser shares to his sons and reserved the greater portion for himself, equal shares must be made up to his wives from his own portion" (D K S. VI, § 27, see also 1 W. MacN, 47).

(*l*) V. May. IV, iv, 18, Dig, II, 243.

one widow, all of them together will be entitled only to one share in modification of the existing law. They will also be entitled like the widow of a deceased coparcener to claim a partition and allotment to them of the shares to which they are entitled. The interest which they take will be the limited interest of a Hindu woman. The provisions of the Act are set forth and discussed in a separate chapter (*m*). As the Act does not apply to cases of partition under the older law, it becomes necessary to state the law as it stood before it.

Wife.

§ 431. A wife however could never demand a partition during the life of her husband, since, from the time of marriage, she and he are united in religious ceremonies (*n*). This is in accordance with the fundamental rule of Hindu law as stated in the text of Harita as quoted by the writers: "There can be no partition between husband and wife" (*o*).

The Dayabhaga says: "when partition is made by brothers of the whole blood, after the demise of the father, an equal share must be given to the mother. For the text expresses: 'The mother should be made an equal sharer'". Jimutavahana considers that the term 'mother' does not include a stepmother (*p*). The Viramitrodaya also takes the same view (*q*).

Obsolete in Southern India.

In Southern India, the rules of the Mitakshara law allotting a share upon partition to wives, widows, mothers and grandmothers have long since become obsolete (*r*) owing to the influence of the Smritichandrika and the Sarasvati Vilasa which follows it and Apararka. The Smritichandrika holds such a share to be merely an assignment by way of maintenance (*s*). Elsewhere, the Mitakshara rules have been in force.

(*m*) *ante* §§ 49, 50; see *post* §§ 589-592.

(*n*) *Punna Bibee* v. *Radhakisen* (1904) 31 Cal, 476, *Pratapmull Agarwalla* v. *Dhanabati* (1933) 63 I.A., 33, 63 Cal, 691 revg. (1934) 61 Cal., 1056, *Srimati Sabitri* v. *Mrs. F. A. Savi* (1933) 12 Pat., 359, 426.

(*o*) The same text is to be found in Apastamba II, vi, 14, 16; Viramit. II, 10, Setlur's ed. 318; Smritichandrika IV, 11.

(*p*) Dayabhaga, III, ii, 29-32; D.K.S., VII, 3, 5, 6; *Raghunandana*, II, 17.

(*q*) Viramit II, 19 (Setlur's ed. p. 334).

(*r*) Stra H.L., 5th ed., 178 note (a); 1 W. MacN., 50. *Muttuvengadachellaswamy Monigar* v. *Thumbhayaswamy* Dec. M.S.U. 1849, p. 27; *Venkatammal* v. *Andyappachetty* (1883) 6 Mad., 130, 135; *Mari* v. *Chinnammal* (1885) 8 Mad., 123; *Subramanian* v. *Arunachellam* (1905) 28 Mad., 1, 8.

(*s*) Smritichandrika, IV, 4-17; Sarasvativilasa, §§ 114-116.

Wife's share under the Mitakshara law

According to the Mitakshara law, a wife is entitled on a partition between her husband and his sons to a share equal to that of a son; but she cannot enforce a partition. She may either be the mother or the stepmother of the sons (*t*). The value of any stridhana given to her by her husband or father-in-law has to be deducted from her share (*u*). The Viramitrodaya takes the expression 'husband' or 'father-in-law' as illustrative so as to comprise all the stridhana property given to her by all relations (*v*). The right of the wife to a share on partition, where it exists, is unaffected by the recent Act.

Under the Dayabhaga law

Of course no question of wife's share, as of right, can arise under the Dayabhaga law, for the father is the absolute owner of the property and the text of Jimutavahana (*w*) only lays down a moral precept Should he, however, elect to partition his estate between himself and his sons, it would seem that a wife should be allowed a share equal to a son's, if she be without male issue but not otherwise (*x*). But as the father's powers are absolute over his property, he can make an unequal partition (*y*)

Mother's share under the Mitakshara law

§ 132 Under the Mitakshara law, when a partition takes place after the father's death between the sons, the mother including the stepmother is entitled to a share equal to that of a son (*z*). As in the case of the wife, the stridhana

(*t*) *Sumrun Thakur* v *Chunder Mun Missir* (1882) 8 Cal, 17; *Sunder Bahu* v *Monohur Lal* (1881) 10 C L R, 79, *Punna Bibee* v. *Radha Kissen* (1904) 31 Cal, 476, *Dular Koeri* v *Dwarkanath* (1905) 32 Cal, 234, *Jairam* v *Nathu* (1907) 31 Bom, 54 (stepmother), *Partap Singh* v *Dalipsingh* (1930) 52 All, 596, *Hosbanna* v *Devanna* (1924) 48 Bom, 468 (stepmother), *Srimati Sabitri* v *Mrs F A Sam* (1933) 12 Pat, 359, 426, *Pratapmull* v *Dhanabati* (1936) 63 I A, 33, 63 Cal, 691, reversing (1934) 61 Cal, 1056, *Hushensab Rajesab* v. *Basappa* (1933) 34 Bom L R, 1325

(*u*) (1907) 31 Bom, 54, *supra*, (1933) 34 Bom L R, 1325, *supra*

(*v*) Viramit II 1, 10 (Setlur's ed 316) But see *Jagobondhu Pal* v. *Rajendranath* (1921) 34 C L J, 29 where the Viramitrodaya is not referred to The view of the Mitakshara that if there is any stridhana the mother is entitled only to a half-share argues in favour of its being only a provision for maintenance

(*w*) Daya Bh III, II, 29

(*x*) *Sorolah Dossee* v *Bhoobun Mohun* (1888) 15 Cal, 292, 306.

(*y*) *Juggomohun* v *Neemoo*, Morton, 90, see *ante* § 353; See Bhattacharya H L, 2nd ed, 360-361

(*z*) *Judoonath* v *Bishonath* 9 W R, 61, *Mohabeer* v *Ramyad* 12 B L R, 90; 20 W R, 192, *Laljeet* v. *Rajcoomar*, *ib*, 373, 20 W R, 336; *Pursid* v *Honooman* (1878) 5 Cal., 845; *Sumrun* v. *Chundar Mun* (1881) 8 Cal, 17, *Krishori* v *Moni Mohun* (1885) 12 Cal, 165; *Chowdhry Ganesh* v. *Mt Jewach* (1904) 31 I A, 10, 31 Cal., 262. *Damoodur* v *Senabutty* (1882) 8 Cal, 537, *Isree Pershad* v. *Nasib Kooer* (1884) 10 Cal., 1017, *Damodar Das* v. *Uttamram* (1893) 17 Bom.,

received by a widow from her husband or father-in-law must be taken into account in determining her share (*a*). Under the Dayabhaga law, a widow who is without male issue is not entitled to a share on partition as under the Mitakshara law: it does not allow any share to a sonless stepmother on a partition between her stepsons (*b*).

Sonless widow under Dayabhaga.

§ 433. Similarly a paternal grandmother including a step-grandmother is, according to the Mitakshara law, on a partition between the grandsons, entitled to a share equal to that of a grandson (*c*). So also she would be entitled on a partition between her son and the son of a predeceased son (*d*). It has been held in Allahabad and Bombay that on a partition between her son and his sons, she is not entitled to any share (*e*). But in Bengal and Mithila she has been held entitled to a share on such a partition (*f*).

Paternal grandmother.

§ 434. Neither the wife, nor mother nor grandmother is entitled to enforce a partition; the sons have a perfect right to remain undivided as long as they choose. Any alienation of property made by the coparceners without their consent

Women cannot enforce partition

271, *Vithal* v. *Prahlad* (1915) 39 Bom., 373 (paternal step-grandmother), *Harnarain* v. *Bishambhar* (1915) 38 All, 83 (stepmother), *Ram Pearı* v *Harı Dutt* A I.R., 1933, All., 562, *Tegh Indar Singh* v. *Harnamsingh* (1925) 6 Lah., 457 (stepmother); *Chowdhury Thakur* v. *Mt. Bhagbatı Koer* (1905) 1 C.L.J., 142 (stepmother), *Bashist Narayan* v. *Bindeshwarı* A.I.R., 1926, Pat., 537, *Manchharam* v. *Dattu* (1920) 44 Bom., 166 (where a partition takes place between the legitimate and the illegitimate sons, the mother of the former has been held entitled to a share). A mother is entitled to a share on a partition between the sons and the alienee of one or more of them, *Bilaso* v. *Dina Nath* (1880) 3 All, 88, *Betı Kunwar* v. *Janki Kunwar* (1911) 33 All, 118; *Amritlal* v. *Manıklal* (1900) 27 Cal., 551, *Jogendra* v. *Kulkumarı* (1900) 27 Cal., 77.

(*a*) *Jodoonath* v. *Brogonoth* (1874) 12 Beng. L.R., 385; *Kishorı* v. *Monı Mohun* (1886) 12 Cal, 165, *Jogobandhu Pal* v. *Rajendranath Chatterjee* (1921) 34 C L J., 29 (stridhana received from her own father was not deducted), but see the Viramitrodaya II, 1, 10 already referred to.

(*b*) Daya Bh. III, 2, 30, *Damoodur* v *Senabutty* (1882) 8 Cal., 537, 542; *Hemangini* v. *Kedarnath* (1889) 16 I.A, 115, 16 Cal., 758; *Tegh Indarsingh* v. *Harnamsingh* (1925) 6 Lah., 457.

(*c*) *Vithal* v *Prahlad* (1915) 39 Bom, 373 (step-grandmother), *Kanhaiyalal* v *Gaura* (1925) 47 All., 127, *Sriram* v. *Haricharan* (1930) 9 Pat., 338 (step-grandmother).

(*d*) *Babuna* v. *Jagat Narain* (1928) 50 All., 532; *Ram Pearı* v. *Harı Dutt* A.I R., 1933, All., 562, disting. (1912) 34 All., 505, *infra*

(*e*) *Sheo Narain* v. *Janki* (1912) 34 All., 505, *Jamnabai* v. *Vasudev* (1930) 54 Bom., 417.

(*f*) *Sibbosoondery* v *Bussoomutty* (1881) 7 Cal., 191 (a Dayabhaga case); *Budry Roy* v. *Bhagwat* (1882) 8 Cal., 649 (a Mitakshara case), *Kishori* v. *Moni Mohun* (1886) 12 Cal., 165; *Purna Chandra* v. *Sarojini* (1904) 31 Cal., 1065 (Dayabhaga case); *Krishnalal* v *Nandeshwar* (1919) 4 P.L.J., 38.

will therefore bind the wife, mother or grandmother as they do not become owners of their shares till an actual division of the joint estate (*g*) In *Pratapmull* v. *Dhanabhati*, it was held that even a preliminary decree in a partition suit declaring that a wife was entitled in severalty to one-third share of the property did not affect a consent decree made on a mortgage, executed by her husband and son, of joint family property "According to the Mitakshara law, the mother or the grandmother is entitled to a share when sons or grandsons divide the family estate between themselves, but she cannot be recognised as the owner of such share until the division is actually made, as she has no pre-existing right in the estate except a right of maintenance" (*h*).

When a man leaves sons by different wives, on a partition between them, both mother and stepmother share, under the Mitakshara law, equally with all the sons; so too, where all the sons are by one wife and the other wife has no sons (*i*)

Widow under Dayabhaga

§ 135 A widow under the Dayabhaga law becomes the heir of her husband, if he leaves no male issue whether he is divided or not She is a coparcener with her deceased husband's brothers or other coparceners and can herself sue for a partition (*j*)

The Calcutta High Court, however, has laid it down that owing to the special nature of a woman's estate, it would be the duty of a Court, before decreeing partition in favour of a widow, to see that the interests of the presumptive heir are not affected by the decree The Court ought to be satisfied that it is a *bona fide* claim under such circumstances as render partition desirable and that she would properly represent the estate (*k*). But now under the Act she has the same right of partition as a male owner The same

(*g*) *Pratapmull* v. *Dhanabhati* (1936) 63 I A., 33, 63 Cal., 691

(*h*) *ibid*, 44, approving of the decision of Mitter, J. in *Sheo Dyal* v *Judoonath* (1868) 9 W R, 61.

(*i*) *Damoodar* v *Senabutty* (1882) 8 Cal., 537, *Damodardas* v *Uttam Ram* (1893) 17 Bom, 271.

(*j*) F. MacN., 39, 59, 1 W. MacN., 49, *Dhurm Das* v. *Mt. Shama Soondri* (1843) 3 M I A. 229, 241, 6 W R (P C), 43, *Shib Pershad* v *Gunga Monee* 16 W R, 291, *Soudamney* v *Jogesh* (1877) 2 Cal., 262. Even before partition the widow has an alienable interest which may be enforced by partition by her assignee, *Janoki Nath* v. *Mothura Nath* (1883) 9 Cal, 580 F B As to the right of widows among the Jains to demand a partition of their husband's share, see *Sheo Singh* v. *Mt Dakho* (1874) 6 N. W P, 382, 406, *affd* (1878) 5 I A, 87; 1 All, 688

(*k*) *Mohodeay* v. *Haruk Narain* (1883) 9 Cal., 244, 250.

widow may take in different capacities, as heir of one branch of the family and as mother or grandmother in another branch (*l*).

Dayabhaga: mothers' shares.

Under the Dayabhaga law, in a partition between sons by different wives, the respective mothers are entitled to share equally only with their own sons. Consequently the property must be first divided into as many shares as there are sons and each widow then shares equally with each of her sons the portion allotted to all her sons (*m*). "When the Hindu law provides that a share shall be allotted to a woman on partition, she takes it in lieu of or by way of provision for the maintenance for which the partitioned estate is already bound, and thus it is material to see in what way she takes a share. According to Jagannâtha, it is a settled rule that a widow shall receive from sons who were born of her an equal share with them and she cannot receive a share from the children of another wife" (*n*). A widow, who has only one son is not entitled to a separate share (*o*). But if he dies, and his sons come to a division, then she would be entitled to share with them as grandmother. Similarly, if a man dies leaving three widows, each of whom has one son, and these three sons come to a division, none of the mothers would have a right to a share; because each of them retains her claim intact upon her own son. But if the sons of one son divide among themselves, their grandmother will be entitled to a share. If the grand sons of all three widows divide, all the grandmothers will be entitled (*p*). In each case the share of the widow will be equal to the share of the persons who effect the partition. If it takes place between her sons, she will take the share

Grandmother.

(*l*) *Jugmohun* v. *Sarodamoyee* (1878) 3 Cal. 149, *Poorendranath* v. *Hemangini* (1909) 36 Cal., 75

(*m*) *Kristo Babhiny* v. *Ashutosh* (1886) 13 Cal., 39 following *Callychurn* v. *Jonava* 1 Ind. Jur. N.S., 284 and dissenting from *Torit* v. *Taraprosonno* (1879) 4 Cal., 756.

(*n*) *Hemangini* v. *Kedarnath* (1889) 16 I.A., 115, 123, 16 Cal., 758. Whether the share is taken by her for her maintenance or for her inheritance has been the subject of conflicting decisions. *Sorolah Dassee* v. *Bhoobun Mohun* (1899) 15 Cal, 292; *Sashi Bhushan* v *Hari Narain* (1921) 48 Cal, 1059; *Hira Lal* v. *Sankar Lal* (1938) 42 C.W.N., 695, *Bhagwantrao* v *Punjaram* A.I.R. 1938 Nag, 1

(*o*) 16 I.A., 115; 16 Cal., 758 *supra; Sorolah* v. *Bhoobun* (1888) 15 Cal., 292, 306.

(*p*) F. MacN., 39, 41 54; *Sibbosoondery* v. *Bussomutty* (1881) 7 Cal., 191; *Badro Roy* v. *Bhugwat* (1882) 8 Cal., 649; *Purna Chandra* v. *Sarojini* (1904) 31 Cal., 1065.

of a son, if between her grandsons, she will take the share of a grandson (*q*).

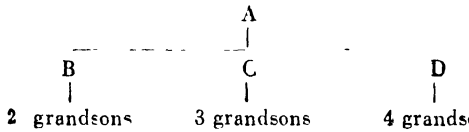
Great grandmother.

Where a partition takes place among great-grandsons only, it is said that the great-grandmother has no right to a share (*r*) But if a son be one of the partitioning parties with great-grandsons by another son, she would take a son's share. And if a grandson and great-grandson divide, she would take a grandson's share (*s*).

"Partition, to entitle a mother to the share, must be made of ancestral property, or of property acquired by ancestral wealth. Therefore, if the property had been acquired by A,

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(*q*) D.K S, VII, §§ 2, 4, Raghunandana, II, 19 If she has already been provided for to the extent to which she would be entitled on partition, she takes no more, if to a less extent, she takes as much more as will make up her share *Jodoonath* v *Brojonath* (1874) 12 B.L R, 385. If a mother has three sons, one of whom dies leaving grandsons, and a partition takes place between the two surviving sons and the grandsons, the mother will be entitled to the same share as if the division had been effected between three sons, that is to say, the property will be divided into four shares, of which the mother will take one, each surviving son will take another, and the grandsons will take the fourth (*Prawankisson* v *Muttoosoondery*, Fulton, 389, *Cooroopersaud* v. *Seebchunder* F MacN ,29, 52) Where the partition takes place between grandsons by different fathers, the matter becomes more



complicated For instance, suppose A to have died leaving a widow and three sons, and these sons to die, leaving respectively two, three, and four grandsons, and that these grandsons come to a division If their grandmother was dead, the property would be divided into three portions, *per stirpes*, which would again be divided into two, three, and four parts, *per capita* (§ 421) But if the grandmother is alive, she will be entitled to the same share as a grandson But it is evident that the grandsons by B take a larger share than those by C, and these again a larger share than those by D. The mode of division, therefore, is stated to be, that the whole property divided into ten shares, of which the grandmother will take one, the two sons of B will take three, the three sons of C will take three, and the four sons of D will take three If the widows of B, C and D were also living, they would be entitled to shares also. Each widow would take the same share as her son But in order to arrive at this share, a fresh division would have to be made. The three-tenths taken by the sons of B would be divided into three parts, of which his widow would take one. Similarly, the three-tenths taken by the sons of C would be divided into four parts, and the three-tenths taken by the sons of D would be divided into five parts, of which one would go to the respective widows of C and D, the remainder being divisible among their sons.

(*r*) Dig, II, 251, F MacN, 28, 51, S C Sarkar's Vyavastha Darpana, Vol. II, p. 745 note

(*s*) F. MacN, 52; *Purna Chandra* v *Sarojini* (1904) 31 Cal., 1065

the father of B and C, and B and C come to a division of it, their mother (the widow of A) shall, but their grandmother shall not, take a share of it. And if the estate shall have been acquired by B and C themselves, neither their mother nor grandmother will be entitled to a share upon partition" (*t*).

Rights of daughters.

§ 436. Where a partition takes place during the life of the father, the daughter has no right to any special apportionment. She continues under his protection till her marriage; he is bound to maintain her and to pay her marriage expenses, and the expenditure he is to incur is wholly in his discretion (*u*) But where the division takes place after the death of the father, Manu directs: "To the maiden sisters, the brothers shall severally give portions out of their shares, each out of his share, one-fourth part" (*v*). Yajnavalkya requires that brothers should have their unmarried sisters married at their expense giving them a quarter of their own share (*w*). The provision of a quarter share was confined to unmarried sisters only, married sisters not being entitled to any share along with their brothers. Obviously, the provision was meant for the expenses of marriage as well as for a gift or dowry in connection with marriage. This is evident from the Arthasastra of Kautilya and Narada (*x*). The latter says: "They shall maintain her upto the time of marriage; afterwards let her husband keep her" (*y*).

Rights of unmarried sisters.

On the question whether unmarried sisters were sharers along with their brothers or were only entitled to an amount sufficient for their marriage, there has been an acute difference of opinion from early times amongst the commentators. Asahaya, Medhatithi, Vijnanesvara, Nilakantha and Mitramisra combat the view that the provision is only for an amount sufficient for marriage expenses, the Mitakshara going farthest and declaring that "after the decease of the father

(*t*) F MacN, 51, 54, *Isree Pershad* v *Nasib Koer* (1884) 10 Cal, 1017

(*u*) Mit, I, 7, 14

(*v*) Manu, IX, 118

(*w*) Yajn., II. 124. Vishnu, XVIII, 34-35; Brih, XXV, 64; Katyayana cited in the Smritichandrika, IV, 26, "Unmarried daughters shall be paid adequate dowry *(pradanikam)* payable to them on the occasion of their marriages", Arthasastra, Shamasastri, 198.

(*x*) Shamasastri, 198, Narada, XIII, 27.

(*y*) Narada, XIII, 27.

an unmarried daughter participates in the inheritance" (*z*). Bharuchi, Apararka, the Smritichandrika, Jimutavahana and his followers, the Madhaviya, the Sarasvati Vilasa, the Vivada Ratnakara and the Vivadachintamani, all take the view that the mention of a definite fourth only meant that an amount must be allotted to each daughter as would be sufficient for her marriage (*a*) But the extreme position in the Mitakshara that an unmarried sister was along with her brother entitled to a share in the inheritance had probably no foundation in usage nor has modern usage been in accordance with it Daughters therefore take only as heirs the separate estate of a Hindu Their rights as coheirs and the effect of partition between them fall under the law of inheritance

Strangers.

§ 437 The purchaser of the undivided interest of a coparcener cannot compel a partition so as to cause any or all of the members of a family to assume the status of divided members with all its legal consequences As already stated, the vendee's suit to enforce the alienation by partition is not a suit for partition in the technical sense in which partition or *vibhaga* is used in Hindu law and does not by itself break up the joint family. The modes in which the equity of the purchaser for value is worked out have already been discussed (*b*).

Disqualified persons.

§ 438 Persons who labour under any defect which disqualifies them from inheriting are equally disentitled to a share on partition (*c*) Various grounds of disqualification were recognised by Hindu law All these grounds with the exception of congenital lunacy or idiocy have ceased to exist as

(*z*) Medhatithi Bhasya, Jha, Vol, V, 98-101, Medhatithi thinks that the gift or dowry in connection with a sister's marriage may be upto a fourth part and quotes a smriti text "What remains of the ancestral property, after the father's debts have been paid off, shall be divided, other necessary payments also being made out of it, such for instance as the gift to the unmarried girls' Mit I, vii, 5 14 Mr Colebrooke's translation of placitum, I, vii, 13 is incorrect It ought to read "Hence the interpretation of Asahaya, Medhatithi, etc", see *ante* § 17 and note (*p*) to it, V May IV, iv, 39, 40, Viramit II, 1, 21, Jolly, L & C 181 ? See the concise note of Mandlik, p 217, notes 4 and 5

(*a*) Smritichandrika, III 18-19, Daya Bh III, ii, 39, D K S, VII, 9-10, Raghunandana III, 19 20, Madhaviya, § 25 The Sarasvati Vilasa sets out both views, but states the modern doctrine, which is that of Apararka,last, though without offering any opinion of its own, § 119-133; Vivada Ratnakara, V, 21 26, Vivada Chintamani, 240

(*b*) See *ante* §§ 386, 388

(*c*) *Ramsahye* v. *Lalla Laljee* (1882) 8 Cal., 149; *Ram Soonder* v *Ram Sahye* (1882) 8 Cal, 919,

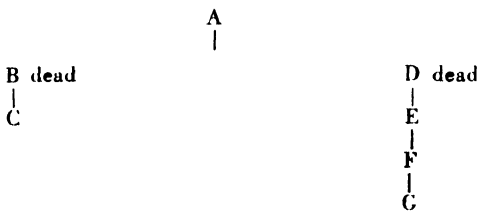
part of the Mitakshara law by virtue of the Hindu Inheritance (Removal of Disabilities) Act, 1928. All the disqualifications however continue to be in force in the Dayabhaga School. The subject will be fully discussed in a subsequent chapter (*d*).

Conversion effects severance.

§ 439. The disqualification arising from renunciation of religion and deprivation of caste has been relieved against by the Caste Disabilities Removal Act, XXI of 1850. The only effect of conversion or exclusion from caste is that it operates as a separation in interest of the convert or the outcaste from the family (*e*); as a result of such severance, he and the other members of the family have no mutual rights of survivorship (*f*). The Act applies only to the convert or the outcaste but does not relieve his descendants from the disqualification which the Hindu law attaches to the offspring of an outcaste (*g*).

Other disqualifications personal.

§ 440. Except in the case of degradation, the disqualifications imposed by Hindu law are purely personal and do not attach to the legitimate descendants of the disqualified person (*h*). Its effect is to let in the next heir, precisely as if the incapacitated person were then dead. But that heir must claim upon his own merits, and does not step into his father's place For instance, suppose the dividing parties were C and F, and that E were incapacitated but alive, his



son F would be entitled to claim half of the property. But if F was the incapacitated person, and D and E were dead.

(*d*) See *post* chap XV

(*e*) *Abraham* v *Abraham* (1863) 9 M.I A, 195, *Khunnilal* v. *Govindakrishna* (1911) 38 I A., 87, 33 All., 356; *Kulada Prasad* v *Haripada* (1913) 40 Cal., 407, *Ram Pergash* v. *Mt. Dahan Bibi* (1924) 3 Pat, 152, *Pathumma* v *Raman Nambi* (1921) 44 Mad., 891, 897 F B.

(*f*) *Kunhichekkan* v *Lydia* (1912) 11 M.L.T., 232; *Subbayya* v. *Rangayya* A.I.R, 1927, Mad, 883, (1913) 40 Cal., 407, *supra* § 43.

(*g*) Mit, II, x, 2, *Mitar Sen* v. *Maqbul Hasan* (1930) 57 I.A., 313, A I.R. 1930, P C, 251, approving *Vaithilinga* v *Ayyathorai* (1917) 40 Mad, 1118 and overruling *Bhagwant* v. *Kallu* (1889) 11 All., 100; *Chedambaram* v. *Ma Nyein Me* (1928) 6 Rang., 243.

(*h*) Mit., II. x, 9 11, Daya Bh., V, 17-19.

G would have no claim, being beyond the limits of the coparcenary (*i*) On the other hand, such disqualification only operates if it arose before the division of the property. One already separated from his co-heirs is not deprived of his allotment (*j*). And if the defect be removed at a period subsequent to partition, the right to share arises in the same manner as, or upon the analogy of, the right of a son born after partition (*k*).

Removal of disability.

Where the disqualification is not congenital, he would under the Mitakshara law acquire a right in the joint family property by birth In such a case, the effect of a subsequent disqualification has been considered In *Muthuswami Gurukkal* v. *Meenammal*, it was held that the right of a member of a Hindu family to share in ancestral property comes into existence at birth and is not lost but is only in abeyance by reason of a disqualification It subsists all through, although it is incapable of enforcement at the time of partition, if the disqualification then exists Hence if on the death of all the other members, the disqualified member becomes the sole surviving member of the family, he takes the whole property by survivorship (*l*). The same rule would seem to apply even where a cogenital disqualification is subsequently removed.

Right in abeyance.

Another consequence of this dormant coparcenary interest of the person suffering from a supervening disqualification is illustrated in *Venkateswara Pattar* v *Mankayammal* where it was held that the father could validly separate himself in interest from his only son who after his birth became lunatic so as to enable the father to dispose of his interest by will in favour of his daughter (*m*) As a result of the Act of 1928 which makes congenital lunacy and idiocy the only grounds of disqualification, the distinction will not be material in future and a person who becomes a lunatic after his birth and before partition will therefore be entitled to his share

(*i*) *Bodhnarain* v *Omrao* (1870) 13 M I A, 519, *per Peacock* C J. *Kalidas* v *Krishan* 2 B L R (F B), 115, *ante* § 267

(*j*) Mitakshara, II 10 § 6, § 603

(*k*) Mitakshara, II, 10, § 7, V May, IV, 11, § 2

(*l*) (1920) 43 Mad, 464; *Mt Dilraj Kuari* v. *Rikheswa Rai* (1934) 13 Pat, 712; *Venkateswara Pattar* v *Mankayammal* A I R, 1935, Mad., 775; 69 M.L J, 410; *Vithaldas* v. *Vadilal* A.I R., 1936. Bom., 191; *Moolchand* v. *Chahta Devi* [1937] All, 825. F.B

(*m*) **A.I.R., 1935, Mad., 775,** ***supra.***

on partition (*n*). The Act does not remove any disability in respect of any religious office or service or management of a religious or charitable trust.

After-born son of disqualified coparcener.

The son of a disqualified member of an undivided family is entitled to a share in the lifetime of his father notwithstanding that he was born after the death of his grandfather. The reason is that the estate vests on the death of the grandfather in the other coparceners subject to the contingency of its being divested on the recovery of the disqualified person or on the birth of a qualified son to him (*o*). The Bombay High Court has held otherwise (*p*).

Murderer.

§ 441. There can be no doubt that the rule now established that a murderer is disqualified from inheriting as heir must apply equally when he claims a share on partition of coparcenary property. Where the murderer claims to succeed by survivorship, it would seem to follow that he will be equally excluded from any increased share coming to him as the result of his crime (*q*).

Effect of fraud of coparcener.

§ 442. A text of Manu treats fraud by one of the coparceners as working a forfeiture of his share (*r*). Kulluka and Jagannatha explain this as referring to the eldest brother's special share (*s*). Yajnavalkya and Katyayana merely say that property wrongfully kept back by one of the co-sharers shall be divided equally among all the sharers when it is

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(*n*) In *Ram Sahye* v *Lalla Lalljee* (1882) 8 Cal, 149 (a Mitakshara case) long before Act XXI of 1928, it was held that supervening lunacy will disentitle a person from inheriting: *Ram Soonder* v *Ram Sahye* (1882) 8 Cal, 949, *Abilakh Bhagat* v *Bhekhi Mahto* (1895) 22 Cal, 864, see these cases explained in A I R., 1935, Mad, 775, 69 M L J, 410, 419, *supra*, the decision in *Tirbeni* v *Muhammad* (1906) 28 All, 247 which took a contrary view is not good law and has been overruled by the Full Bench in [1937] All 825 (F B), 831, 832

(*o*) *Krishna* v *Sami* (1886) 9 Mad, 64 F.B

(*p*) *Bapuji* v *Pandurang* (1882) 6 Bom, 616, *Pawadewa* v *Venkatesh* (1908) 32 Bom, 455 The case in 6 Bom, 616 follows *Kalidoss* v *Krishan* (1869) 2 Beng L R, 103, 111 F B admittedly a Dayabhaga case A son adopted after the death of the ancestor would have divested in that case The case in 2 Beng L.R, 103 was a case of inheritance strictly according to the law in Bengal, and not a case of a birth or adoption before the death of the surviving coparcener. Both the Bombay cases therefore proceed upon a misconception and are opposed to the positive rule of the Mitakshara, II, x, 9-10 See *post* § 605

(*q*) *Kenchawa* v *Girimallappa* (1924) 51 I A, 368, 48 Bom, 569.

(*r*) Manu, IX, 213.

(*s*) Dig., II, p. 222.

discovered (*t*). The Mitakshara treats the coparcener's fraud as a criminal act but only contemplates a fresh distribution including the property concealed (*u*).

The Bengal writers are of opinion that the act of one coparcener, in withholding part of the property which is common to all, is not technically theft, and is not to be punished by any forfeiture (*v*)

Agreement not to partition.

§ 443 An agreement between the members of a Hindu family that for a certain time or until a certain event or for their lives the joint family properties are not to be partitioned will bind the actual parties to it (*w*) The Bombay High Court has held that an agreement between the coparceners never to divide is invalid as tending to create a perpetuity (*x*). Unless the agreement also contained a condition against alienation, it would not prevent any of the parties to it from selling his share, and would be no bar to a suit by the vendee to compel a partition (*y*). Nor could such an agreement ever bind the descendants of the parties to it (*z*). A covenant to postpone partition during the lifetime of a member of the family and then to divide the property in certain shares does not effect an immediate severance of status, but postpones it to a future time, the members remain in the meantime undivided (*a*).

(*t*) Yajn., II, 126, Dig., II, p. 292

(*u*) Mit., I, iv, Smritichandrika, XIV, 46, Madhaviya, § 54, V May., IV, vi, 3, Viramit chapter VI

(*v*) Daya Bh., XIII, 2, 8, 15, D K S VIII, Dayatattva, I, 24-26

(*w*) *Anand* v *Pranksto* (1869) 3 B L R (O C J), 14, *Anath* v *Mackintosh* (1871) 8 B L R, 60, *Rajender* v *Sham Chund* (1881) 6 Cal., 106, *Sri Mohan* v *MacGregor* (1901) 28 Cal., 769, 786; *Krishnendra* v *Debendra* (1908) 12 C W N, 793, *Jyotish Chandra* v *Rathika Chandra* (1933) 60 Cal., 1078 *Rup Singh* v *Bhabhuti* (1920) 42 All, 30, *Arumugha* v *Ranganathan* (1934) 57 Mad., 405, see *Jafri Begam* v *Syed Ali* (1901) 28 I A., 111, 118, 23 All, 283

(*x*) *Ramalinga* v *Virupakshi* (1883) 7 Bom., 538, *Chandar Shekar* v *Kundan Lal* (1908) 31 All, 3 (not binding even on the parties)

(*y*) See cases cited in note (*w*), *supra*

(*z*) *Venkatramanna* v *Brammanna* (1869) 4 Mad H C 345, 348, 349

(*a*) *Purnananthachi* v *Gopalaswami Odayar* (1936) 63 I A., 436 affirming (1931) 54 Mad, 269 A provision in a partition deed that in the event of the death of any one of the members without male issue, his share of the joint family properties after deducting any alienations made by him should be divided among the surviving brothers is valid *Ram Nirunjun* v *Prayag Singh* (1882) 8 Cal., 138, *Kanti* v *Ali Nabi* (1911) 33 All 414, *Muthuraman* v *Ponnusamy* (1915) 29 M.L.J., 214.

Will prohibiting or postponing partition.

§ 444. Any direction in a will prohibiting a partition, or indefinitely postponing the period for partition, is invalid, as it forbids the exercise of a right which is essential to the full enjoyment of family property by Hindu law (*b*).

Instrument of partition.

§ 445. THIRDLY, WHAT CONSTITUTES A PARTITION:—A partition may be effected without any instrument in writing (*c*). An instrument of partition in respect of immovable property of the value of rupees 100 and upwards requires registration under sec. 17 (1) of the Indian Registration Act, 1908 (*d*). But an agreement which by itself does not create any right or interest in immovable property but only a right to obtain an instrument on partition does not require registration (*e*).

(*b*) *Umrao Singh* v *Baldeo Singh* (1933) 14 Lah., 353, *Mokoondo* v. *Ganesh* (1876) 1 Cal., 104, *Jeebun* v *Ramanath* (1875) 23 W.R., 297. In *Ratkishori* v *Debendranath* (1888) 15 I A., 37, 15 Cal, 409, the restrictions which were very indefinite were held to be invalid as creating a perpetuity, Act IV of 1882, § 10, 11 (Transfer of Property Act) Compare *Muhammad Ruza* v. *Abbas Bandi Bibi* (1932) 59 I.A, 236, 7 Luck., 257, where a partial restriction on alienation was held to be valid distinguishing *Raghunath Prasad* v. *Depy Commr, Partabgarh* (56 I A., 372) as a case of absolute restriction.

(*c*) Sec 9, T P Act *Rewun Persad* v *Radha Beeby* (1846) 4 M.I A., 137, 168; *Kishanlal* v. *Lachmichand* A.I R., 1937, All., 456; *Satyakumar* v *Satyakripal* (1900) 10 C.L J, 503, *Katama Natchiar* v. *Rajah of Shivaganga* (1863) 9 M.I A., 539, 543, *Alamelu* v *Balu* (1920) 43 Mad, 849.

(*d*) "The agreement was, unfortunately, not registered, and is, therefore, under the terms of the Registration Act, not available as evidence of the transaction" *Jogireddi* v. *Chinnabbireddi* (1929) 56 I.A., 6, 9, 52 Mad, 83, 86, *Ram Gopal* v *Tulshi Ram* (1929) 51 All, 79 F.B, *Nilkanth* v. *Hanmant* (1920) 44 Bom, 881, *Remlal* v. *Mt Sitabai* (1933) 14 Lah, 635, *Lakshmamma* v. *Kamesvara* (1890) 13 Mad, 281, *Shankar* v *Vishnu* (1875) 1 Bom, 67

(*e*) *Rajangam Iyer* v *Rajangam Iyer* (1923) 50 I.A., 134; 46 Mad, 373, *Chhotalal* v *Bai Mahakore* (1917) 41 Bom, 466 An unregistered instrument of partition is admissible to prove division in status, *Subramania* v *Savitri* (1909) 19 M L J, 228, *Varadapillai* v *Jeevarathnammal* (1920) 46 I A, 285, 43 Mad, 244, P C, (1923) 50 I A, 134, 46 Mad, 373, *supra*, *Gnanamuthu* v. *Veilukanda* (1923) 19 M.L W., 494, *Ramuchetty* v *Panchamma* (1925) 92 I C., 1028 following 46 Mad., 373, P C, *supra*, *Mahalakshmamma* v. *Suryanarayana* (1928) 51 Mad, 977, *Subbarao* v *Mahalakshmamma* (1931) 54 Mad, 27, 44; *Samuvier* v. *Ramasubbier* (1932) 55 Mad, 72; but see cases *contra*, *Pothi* v *Naganna* (1916) 30 M L J., 62 F.B.; *Ayyakutti* v *Periasami* (1916) 30 M L J., 404 F B. Mere lists of properties allotted at a partition do not constitute an instrument of partition requiring registration *Kshetra Mohun Pal* v *Tufani* (1933) 37 C.W N, 112 Where an unregistered partition affects both immovable and movable properties and is indivisible, the instrument is inadmissible even for the purpose of proving the terms not affecting immovable property· *Samuvier* v *Ramasubbier* (1932) 55 Mad., 72; *Lakshmamma* v. *Kamesvara* (1890) 13 Mad, 281, *Perumal Ammal* v. *Perumal Naicker* (1920) 44 Mad., 196 By the amendment of section 49 of the Indian Registration Act by the Transfer of Property (Amendment) Supplementary Act, 1929,

Numerous circumstances are set out by the writers as being more or less conclusive of a partition having taken place, such as separate food, dwelling, or worship; separate enjoyment of the property, separate income and expenditure; business transactions with each other, and the like (*f*). The rules laid down by the writers as to evidence of partition are clear and practical and are characterised by shrewd insight. Dr. Jolly remarks of them "If these sensible rules had been enforced by the courts they might have saved much litigation" (*g*)

Evidence of partition.

But all these circumstances are merely evidence, and not conclusive evidence of the fact of partition Partition is a new *status*, and when it is brought about by consensus of the members of a coparcenary they must intend that their condition as coparceners shall cease. It is not sufficient that they should alter the mode of holding their property They must alter, and intend to alter, their title to it They must cease to be joint owners, and become separate owners. On the one hand, the mere cesser of commensality and

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an unregistered deed is admissible as evidence of part performance under s. 53A of the Transfer of Property Act In Madras unregistered deeds executed before 1884 are admissible by Madras Act II of 1884 In *Kishan Lal* v *Lachmichand* AIR, 1937, All, 456, it was held that there can be no partition of immovable property without change of possession, in the absence of a registered deed

(*f*) Nar. XIII, 36-43, Mit, II, 12, Daya Bh, XIV, Smritichandrika, Ch XVI, 2 W MacN, 170 See *Hurrischunder* v. *Mokhoda*, 17 W.R, 564, *Murari Vithoji* v *Mukund Shivaji* (1891) 15 Bom, 201, *Ram Lall* v *Debi Dat* (1888) 10 All, 490 Regarding separate business transactions, Narada says "The acts of giving evidence, of becoming a surety, of giving, and of taking, may be mutually performed by divided brothers, but not by unseparated ones, if brothers or others should transact such as these publicly with their coheirs, they may be presumed to be separate in affairs, even though no written record of the partition be in existence Those brothers who for ten years continue to live separate in point of religious duties and business transactions, should be regarded as separate, that is a settled rule" XIII 39-41 See also Brih, XXV, 93 As regards worship, Narada says, "Among unseparated brothers, the performance of religious duties is single. When they have come to a partition, they have to perform their religious duties each for himself" (XIII, 37) The result of separation is thus stated by him "Giving, receiving, cattle, food, houses, fields, and servants must be regarded as separate among divided brothers, and so must cooking, religious duties, income and expenditure be kept separate for each of them", (XIII, 38) "For those living under one kitchen there shall be only one offering to Pitris, Deities and Brahmins For those that are separated it shall be done in each house separately" Nar Dig., II, p 499. For Asvalayana and other texts, see Jha, H.L.S., II, 621 *sqq*

(*g*) Jolly, T.L L, 141-2.

joint worship(g^1), the existence of separate transactions(h), the division of income (i), or the holding of land in separate portions (j), or a mere definition of shares in revenue and village papers (k), do not establish partition, unless such steps were taken with a view to carry out a partition (l). The question however is one of fact to be decided in the light of legal principles, as to the cumulative effect of all the circumstances (m). On the other hand where a division in status has in fact taken place between the members of a family, the fact that one member continues to live jointly with the others and is described in suits and proceedings as

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(g^1) *Rewan Pershad* v. *Radha Beeby* (1846) 4 M.I.A., 137, 168, *Anundee* v. *Khedoo* (1872) 14 M.I.A., 412; *Chowdhury Ganesh* v. *Mt. Jewach* (1904) 31 I A., 10, 31 Cal, 262, *Suraj Narain* v *Iqbal Narain* (1913) 40 I.A., 40; 35 All., 80, *Alluri Venkatapathi* v. *Dantuluri Venkatanarasimha* (1936) 63 I A., 397, 406, [1937] Mad, 1. "If there has been no such division of right or severance in interest, they continue to be joint in estate and mere cesser of commensality would not make them separate in estate, as a member may become separate in food or residence for his convenience". *Konammal* v. *Annadana* (1927) 55 I.A., 114; 51 Mad., 189 (as to an impartible estate); *Mukund* v. *Balkrishna* (1928) 54 I.A., 413; 52 Bom., 8; *Chhabila* v. *Jadavbai* (1870) 3 Bom. H.C. (O.C.J), 87 (food and worship), *Purnima Debya* v. *Nand Lal* (1932) 11 Pat, 50

(h) (1872) 14 M.I.A., 412, *supra*, *Krishnappa* v. *Ramaswami* (1875) 8 M.H.C.R., 25; *Chokhey Lal* v. *Commr. of Income-tax* A.I.R., 1932, All., 471, *Lal Chand* v. *Punjab National Bank, Ltd.* A.I.R, 1934, Lah., 555.

(i) *Sonatun Byrack* v. *Juggutsoondaree* (1859) 8 M.I A, 66, 86 (mere division of income for the convenience of the different members).

(j) *Runjit* v. *Koer* (1873) 1 I.A, 9, *Ambika* v. *Sukhmani* (1876) 1 All., 437, *Viravara* v. *Suryanarayana* (1897) 24 I A., 118. 20 Mad., 256; *Gajendar* v. *Sardar* (1896) 18 All, 176; *Murari* v. *Mukund* (1891) 15 Bom., 201, *Abdul Wahabkhan* v *Tilakdhari Lal* (1927) 32 C W.N., 170 P.C., 53 M L.J, 325 (where the circumstance of exclusive collection for forty years was held to be evidence of a formal partition). *Saddha Singh* v. *Mangal Singh* A.I.R., 1933, Oudh 166.

(k) *Nageshar Baksh Singh* v. *Ganesha* (1920) 47 I.A., 57; 42 All., 368, *Mt. Bhagwani Kunwar* v. *Mohansingh* (1925) 29 C.W.N., 1037 P.C., *Rampershad* v *Lakshpati* (1903) 30 I A., 1; 30 Cal, 231, *Parbati* v. *Naunihal* (1909) 36 I.A., 71; 31 All., 412 (division proved).

(l) *Ram Kissen* v. *Sheonundan* (1875) 23 W.R., 412 P.C. "The mere fact that the shares of the coparceners have been ascertained does not by itself necessarily lead to an inference that the family had separated. There may be reasons other than a contemplated immediate separation for ascertaining what the shares of the coparceners on a separation would be", *Palani* v. *Muthuvenkatachala* (1925) 52 I.A., 83, 86; 48 Mad, 254, 257, *Beti* v. *Sikhdar* (1928) 50 All., 180; (1936) 63 I A, 397, 406, [1937] Mad., 1, *supra*, which discounted admissions of division made for a purpose or in ignorance of the true position; *Kamtaprasad* v. *Dingat Dat* A.I.R., 1935, Pat., 368, *Karan Singh* v. *Budh Sen* A.I.R. 1938 All, 342 (mere separate residence).

(m) *Parbati* v. *Naunihal* (1909) 36 I.A., 71; 31 All., 412.

being joint and even acts as karta is not necessarily inconsistent with their being divided members (*n*).

Father's power to effect a partition

§ 146. A Hindu father under the Mitakshara law can, it has been held, effect a partition between himself and his sons without their consent and this is rested on the Mitakshara I, ii. 2 This text has been held to apply not only to property acquired by the father himself but also to ancestral property The father has power to effect a division not only between himself and his sons but also between the sons *inter se* (*o*) So also it would seem that he has the power to make a division when the sons are dead and his grandsons alone living (*p*) The power extends not only to effecting a division by metes and bounds, but also to a division of status (*q*) In all these cases, the father's power must be exercised *bona fide* and in accordance with law: the division must not be unfair and the allotments must be equal (*r*)

Partition by agreement

§ 147 It is now well established law that the coparceners in a joint family can by agreement amongst themselves separate and cease to be a joint family, and on separation, are entitled to partition the joint family property amongst themselves (*s*). In Hindu law, partition does not mean simply division of property into specific shares It covers, as pointed out by Lord Westbury in *Appovier* v. *Ramasubbier* (*t*), both a division of right and a division of

(*n*) *Balkrishna* v. *Ramkrishna* (1931) 58 I A, 220, 53 All, 300, *Babu Ramasray* v *Baboee Radhika* (1935) 41 C W.N, 385 P.C

(*o*) *Alluri Venkatapathi* v. *Dantuluri Venkatanarasimha* (1936) 63 I.A, 397, 401, [1937] Mad., 1, 6, *Kandasami* v. *Doraisami* (1880) 2 Mad, 317, 321, *Murugayya* v *Palaniyandi* (1916) 31 M.L.J., 147, *Natesa* v *Subramania* (1918) 23 M L.T., 307, *Venkateswara Pattar* v *Mankayammal* (1933) 69 M.L.J, 410; *Bapu* v. *Shanker* A.I.R., 1926, Bom., 160, *Ganpat* v. *Gopalrao* (1899) 23 Bom., 636, 642, *Nirman* v *Fateh Bahadur* (1930) 52 All, 178, *Shiv Dyal* v *Ram Jiuaya* (1931) 12 Lah, 574, *Laxminarain* v. *Trimbak* A I R., 1934, Nag., 278

(*p*) *Aiyavier* v *Subramania Iyer* (1917) 32 M.L J, 439, see also *Lakshmibai* v. *Ganpat* (1867) 4 Bom. H C. (O.C.J), 150 on appeal (1868) 5 Bom H.C (O.C.J.), 128.

(*q*) (1936) 69 M.L.J., 410, 423, *supra.*

(*r*) (1936) 63 I A, 397, 401, *supra*, (1880) 2 Mad., 317, 321, *supra*, (1917) 32 M L J., 439, 441, *supra*, (1931) 12 Lah., 574, *supra;* (1930) 52 All, 178, 190, *supra.* See also *Ramkishore* v. *Jainarayan* (1913) 40 I.A., 213, 40 Cal., 966. A father cannot effect a partition by will except with the consent of his sons, *Brijraj* v. *Sheodan* (1913) 40 I.A, 161, 167, 35 All., 337, 346; *Harkesh Singh* v. *Hardevi* (1927) 49 All., 763.

(*s*) *Palaniammal* v. *Muthuvenkatachela* (1925) 52 I.A., 83, 86, 48 Mad., 254, 257.

(*t*) (1866) 11 M.I.A., 75.

property (*u*). When the members of an undivided family agree among themselves either with respect to a particular property or with reference to the entire joint estate that it shall thenceforth be the subject of ownership, in certain defined shares, then the character of the undivided property and joint enjoyment is taken away from the subject matter so agreed to be dealt with; and in the estate, each member has thenceforth a definite and certain share which he may claim the right to receive and to enjoy in severalty although the property itself has not been actually severed and divided. In other words, "If there be a conversion of the joint tenancy of an undivided family into a tenancy in common of the members of that undivided family, the undivided family becomes a divided family with reference to the property that is the subject of that agreement, and that is a separation in interest and in right, although not immediately followed by a *de facto* actual division of the subject-matter. This may, at any time, be claimed by virtue of the separate right" (*v*).

Apportionment unnecessary.

A division of right or a severance of the joint status may result, not only from an agreement between the parties but from any act or transaction which has the effect of defining their shares in the estate, though it may not partition the estate. If a document clearly shows a division of right, its legal construction and effect cannot be controlled or altered by evidence of the subsequent conduct of the parties (*w*).

§ 448. It is now settled that an agreement between all the coparceners is not essential to the disruption of the joint status though it is required for the actual division and dis-

Severance by unilateral declaration

(*u*) *Girjabai* v. *Sadasiv Dundhiraj* (1916) 43 I A, 151; 43 Cal., 1031

(*v*) (1866) 11 M.I.A., 75, 92, *supra*, (1916) 43 I.A., 159, 162, *supra; Amrit Rao* v *Mukundrao* (1919) 15 Nag. L R., 165 P.C.; 13 M.L.W, 112, 53 I.C., 666, *Mukund* v. *Balkrishna* (1927) 54 I.A., 413, 419, 52 Bom., 8, *Alluri Venkatapathi* v. *Dantuluri Venkatanarasimharaju* (1936) 63 I A., 397, [1937] Mad, 1, *Suranemi* v. *Suranemi* (1869) 13 M.I.A., 113, *Doorga Pershad* v *Mt. Kundan* (1874) 1 I A., 55; 13 B.L.R., 235, *Balkishen* v. *Ram Narain* (1903) 30 I.A., 139, 30 Cal., 738; *Anurago Kuer* v. *Darshan Raut* A.I.R. 1938 P.C., 65, *Ashabai* v *Haji Tyeb* (1885) 9 Bom, 115; *Tej Protap* v *Champakavallee* (1886) 12 Cal., 96, *Adi Deo* v. *Dukharan* (1883) 5 All., 532, *Anant* v. *Damodhar* (1889) 13 Bom., 25; *Parbati* v. *Naunihal* (1909) 36 I.A., 71, 31 All., 412; *Raghubir* v *Moti* (1913) 35 All., 41 P.C.; *Harkishan* v. *Partap* A.I.R. 1938 P.C., 189.

(*w*) (1936) 63 I A, 397, 406, [1937] Mad., 1, 6, *supra*, *Balkisendas* v. *Ramnaram Sahu* (1903) 30 I.A., 139, 30 Cal., 738; *Manickam Chetty* v. *Kamalam* (1937) 1 M.L.J., 95; *Jai Narain* v. *Baijnath Rai* (1928) 50 All., 615, *Shamlal* v. *Hiru Singh*, A.I.R., 1936, Cal., 472; *Hira Singh* v. *Mt. Mangalam* (1928) 9 Lah., 324; A.I.R. 1938 P.C., 189 *supra.*

tribution of the property held jointly (*x*). A definite and unambiguous indication of intention by one member to separate himself from the family and to enjoy his share in severalty will amount to a division in status (*y*). Separation in *status*, with all the legal consequences resulting therefrom, is quite distinct from *de facto* division into specific shares of the property held until then jointly. The former is a matter of individual decision, and is effected by the unequivocal expression of a desire on the part of any one member to sever himself from the joint family and to enjoy his hitherto undefined and unspecified share separately from the others, without being subject to the obligations which arise from the joint *status*. The latter is the natural resultant from his decision, the division and separation of his share, which may be arrived at either by private agreement of the parties or, on failure of that, by intervention of the Court Once the decision has been unequivocally expressed, and clearly intimated to his co-sharers, his right to obtain and possess the share to which he admittedly is entitled, is unimpeachable; neither the co-sharers can question it, nor can the Court examine his conscience to find out whether his reasons for separation are well founded or sufficient The Court has simply to give effect to his right to have his share allocated separately from the others (*z*). This view finds ample support in the Sanskrit books. In the Mitakshara, Vijnaneswara defines the word "*vibhaga*" which is usually rendered into English by the word "partition" as the adjustment of diverse rights regarding the whole, by distributing them in particular portions of the aggregate (*a*). Mitramisra explains in the Viramitrodaya the meaning of the passage; he shows that the definition of Vijnaneswara does not mean exclusively the division of property into specific shares as alone giving right to property but includes the ascertainment of the respective rights of individuals, who

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(*x*) *Girja Bai* v *Sadashiv Dhundiraj* (1916) 43 I A, 151, 159, 43 Cal., 1031, the prior decisions requiring an agreement or a decree of court for a division in status are longer law The Privy Council said "Some of the courts in India have supposed Lord Westbury's expressions to imply that the severance in status can take place only by agreement Their Lordships have no doubt that this is a mistaken view" (43 I A, 151, 162, 43 Cal, 1031).

(*y*) (1916) 43 I A, 151, 158, *supra*

(*z*) (1916) 43 I A, 151, 160, 161, 43 Cal., 1031, *supra*, *Surajnarain* v *Iqbal Narain* (1912) 40 I A, 40, 35 All, 80, *Gundayya* v *Shriniwas* A I R, 1937, Bom, 51, but a mere oral direction by a coparcener to his undivided brother to give his share to the widow of the former does not amount to such severance; *Shivappa* v. *Rudrava* (1933) 57 Bom., 1 *sed qu.*

(*a*) Mit., I, i, 4.

claim the heritage jointly. He says (*b*), "For partition is made of that in which proprietary right has already arisen; consequently partition cannot properly be set forth as a means of proprietary right. Indeed what is effected by partition is only the adjustment of the proprietary right into specific shares" (*c*). The Vyavahara Mayukha makes it clear that separation is a matter of individual volition (*d*). Nilakantha says. "even when there is a total absence of common property, a partition is effected by the mere declaration 'I am separate from thee'; for, partition is but a particular condition of the mind and this declaration is indicative of the same" The passage in the Viramitrodaya is conclusive on the matter. "Here again, ' partition at the desire of the sons', (which expression includes grandsons and great-grandsons) whether in the lifetime of the father or after his death may take place by the choice of a single coparcener, since there is no distinction" (*e*)

Or by conduct.

§ 449. The intention to separate may be evinced in different ways either by explicit declaration or by conduct. If it is an inference derivable from conduct, it will be for the Court to decide whether it was unequivocal and express. The intention of one member to separate himself must ordinarily be intimated to the other coparceners(*f*).

Or by suit.

§ 150 The institution of a suit for a partition by an adult member is an unequivocal intimation of his intention to separate and there is consequently a severance of his joint status from the date when the suit is instituted (*g*). Where

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(*b*) Viramit., Sarkar's trans., I § 36, Setlur ed., p. 288

(*c*) (1916) 43 I A, 151, 159, 43 Cal, 1031, *supra.*

(*d*) V May., IV, iii, 2

(*e*) Viramit., II, § 23 (Setlur's ed., 341), the Sarasvati Vilasa says "It is to be understood by this that there is a completion of division by means of an act of the will alone without any technical form, just as the creation of an appointed daughter is completed by a mere act of the will without any technical form" (para 28).

(*f*) *Joy Narain* v *Grish Chunder* (1878) 5 I A, 228, 232, 4 Cal, 434, (1916) 43 I A, 151, 162, 163, 43 Cal., 1031, *supra,* approving of the dictum of Mitter, J., in *Deo Bunsee Koer* v. *Dwarkanath* (1868) 10 W.R., 273; *Balkrishna* v *Ramakrishna* (1931) 58 I.A., 220, 53 All, 300, *Rangasayi* v. *Nagarathnamma* (1934) 57 Mad., 95 F B.; *Suraj Narain* v *Iqbal Narain* (1913) 40 I.A., 40, 35 All., 80; *Kedar Nath* v. *Ratan Singh* (1910) 37 I A, 161, 32 All, 415

(*g*) *Kawal Narain* v *Prabhu Lal* (1915) 44 I A., 159; 39 All 496, *Ramalinga* v *Narayana* (1922) 49 I.A., 168, 45 Mad., 489, *Jagadamba* v. *Narain Singh* (1923) 50 I.A., 1, 2 Pat., 319, *Palaniammal* v. *Muthuvenkatachala* (1925) 52 I A, 83; 48 Mad., 254, (1931) 58 I.A., 220, 53 All., 300, *supra, Soundara rajan* v. *Arunachala* (1915) 39 Mad., 159 F.B.; (1934) 57

a coparcener who institutes a suit for partition afterwards withdraws it, there is no severance of the joint status (*h*). *A fortiori* where a coparcener sends a notice to the other members demanding a partition and afterwards withdraws his demand with the consent of the other members, he cannot be treated as having become divided in status (*i*).

Communication of intention

§ 451. It is open to an adult coparcener to express his intention to separate from a minor coparcener by communicating his intention to the mother or other natural guardian of the minor. On principle it is difficult to see why the intention should be communicated to every member of the family. It would seem to be sufficient if the intention is clearly intimated to the managing member, or where it is by the managing member to some of the members of the family. No doubt, the expression of intention must be published in some way so as to be legally effective (*j*) It would seem that all that is necessary is that the expression of intention should be clear and unequivocal and the coparceners should be either aware or in a position to be aware of it (*k*). In a case where there are only two coparceners and one of them is a minor, the other being his natural guardian, the difficulty of insisting upon any rigid rule as to communication will be felt (*l*). In such a case no formal communication would appear to be necessary by the adult coparcener desiring to separate. In *Narayana Rao* v *Purushottama Rao*, it was laid down that the rule is not that the severance in status takes place only after the communication of the notice of intention has been received by the other coparceners, but a mere posting of the notice was sufficient to validate a will executed by the coparcener desirous of separating, the day after it was posted (*m*).

Mad, 95 F.B, *supra*, *Parsottam* v *Jagannath* (1919) 11 All, 361, *Rupan Rai* v. *Subhkaran Rai* (1919) 41 All, 207, 209, *Rachhpali* v. *Chandresar* A.I.R 1924 Oudh, 252, *Lala Baijnath* v *Ram Gopal* [1938] 1 Cal, 369 The decision in *Joala Prasad* v *Chanderjot* (1938) 17 Pat, 430 that a plaint claiming partition is a mere piece of evidence overlooks its formal character as a demand which is an act in the law.

(*h*) (1910) 37 I.A., 161, 32 All, 415, *supra*, (1925) 52 I A, 83, 48 Mad., 251, *Ganapathy* v. *Subramanyam* (1929) 52 Mad, 845, 851 ("withdrawal before trial" is interpreted as withdrawal before final decree), (1934) 57 Mad, 95 (F.B.); 130, *supra*, *Dattatraya* v. *Prabhakar* A.I.R., 1937, Bom. 202, *Rama Ayyar* v *Meenakshi* A.I.R, 1931, Mad, 278, *Thatasimuthu* v *Thavasimuthu* A I R, 1931, Mad, 824; *Shagun Chand* v. *Data Ram* (1927) 49 All., 664.

(*i*) *Banke Behari* v. *Brij Bihari* (1929) 51 All., 519, (1934) 57 Mad., 95 (F.B.), 130.

(*j*) *Dnyaneshwar* v *Anant* (1936) 60 Bom., 736

(*k*) *Venkateswara Pattar* v. *Mankayammal* (1933) 69 M L J, 410.

(*l*) (1933) 69 M.L.J., 410, *supra*

(*m*) (1938) 1 M.L.J., 45, A I R. 1938 Mad, 390

Minor's suit for partition.

§ 452. On the question whether the institution of a suit for partition by the next friend of a minor effects a severance in interest so as to make the minor coparcener divided in status from the other members, there is a conflict of decisions. In *Rangasayi* v. *Nagarathnamma*, a Full Bench of the Madras High Court has held that in all such cases, the severance is effected from the date of suit, conditional on the Court being able to find that the suit when filed was for the benefit of the minor; and if a minor dies pending the suit, his legal representative can bring himself on record and continue the suit for partition subject to the decision of the Court on the question whether the suit, when instituted, was for the benefit of the minor (*n*). The same view has been taken in Patna (*n*[1]). Following the earlier Madras decision in *Chelmi Chetty* v. *Subbamma* (*o*) which has since been overruled by the Full Bench (*p*), the Allahabad High Court however has held that the institution of a suit by the next friend of a minor has not the same effect as the institution of a similar suit by an adult member of the family and that

(*n*) *Rangasayi* v. *Nagarathnamma* (1934) 57 Mad., 95 (F.B.); "The ratio decidendi of the Full Bench is intelligible; the exercise of the option by the guardian does effect a severance but the severance so to speak remains in a state of suspended animation till the Court ratifies the act, the Court takes upon itself the task of deciding that which the minor if he were an adult would have done himself, namely, whether it is beneficial or not to become separate; it is not a fresh expression of volition by the Court; the volition was already expressed by the guardian on behalf of the minor, the Court puts the seal of approval on it in the place of the minor and for him. It is open to the minor on attaining majority to elect to abandon or continue the suit. If he elects to continue, he adopts the act of the guardian and puts his own *imprimatur* on it and the Court is no longer called upon to pronounce its opinion upon it; the minor becomes separated from the date of the plaint. And if he elects to abandon the suit, the minor continues to be an undivided member of the family and he must be deemed to have revoked the intention to separate", *Rama Rao* v *Venkatasubbayya* (1937) 46 M L W, 309; A.I R, 1937, Mad, 274, 276, 277, *Krishnaswami* v *Pulukaruppa* (1924) 48 Mad, 465, *Sri Ranga Thathachari* v. *Srinivasa* (1927) 50 Mad., 866, *Akkamma* v. *Srirangа Raja* A.I R, 1930, Mad., 486, *Ganapathy* v. *Subramanyam* (1929) 52 Mad, 845, *Sarvothama Pai* v *Govinda Pai* A.I R, 1937, Mad, 11, 44 M L W., 692 (in the case of a suit instituted *in forma pauperis* on behalf of minor coparceners, the date of the presentation of the application for leave to sue *in forma pauperis* is the date from which division in status takes effect).

(*n*[1]) *Atul Krishna Roy* v *Lala Nandanji* (1935) 14 Pat., 732 F.B.; *Krishna Lal* v. *Nandeshvar* (1918) 4 P.L.J., 38.

(*o*) (1918) 41 Mad., 442

(*p*) (1934) 57 Mad., 95 F.B.

separation only takes place when the suit is decreed (*q*) The Lahore and Bombay High Courts take the same view (*r*)

Date of partition.

In answering the question whether in such a case the partition takes effect from the date of the suit or from the date of the decree, it has to be remembered that it is open to the other coparcener to agree to the division or to claim a division himself In that case, it is obvious that the separation must take effect even before the date of the decree The other coparceners have in truth no right to dispute the minor coparcener's right to claim a partition but only to ask the Court to hold as a matter of discretion that the partition was inexpedient in the interests of the minor. Where a decree for partition at the instance of a minor is made, it is an adjudication that the partition was properly claimed on the date of the suit and it must therefore relate back to that date. The view taken by the Full Bench of the Madras High Court would seem to be not only the more logical view, but is also the better one from the point of view of convenience

Death of minor pending suit

But it is by no means clear that, where a minor dies before the Court decides that the suit is for his benefit, a legal representative who can come in only if the minor has become separated in interest, is entitled to continue the suit for his or her own benefit, for, there could be no benefit to the minor when he is dead Where a mother sues as the next friend of a minor for partition, it is difficult to see how her right to act on his behalf can ordinarily be disputed and the question whether the suit is for the benefit of the minor or not can fairly arise only where a next friend who is not the mother or a coparcener in the family sues for partition purporting to act on behalf of the minor (*s*) There can however be no doubt that when a father and his minor sons sue for partition, a separation so far as his branch of the family is concerned is at once effected The father's right to separate his sons

(*q*) *Lalta Prasad* v *Sri Mahadeoji Birajman Temple* (1920) 42 All, 461, see *Ram Narain* v *Mt Makhna* A I R, 1935. All, 875, 877, 882.

(*r*) *Harisingh* v *Pritamsingh* A I R, 1936 Lah 504, *Chhotabai* v *Dadabhai* A I R, 1935, Bom, 54

(*s*) It is after all a rule of practice and convenience and the question as to the desirability of a next friend suing for partition should be disposed of and leave granted or refused at an early stage by the Court before the merits of the litigation are entered upon

from the others as well as from himself under the Mitakshara law is undoubted (*t*).

§ 453. A reference to an arbitration or a claim before an arbitrator or an agreement appointing a person to partition the property would constitute a separation from that date. The fact that no award is made subsequently, will not amount to a renunciation of the intention to separate (*u*). **Arbitration.**

§ 454. Separation of a coparcener may be effected by renunciation of his interest in the family property. Yajnavalkya says: "The separation of one, who is able to support himself and is not desirous of partition, may be compelled by giving him some trifle" (*v*) The Mitakshara adds: "The male issue of a coparcener who renounces also lose their claim" (*w*). But this can apply only to after-born sons unless at the time of renunciation, his sons and grandsons are adults and consent to it. The giving of a trifle is only as a token and is not essential (*x*). In *Alluri Venkatapathi* v. *Dantuluri Venkatanarasimharaju*, the Privy Council held that a coparcener's renunciation merely extinguishes his interest in the estate but does not affect the status of the remaining members *quoad* the family property and that they continue to be coparceners as before The only effect of renunciation is to reduce the number of persons to whom shares would be allotted if and when a division of the estate takes place (*y*) But the relinquishment by one coparcener must **Renunciation.**

(*t*) The opinion to the contrary expressed in *Ganapathy* v *Subrahmania* (1929) 52 Mad, 845 cannot be treated as good law. The decision itself is not good law after the Full Bench decision in *Rangasayi* v *Nagarathna* (1934) 57 Mad., 95 F B.

(*u*) *Syed Kasum* v *Jorawarsingh* (1922) 49 I A, 358, 50 Cal, 84, *Harkishan* v *Partap* A.I R 1938 P C, 189, *Krishna* v *Balaram* (1896) 19 Mad, 290, *Subbaraya* v *Sadashiv* (1897) 20 Mad, 490, *Balmukund* v *Mt Sohano* (1929) 8 Pat, 153 (a claim before arbitrators), *Ramkali* v *Khamman Lal* (1929) 51 All, 1, but see *Shantilal* v *Munshilal* (1932) 56 Bom, 595

(*v*) Yajn., II, 116, Manu, IX, 207, Apararka considers that the text applies only to property jointly acquired and not to ancestral property, see Apararka trans, 21 M L J, Journal, 50

(*w*) Mit., I, II, 11, 12, 13, Smritichandrika, II, 1, 40, V. May, IV, III, 16, Viramit, II, 115 (Setlur's ed, 326) Jha, H.L.S, II 154-156

(*x*) *Sudarsana Maistry* v *Narasimhalu* (1902) 25 Mad, 149, 156, *Thangavelu* v. *Doraisami* (1914) 27 M L J, 272, *Veerammal* v *Kamu* (1915) 2 M L.W, 850

(*y*) (1936) 63 I A, 397, 402 [1937] Mad, 1, 6 In *Periaswami* v *Periaswami* (1878) 5 I.A, 61, 71, 1 Mad, 312, in considering the effect of renunciation by one branch with respect to an impartible estate, the Privy Council said that such a renunciation would not deprive the descendants of the separating coparcener of such future rights of succession as they might afterwards have to that property, treating it as separate property *quoad* them,

be in favour of all the others and not in favour of some only, nor confined to part only of the joint estate (*z*).

Marriage under Act III of 1872

§ 455. Just as the conversion of a coparcener to a different religion effects his severance, the marriage under the Special Marriage Act (III of 1872) of any coparcener in an undivided family, who professes the Hindu, Buddhist, Sikh or Jaina religion effects his severance from that family (*a*).

Sale by one coparcener to another

Where a coparcener sells his interest in all or some of the properties, in provinces where he is competent to do so, to the other coparceners in the family, he becomes divided from them in respect of such properties (*b*)

Special shares formerly allowed.

§ 456. FOURTHLY, THE MODE OF DIVISION:—Partition amongst coparceners was declared to be of two kinds by Brihaspati, one in accordance with priority of birth and the other, allotment of equal shares (*c*). But the principle of Hindu law is equality of division and the exceptions to that rule have almost disappeared (*d*) One of these exceptions was in favour of the eldest son, who was originally entitled to a special share on partition, either a tenth or a twentieth in excess of the others, or some special chattel, or an extra portion of the flocks (*e*) Unequal partition of ancestral or joint property was from early times condemned The Smritichandrika, the Vyavahara Mayukha and the Viramitrodaya declare that unequal partition is forbidden in the Kali age (*f*) As early as the Arthasastra of Kautilya, a father was forbidden to make any distinction in dividing his property amongst his sons (*g*)

(*z*) See *ante* § 383 and the cases cited there, *Tulsi Bai* v *Haji Bakhsh* A I R 1938 Lah 478

(*a*) Act III of 1872, section 22

(*b*) *Lakshmi Achi* v *Naravanasami* (1930) 53 Mad, 188, 195, following *Balakrishna* v *Savitribai* (1879) 3 Bom, 54, *Jagannadha Rao* v *Ramanna* (1937) 2 M L J, 386, A I R, 1937, Mad, 461

(*c*) Brih, XXV, 7, Mit, I, II, 8

(*d*) See *Rajangam Aivar* v *Rajangam Aivar* (1923) 50 I A, 134, 46 Mad, 373, *Venkatareddi* v *Kupparedd* (1918) M.W N, 680, *Subba Rao* v. *Subbarao* A I R, 1936, Mad, 689

(*e*) Apastamba, II, 6, 14, 10-13, Baudh, II, 2, 2-5, Gaut, XXVIII, 11, 12, Vas, XVII, 42-45, Manu, IX, 112, 114, 156, Nar, XIII, 13, Devala, Dig, II, 215, Brih, *ib*, 217, Harita *ib*, 218, Yajn, II, 114, Viramit, p 53, 9 (Setlur's ed, 313)

(*f*) Smritichandrika, III, 16, V May, IV, IV, 11, Viramit, III, 16 (Setlur's ed., 319).

(*g*) Shamasastri, 198, Dr Jolly says that unequal division has disappeared and become obsolete from early times except as a matter of special custom, L & C, 180,

Now obsolete.

As between brothers or other relations absolute equality is now the invariable rule in all the provinces (*h*), unless, perhaps, where some special family custom to the contrary is made out (*i*); and this rule equally applies whether the partition is made by the father, or after his death (*j*).

Where property is self-acquired.

§ 457. Even in the case of father's self-acquired property, equality was the rule though more exceptions were recognised But it is obvious that in modern Hindu law it is merely a moral precept: a father under the Mitakshara law in dealing with his separate property (*k*) and a father under the Dayabhaga law in dealing with any property (*l*) may therefore distribute it in any way he likes.

Partition partial or total.

§ 458. Partition may be either total or partial (*m*). A partition may be partial either as regards the persons making it or the property divided (*n*).

Partial as to properties.

It is open to the members of a joint family to sever in interest in respect of a part of the joint estate while retaining their status of a joint family and holding the rest as the properties of an undivided family (*o*).

(*h*) Mitakshara, i, 2, § 6, 1, 3, §§ 1-7; Smritichandrika, ii, 2, § 2, 11, 3, §§ 16-24; Madhaviya, § 9; V May, iv, 4, §§ 8-11, 14, 17; Daya Bhaga, iii, 2, § 27, D.K.S., vii, §§ 12, 13; Viramit., p. 60, § 11, p. 70, § 14. The case of an adopted son, where natural-born sons afterwards come into existence, has been discussed, *ante* § 192.

(*i*) *Sheo Buksh* v *Futteh* 2 S.D., 265 (340); 2 W. MacN., 16. As to agreements to divide in particular shares, see *Ram Nirunjun* v. *Pravag* (1882) 8 Cal., 138

(*j*) *Bhyrochund* v. *Russomunee* 1 S.D., 28 (36); *Neelkaunt* v. *Munee ib.*, 58 (77); *Talwar* v. *Puhlwand* 3 S.D., 301 (402); *Lakshman* v. *Ramachandra* (1877) 1 Bom., 561; *Nand Ram* v. *Mangal Sen* (1909) 31 All., 359, 362 3 The acquirer's special share has already been discussed, *ante* §§ 291, 292, 297

(*k*) Yajn., II, 114, 116, Narada, XIII, 15, 16, Mit, I, ii, 6, 13, 14. The author of the Smritichandrika sums up his argument upon the point by saying, "It is hence settled that unequal distribution made by the father, even of his own self-acquired property, according to his whims, without regard to the restrictions contained in the sastras, is not maintainable, where sons are dissatisfied with such distribution". (II, 1, 17-24).

(*l*) Dayabhaga, II, 15-20, 35, 47, 56, 73, 86, D.K.S, VI, 16; Raghunandana II, 2-6, 26-29

(*m*) *Rewan Persad* v *Radha Beeby* (1846) 4 M I A., 137, 168.

(*n*) *Appovier* v *Rama Subba Aiyan* (1866) 11 M.I.A., 75, 90; *Sudarsana Maistri* v *Narasimhalu* (1902) 25 Mad., 149, 157, *Muthuswami* v. *Nallakulanthai* (1895) 18 Mad, 418

(*o*) *Ramalinga* v *Narayana* (1922) 49 I A., 168, 45 Mad, 489; A.I.R, 1922, P.C., 20; 26 C.W.N., 929; the passage above cited which appears in the original judgment is reported in the A I R volume and C.W N. volume but does not appear in the extracts from the judgment given in 49 I.A., 168 or in 45 Mad., 489, *Manickamchetty* v. *Kamalam* (1937) 1 M L.J, 95, 97, *Jagannatha Rao* v. *Ramanna* (1937) 2 M.L.J., 386; *Gavrishankar* v. *Atmaram* (1894) 18 Bom., 611.

Partial as to persons

Any one coparcener may separate from the others, but no coparcener except the father or grandfather, can compel the others to become separate amongst themselves A father may separate from all or from some of his sons, remaining joint with the other sons or leaving them to continue a joint family with each other (*p*) A separation between coparceners, for instance, between two brothers, does neither necessarily nor even ordinarily involve a separation between either of the coparceners and his own sons (*q*).

Partial separation

The view taken in some early cases (*r*), that where one brother separates from the others and these continue to live as joint family, it must be presumed that there has been a complete separation of all the brothers, but that those who continue joint have re-united cannot be regarded as good law (*s*) As was observed in *Balabux* v *Rakhmabai*, in many cases, it may be necessary in order to ascertain the share of the outgoing member to fix the shares which the other coparceners are or would be entitled to and in this sense, subject to the question whether these others have agreed to remain united or to re-unite, the separation of one is said to be a virtual separation of all (*t*) In *Balkrishna* v *Ramkrishna* (*u*), Sir George Lowndes, delivering the judgment of the Board, adopted the statement of the law by Sir John Edge in *Palani Ammal* v *Muthu Venkatachala* (*v*)

(*p*) Mit, I n 2 W & B, 665 *Sengoda* v *Muthu* (1921) 47 Mad, 567

(*q*) *Hari Baksh* v *Babu Lal* (1921) 51 I A 163 170 5 Lah, 92, *Deputy Commr* v *Sheonath* A I R 1927 Oudh 149, 2 Luck 459

(*r*) *Iudub Chunder* v *Benodbehary* 1 Hyde, 214, *Petambur* v *Hurish Chunder* 15 W R, 200, *Keshubram* v *Vand Kishore* 3 B I R (A C J), 7, 11 W R, 308

(*s*) *Upendra* v *Gopinath* (1883) 9 Cal, 817 *Bata* v *Chintamani* (1885) 12 Cal, 262, *Sudarsana Maistri* v *Narasimhalu* (1902) 25 Mad, 149, 157, *Ranganatha* v *Narayanaswami* (1908) 31 Mad 182 *Rangaswami* v. *Sundararajulu* (1916) 31 M L J, 472

(*t*) *Alluri* v *Dantaluri* (1936) 63 I A 397 [1937] Mad, 1, *Balabux* v *Rakhmabai* (1903) 30 I A, 130, 30 Cal, 725, *Jatti* v *Bannari Lal* (1923) 50 I A 192, 1 Lah, 350, *Rudragouda* v *Prasangouda* A I R 1938 Bom, 257, *Pratul Chandra* v *Purna Chandra* (1938) 66 C L J, 324, A I R 1938 Cal 284

(*u*) (1931) 58 I A, 220, 53 All, 300

(*v*) (1925) 52 I A, 85, 48 Mad, 254, see per Bhashyam Ayyangar J, in *Sudarsanam Maistri* v *Narasimhalu* (1902) 25 Mad, 149, 157, see also *Babanna* v *Parava* (1926) 50 Bom, 815, *Martand* v *Radhabai* (1930) 54 Bom, 616, *Saheb Gauda* v *Basangouda* A I R, 1931, Bom 378, *Piyarelal* v *Chunilal* A I R 1933 All, 103 *Ramnarain Sahu* v *Mt Makhna* A I R, 1935, All, 875, *Kanyalal* v *Banwarilal* A I R 1936 Cal, 269, *Deputy Commr*, *Partabgarh* v *Sheonath* 2 Luck 459, A I R., 1927, Oudh, 149, in 52 I.A., 83 (*supra*) it was said

"It is now beyond doubt that a member of a joint family can separate himself from the other members of the joint family and is, on separation, entitled to have his share in the property of the joint family ascertained and partitioned off for him, and that the remaining coparceners, without any special agreement amongst themselves, may continue to be coparceners and to enjoy as members of a joint family what remained after such a partition of the family property That the remaining members continued to be joint may, if disputed, be inferred from the way in which their family business was carried on after their previous coparcener has separated from them" This seems to be a much more satisfactory method of dealing with the question than first to invoke a presumption of a general partition which was never intended, and then to superimpose upon it the second legal fiction of a reunion, which never in fact took place (*w*).

Under the Dayabhaga law, the separation of one of the brothers from the rest does not even *prima facie* amount to a separation of all, for there in addition to a mere intention to separate, there must be a division of property by metes and bounds in order to effectuate a partition (*x*). Dayabhaga law

§ 159 In a partition suit all the coparceners must be before the Court either as plaintiffs or as defendants (*y*). Any coparcener or co-sharer who sues for partition of property must make the other coparceners or co-sharers defendants because the partition which is made in his favour is a partition against his coparceners or co-sharers Any decree which gives him a portion of the property takes away all rights which they would otherwise have to that portion, and therefore it is a decree against them and in his favour. A decree for partition made in a suit instituted by a member of a joint Hindu family is therefore *res judicata* as between All must be parties to suit

Res judicata

that in a suit for partition which proceeds to a decree, the decree for partition is the evidence to show whether the separation was only a separation of one coparcener from others or of all the members of the joint family from each other

(*w*) *Balabux* v *Rakhmabai* (1903) 30 I A., 130, 30 Cal., 725, *Rampershad* v *Lallapathi* (1903) 30 I A., 1, 30 Cal., 231, *Hari Baksh* v *Babu Lal* (1924) 51 I A 163, 5 Lah., 92 A fatal objection to this theory is that the fictitious reunion could not take place in law except between father and sons, brothers, and uncle and nephew

(*x*) *Gourhari* v *Shyam Sunder* A I R., 1934, Cal., 824, 38 C W N, 977, *Upendra Narain* v *Gopee Nath* (1883) 9 Cal., 817

(*y*) *Nalinikanta* v *Surnamoyee* (1911) 41 I A., 247, 249, 19 C.W N 531, *Pahaladh* v *Mt Lachmunbutty* 12 W R., 256.

all who are parties to the suit (*z*). Besides the coparceners, the wife, mother or grandmother, when entitled to shares on partition are necessary parties to the suit as well as the purchaser of a coparcener's interest (*a*).

Where the partition is claimed as between branches of the family only, the heads of all the branches alone need be made parties (*b*). Of course in such a case, it is open to the others to apply to be made parties Those members of the family who are entitled to maintenance would be proper parties to a suit for partition. So too, the joinder of creditors and in particular of decree-holders as well as of mortgagees as defendants may be proper in cases where their claims are disputed (*c*).

Partition suit should embrace all property.

§ 460 Every suit for a partition should ordinarily embrace all joint family properties (*d*) Such a suit, however, may be confined to a division of property which is available at the time for an actual division and not merely for a division of right (*e*) Ordinarily a suit for partial partition does not lie but in this sense, a suit for partial partition will lie when

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(*z*) *Nalinikanta* v *Sarnamoyee* (1914) 41 I A, 247, 19 C W.N, 531. In *Palani Ammal* v *Muthuvenkatachala* (1925) 52 I A, 83, 48 Mad, 254, the Privy Council observed that "in a suit for partition, no effective decree can be made for a partition unless all the coparceners whose addresses are known are parties to the suit and that it is the decree alone which can be evidence of what was decreed" *Ejaz Ahmad* v *Saghir Bano* (1929) 51 All, 850, *Munni Bibi* v *Tirloki Nath* (1931) 58 I A 158, 53 All, 103 (*res judicata* between co defendants)

(*a*) *Duri* v *Tadepatri* (1910) 33 Mad, 246 (purchaser) In *Sadu* v *Ram* (1892) 16 Bom, 608, the joinder of both purchasers and mortgagees is referred to But a mortgagee will not be a *necessary* party, for he is only entitled to the properties allotted to his alienor See *Mahommad Afzal Khan* v *Abdul Rahim* (1932) 59 I A, 405, 13 Lah., 702, *Laljeet Singh* v *Rajcoomar* (1874) 12 Beng L R, 373, 383

(*b*) *Prahladh* v *Luchmunbutty* (1869) 12 W R, 256, *Digambar* v. *Dhanraj* (1922) 1 Pat, 361, *Bishambar Das* v *Kanshiprasad* (1932) 13 Lah, 483, *Thakarsingh* v *Santsingh* A.I R, 1933, Lah, 465; *Subba Rao* v *Subba Rao* A I R, 1936, Mad, 689

(*c*) *Shunmuka Nadan* v *Arunachelam Chetty* (1922) 45 Mad, 194, *Annamalai Chettiar* v *Koothappudayar* (1933) 38 M L W, 280

(*d*) Manu, IX, § 47, *Rajendra Kumar* v *Brojendra* A.I.R. 1923 Cal, 501, 504, 37 C L J, 191, *Koer Hasmat Rai* v *Sunder Das* (1885) 11 Cal, 396, *Trimbak* v *Narayan* (1874) 11 Bom H C, 68, 71, *Shivmurtappa* v *Virappa* (1900) 24 Bom, 128 *Haridas* v *Pram Nath* (1886) 12 Cal., 566, *Jogendro Nath* v *Jugobundhu* (1887) 14 Cal, 122, *Satyakumar* v *Satyakripal* (1909) 10 C L J, 503 (partial partition by private arrangement allowable), *Purushottam* v. *Atmaram* (1899) 23 Bom, 597, see *Hem Chandra* v *Hemanta Kumari* (1914) 19 C W N, 356.

(*e*) *Pattaravy* v. *Audimula* (1870) 5 Mad H C, 419; *Narayan* v *Pandurang* (1875) 12 Bom. H.C, 148, *Krishtayya* v. *Narasimhan* (1900) 23 Mad., 608.

the portion excluded is not in the possession of coparceners and may consequently be deemed not to be really available for partition, as for instance, where part of the family property is in the possession of a mortgagee or lessee (*f*), or is an impartible zemindari (*g*), or held jointly with strangers to the family who have no interest in the family partition (*h*). So also, partial partition by suit is allowed where different portions of property lie in different jurisdictions (*i*), or are out of British India (*j*).

Bringing into hotchpot.

§ 461. Where a coparcener sues for partition of the property in the hands of the other coparceners, he must bring into hotchpot any undivided property held by himself, even though it is out of the jurisdiction of the Court, and thus make a complete and final partition (*k*). Where, however, part of the property is out of India it has been laid down that the Court need not require it to be brought into account (*l*). If it were land, it is obvious, that it would have to be dealt with under a system of law which would be more properly administered by the Courts within whose

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(*f*) (1870) 5 M.H.C., 419, *supra*, (1875) 2 B.H.C., 148, *supra*; (1900) 23 Mad, 608, *supra*, *Narayan* v. *Pandurang* (1875) 12 Bom. H.C, 148; *Ramaswami* v. *Alagiriswami* (1904) 27 Mad., 361 (lessee), *Rajendrakumar* v. *Brojendrakumar* (1923) 37 C.L.J., 191, A.I R., 1923 Cal., 501, *Pakkirikanni* v. *Manjoor Saheb* (1923) 46 Mad, 844 (where a distinction is made between partition of common property and of joint property, so far as liability to dismissal is concerned); *Thakarsingh* v *Santsingh* A I.R, 1933, Lah., 465, *Subramania* v *Ramachandra Rao* (1924) 47 M L J, 908, *Moti* v. *Amarchand* A I R, 1933, Bom, 121 (mortgagee entitled to possession)

(*g*) *Parvati* v. *Tirumalai* (1887) 10 Mad., 334, *Malikarjuna* v. *Durga Prasad* (1894) 27 I A, 151, 24 Mad., 147.

(*h*) *Purushottam* v *Atmaram* (1899) 23 Bom., 597; *Lachmi* v. *Janaki* (1901) 23 All, 216

(*i*) (1923) 37 C.L.J., 191, A.I.R. 1923 Cal., 501, 503 *supra*, *Hari* v. *Ganapat Rao* (1883) 7 Bom., 272, 278; *Subba Rau* v *Ramarau* (1867) 3 Mad. H C, 376, *Jairam* v *Atmaram* (1880) 4 Bom., 482; *Punchanun Mullick* v. *Sib Chunder* (1887) 14 Cal., 835, *Balaram* v. *Ramachandra* (1898) 22 Bom, 922, *Abdul Karim* v. *Badrudeen* (1905) 28 Mad., 216.

(*j*) *Ramacharya* v. *Anantacharya* (1894) 18 Bom., 389, (1887) 14 Cal, 835, *supra*, see *Rajangam Aiyar* v *Rajangam Aiyar* (1923) 50 I A, 134, 46 Mad, 373, where partition of properties in British India alone was made. See section 16, explanation and section 17 of the C. P. Code where properties are in different jurisdictions; *Krishnaji* v. *Gajanan* (1909) 33 Bom., 373, *Nilkanth* v *Vidya Narasinh* (1930) 57 I.A, 194, 54 Bom., 495.

(*k*) *Ram Lochun* v. *Rughoobur* (1871) 15 W.R, 111, *Lalljeet* v. *Rajcoomar* (1876) 25 W.R., 353, *Hari Narayan* v. *Ganpatrav* (1883) 7 Bom, 272; *per curiam* (1898) 22 Bom., 922, 928; *Satyakumar* v. *Satyakripal* (1909) 10 C L.J, 503, *Venkatanarasimha* v. *Bhashyakarlu* (1899) 22 Mad, 538.

(*l*) *Ramacharya* v. *Anantacharya* (1894) 18 Bom., 389,

jurisdiction it is situated Of course property excluded from partition continues joint property and is available for subsequent division (*m*)

Partition presumed to be complete

§ 462 Where there has been a partition, the presumption is that it was a complete one both as to parties and property (*n*) There is no presumption that any property was excluded from partition On the contrary, the burden lies upon him who alleges such exclusion to establish his assertion (*o*) The presumption, however, is one of fact and not of law (*p*), and its strength must necessarily vary with the circumstances of each case The question always is whether the parties intended the partition to be complete either as to parties or as to properties or as to both (*q*)

May be partial

As already stated (§ 458), there may be a partial division of such a nature that the coparcenary ceases as to some of the property and continues as to the rest (*r*) The view expressed in some of the cases that there must be an express or special agreement to continue to hold the rest

(*m*) *Bhoosani* v *Juggernath* (1908) 13 C W N, 309, *Monsharam Chakravarti* v *Ganesh Chundra* (1912) 17 C W N, 521, *Purushottam* v *Atmaram* (1899) 23 Bom 597 (second suit for partition in respect of properties not partitioned before is not barred)

(*n*) *Balabux* v *Rukhmabai* (1903) 30 I A, 130, 30 Cal, 725 (parties), *Jattu* v *Banwarilal* (1923) 50 I A, 192 4 Lah, 350 (parties) *Balkrishna* v *Ramkrishna* (1931) 58 I A, 220, 53 All, 700 (parties), *Ladyanathier* v *Ayyaswamy Ayyer* (1909) 32 Mad 191 (properties), *Subbareddi* v *Nagammal* (1918) 34 M L J, 596 (properties) *Kumarappa Chettiar* v *Adaikkalam* (1932) 55 Mad 183, following *Kalas* v *Bija*, (1922) 36 C L J, 134, *Kanshi Ram* v *Dunichand* A I R, 1934, Lah, 707, *Purnima Debya* v *Nand Lal* (1932) 11 Pat, 50, 81, *Anandibai* v *Harisuba* (1911) 35 Bom, 293 *Karan Singh* v *Budh Sen* A I R 1938 All, 342, *Narmadabai* v *Rupsingh* A I R 1938 Bom, 69, *Dattatriya* v *Shankar* A I R 1938 Bom, 250

(*o*) (1932) 55 Mad, 183, *supra*, *Narayan* v *Nana Manohar* (1870) 7 B H C, A C J, 153 *Ram Chandra* v *Tukaram* (1921) 45 Bom, 914, *Rudragouda* v *Basangouda* (1938) 40 Bom L R 202, A I R 1938 Bom, 257

(*p*) *Hari Baksh* v *Babulal* (1924) 51 I A, 163, 5 Lah, 92, *Palaniammal* v *Muthuvenkatachela* (1925) 52 I A, 83, 48 Mad, 254, *Balkrishna* v *Ramkrishna* (1931) 58 I A, 220, 53 All, 300

(*q*) *Babanna* v *Parawa* (1926) 50 Bom, 815, 829

(*r*) *Apoorier* v *Ramasubbier* (1866) 11 M I A 75, 90, *Ramalinga* v *Narayana* (1922) 49 I A, 168, 26 C W N, 929 *Kandasami* v *Doraisami* (1880) 2 Mad, 324, the Calcutta High Court considers that a partial division may be effected by arrangement but not by suit, *Radha Churn* v *Kripa* (1880) 5 Cal 474, but the observations of the Privy Council in *Palaniammal's* case (52 I A 83, 87) show that the question would depend upon the decree for partition whether it is complete or partial as to persons or properties Where no objection is raised or pressed in a suit for partial partition, there is no reason why a decree should not be passed as regards the properties in the suit.

of the property as undivided is contrary to the statement of the law in *Appovier's* case and in *Ramalinga* v *Narayana*(*s*).

Where the coparcenary ceases as to some of the properties but not as to the rest, the rights of inheritance and alienation differ according as the property in question belongs to the members in their divided or in their undivided capacity (*t*).

Births and deaths pending suit.

§ 463 The share of an adult coparcener who sues for partition is ascertained as on the date of the suit and is neither diminished nor augmented by births and deaths in the family as was once supposed. If he dies without obtaining a decree, his widow or other legal representative is entitled to continue the suit and inherit his share (*u*). The shares of the other coparceners however who are parties to the suit will be affected by changes in the family unless they clearly express their intention to divide, in their defences or otherwise in the course of the suit, for, while the institution of a plaint claiming a share severs the plaintiff in interest from the rest of the coparceners, it cannot by itself separate the others *inter se* (*v*) As the wife, mother or grandmother has, apart from the recent Act, no ownership of any share until actual division, her death will leave any share assigned to her by the preliminary decree an integral part of the property available for division (*v*[1])

Suit for partition by stranger

§ 464 Where a stranger to the family acquires a title to a portion of the family property, by purchase or under an execution his remedy is by suit to compel his vendor to come to a partition, and so give him an absolute title But he cannot demand a partition merely as to the portion over

(*s*) Having regard to the observations in *Ramalinga* v *Narayana* (1922) 49 I A, 168 that no special agreement is necessary, the observations in *Gaurishankar* v *Atmaram* (1894) 18 Bom., 611, would seem to be right and not the observations in *Dagadu Govind* v. *Sakhubai* (1923) 47 Bom, 773, 777 and in *Martand* v *Radhabai* (1930) 54 Bom, 616. The decision in *Beni Prasad* v *Mt Gurdevi* (1923) 4 Lah., 252 has been dissented from in *Mohansingh* v *Mt Gurdevi* (1931) 12 Lah 767, 774, *Kumarappa Chettiar* v *Adaikkalam* (1932) 55 Mad., 483, *Muthusami* v *Nallakulantha* (1895) 18 Mad, 418; *Ajodhya Pershad* v *Mahadeopershad* (1909) 14 C.W N., 221. In *Annamalai Chetty* v *Murugesa* (1903) 30 I A, 220, 26 Mad., 544, the division of some property while the other property remained undivided was held to be ineffectual to change the undivided status of the family.

(*t*) *Katama Nachiar* v *Raja of Shivaganga* (1863) 9 M.I A, 539, 543.

(*u*) *Girjabai* v *Sadashiv Dhundiraj* (1916) 43 I A., 151, 43 Cal, 1031; *Syed Kasum* v *Jorawarsingh* (1922) 49 I A, 358, 50 Cal, 84 *Sakharam* v *Harikrishna* (1882) 6 Bom, 113 is no longer law

(*v*) The dictum in *Dattatraya* v *Prabhakar* A I R 1937 Bom, 202 that it separates all the coparceners is due to a misconception

(*v*[1]) *Sheo Dyal* v *Judoonath* (1868) 8 W.R., 61, *Krishna Lal* v *Nandeshwar* (1919) 4 P L J., 38, *Raoji* v. *Anant* (1918) 42 Bom, 535, *Pratapmull* v *Dhanabhati* (1936) 63 I.A., 33, 63 Cal, 691.

which he has claim (*w*). The vendor must have a complete and final partition, so that all the family accounts may be taken against him, and all the other members of the family must be made parties to the suit (§§ 386, 388) Where the land to be partitioned is in possession of a tenant the shares may be allotted subject to the tenancy under Civ. P. C, Or. 21, R. 36.

Against stranger.

Where the suit for partition is brought by other members of the family, in order to get rid of the joint possession of the stranger, it has been held by the Madras, Allahabad and Bombay High Courts that the suit may be limited to their share in the particular parcel of family property which had been sold (*x*). On the other hand the Calcutta High Court has ruled that in this case, as in all others, the suit must be one for a complete partition, and that this is not a mere technical objection, because on partition of the whole of the joint family property, the whole land so alienated by a single member might fall entirely to the share of the alienor (*y*) Where the dispute is wholly between strangers to the family, each of whom claims against the other an interest in the family property, they can sue to obtain possession of their own interest without claiming a general partition (*z*). Where the suit is by one member of the family to assert his right to joint possession against the wrongful acts of other members, no suit for a partition is necessary. He has a right to remain, and to enjoy the rights appropriate to a coparcener. *A fortiori*, a member of the

(*w*) *Venkatarama* v *Veera Labbai* (1890) 13 Mad, 275, *Manjaya* v *Shanmuga* (1915) 38 Mad, 684, *Pandurang* v *Bhaskar* (1874) 11 Bom H C R, 72, *Udaram* v *Ranu* (1874) 11 Bom H C R, 76, *Murar Rao* v *Sitarama* (1898) 23 Bom, 184, *Ishrappa* v *Krishna* (1922) 46 Bom, 925, but see *Ram Mohanlal* v. *Mulchand* (1906) 28 All, 39

(*x*) *Chinna Sannayasi* v *Surya* (1882) 5 Mad, 196 *Subramanya* v *Padmanabha* (1896) 19 Mad, 267, *Palanthonan* v *Masalonan* (1897) 20 Mad, 243, *Iburamsa Rowthan* v *Tirumalai* (1911) 34 Mad, 269 F B, *Ramcharan* v *Ajudhia Pershad* (1906) 28 All, 50, *Hanmandas Ramdayal* v *Valabhdas Shankardas* (1919) 43 Bom, 17, *Bunwari Lal* v *Daya Shunker* (1909) 13 C W N, 815, 816, see *Rajendra Kumar* v *Brojendra Kumar* A.I.R. 1923 Cal, 501, where all the authorities are noticed.

(*y*) *Koer Husmat Rai* v *Sunder Das* (1885) 11 Cal, 396

(*z*) *Subbarazu* v *Venkataratnam* (1892) 15 Mad, 234 *Iburamsa Rowther* v *Tirumalai* (1911) 34 Mad, 269 F B, *Kandaswami* v *Venkatarama* (1933) 65 M L J, 696, *Suranna* v *Subbarayudu* (1933) 65 M.L.J, 769.

family after a division in status and before there is a division by metes and bounds can sue for joint possession (*a*).

§ 465. The Partition Act (IV of 1893) empowers the Court, in its discretion, in a suit for partition to order a sale of a property instead of a division of the same on the request of shareholders where the former course would be more convenient and beneficial. At such a sale, any coparcener may have leave to buy at a valuation ordered by the Court. Where a transferee of a share in a dwelling house, when he is not a member of the family sues for partition, the Court may instead of directing a partition direct the sale of the share to any member of the family who agrees to buy it. Section 2 of the Act which is the principal provision runs thus:— "Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein or of any other special circumstance, a division of the property cannot reasonably or conveniently be made and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds". Apart from the Act, it has been held that the Court has an inherent power to refuse to divide the property by metes and bounds and to adopt such other means as may appear equitable for effecting a partition (*b*). Act IV of 1893.

§ 466. FIFTHLY, REOPENING OF PARTITION:—Notwithstanding the saying "once is the partition made" (*c*), just as partial partition is recognised by arrangement or otherwise in certain circumstances, so too a repartition or supplemental partition has always been recognised by Hindu law. Manu says "If after all the debts and assets have been duly distributed according to the rule, any property be afterwards discovered, one must divide it equally" (*d*). Yajnavalkya is even more definite: "The settled rule is that coheirs should again divide on equal terms that wealth which being concealed by one Reopening of partition.

(*a*) *Ramchandra* v *Damodhar* (1895) 20 Bom., 467, *Naranbhai* v. *Ranchod* (1901) 26 Bom., 141; *Bhau* v. *Budha Manaku* (1926) 50 Bom., 204, 210; *Sheodan Kurmi* v. *Balkaran Kurmi* (1921) 43 All., 193.

(*b*) *Subbamma* v *Veerayya* (1931) 61 M.L.J., 552. For a decision under the Act, see *Bai Hirakore* v. *Trikamdas* (1908) 32 Bom., 103.

(*c*) Manu. IX. 47.

(*d*) Manu, IX. 218.

coheir from another is discovered after partition" (*e*). The Smritichandrika cites a text of Katyayana to the effect that 'property of which an unequal distribution has been made contrary to law should be re-distributed' So too property recovered after being seized or lost must also be distributed (*f*) In *Moro Vishvanath* v *Ganesh Vithal*, it was held that partition once effected is final and can be reopened only in case of fraud or mistake or subsequent recovery of the family property (*g*) A partition which is shown to be prejudicial to the interests of a minor coparcener will be set aside so far as he is concerned (*h*) Where at a partition intended to be final some part of the property has been overlooked or fraudulently concealed, but is afterwards discovered, it will be the subject of a like distribution among the persons who were parties to the original partition or their representatives (*i*) But the former distribution will not be opened up again (*j*) Conversely, where through a mistake as to, or ignorance of the title, property has been handed over to one member for his share, which afterwards turns out to belong to a stranger or to be charged for his benefit the person who has received such property will be entitled to compensation out of the shares of the others (*k*) Where however the whole scheme of distribution is fraudulent whether as regards a minor or otherwise, it will (where necessary) be set aside absolutely unless the person injured has acquiesced in it after full knowledge that it was made in violation of his rights (*l*)

Case of fraud

Reunion Mitakshara

§ 167 Lastly on the subject of Reunion, the rules in the Mitakshara are "Effects, which had been divided and which are again mixed together are termed reunited He, to whom such appertain, is a reunited parcener" "That cannot take place

(*e*) Yaj II, 126 Mandlik 218 Mit I ix 2

(*f*) Smritichandrika XIV 7 8, Dayabhaga XIII 1 33 5, Vyavah II 1 11 p 326, Digest, II 184 *et seq*

(*g*) (1873) 10 Bom H C R 111 *Bishambar Nath* v *Lala Iman* AIR 1937 PC 105 11 C W N 65 *Mukundlal Chakravarti* v *Jogeschandra* (1916) 1 P L J, 393, *Kandum Venkatasvami* v *Baligadu* (1916) 19 M L T, 13, S N *Halder* v S N *Mallick* (1923) 28 C W N 131, *Lachman* v *Sanual* (1878) 1 All, 543, *Jogendra* v *Baladeb* (1907) 12 C W N, 127, *Bhouani* v *Juggernath* (1908) 13 C.W.N., 309

(*h*) See *ante* § 426

(*i*) *Kandum Venkatasvami* v *Baligadu* (1916) 19 M L T, 43 see *Jogendra* v *Baladeo* (1907) 35 Cal 961

(*j*) Manu, IX 218 Mit, I, ix, 13, Dayabhaga, XIII, 1 3, 6 V May, IV, vi, 3 what has already been divided is not to be divided again", D Bh, XIII, 6

(*k*) *Maruti* v *Rama* (1897) 21 Bom 333 *Lakshman* v *Gopal* (1899) 23 Bom, 385, *Ganeshi Lal* v *Babulal* (1918) 40 All, 374

(*l*) Brih II 186 Manu IX 47, Dayabhaga, XIII, 5, *Moro Vishvanath* v *Ganesh* (1873) 10 Bom. H C, 414

with any person indifferently; but with a father, a brother or a paternal uncle"; as Brihaspati declares "He, who, being once separated, dwells again through affection with his father, brother or a paternal uncle is termed reunited with him" (*m*). The express mention by Brihaspati of father, brother and paternal uncle has been held to be restrictive and not merely illustrative (*n*). In *Ram Narain Chaudhury* v. *Pan Kuer* (*o*), the Privy Council held, (1) that the text of the Mitakshara is clear and unambiguous and excludes recourse to the other authorities; and (2) that in a Hindu family governed by the Mitakshara, a reunion is valid only if it is with a father, brother or paternal uncle and only if it is between parties to the partition. A reunion under the Mitakshara law is therefore legally possible only as (1) between father and son, (2) between brothers, and (3) between nephews and paternal uncle.

Dayabhaga.

The Dayabhaga is even more emphatic: "A reunion is valid only with a father, brother or paternal uncle" (*p*).

Mayukha.

The Vyavahara Mayukha says: "This reunion according to the Mitakshara and others 'can only take place with a father, brother or paternal uncle, and not with any other', because no others are mentioned in the text. Properly speaking the state of reunion should be co-extensive with the makers of partition. As for the word, 'father and the rest', they are simply illustrative of the makers of partition . . . Hence reunion may take place even with a wife, a paternal grandfather, a brother's grandson, a paternal uncle's son and the rest" (*q*). According to the rule of the

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(*m*) Brih, XXV, 7, Mit, II, IX, 2, 3, translation as corrected by the decision in *Basanta Kumar* v. *Jogendra Nath* (1906) 33 Cal., 371, 374, Manu, IX, 210-212, Yaj., II, 138-139, Smriti Ch., XII, 1-28; Madhaviya, § 47, V. May., IV, ix, 1-25, Viramit. IV (Setlur's ed., 427-438). The Smritichandrika says that there can be no reunion with relations other than a father, brother or paternal uncle, Smriti-chandrika, XII, 1, Sarasvativilasa, para 176, p. 139.

(*n*) *Basanta Kumar Singha* v. *Jogendra Nath Singha* (1906) 33 Cal., 371.

(*o*) (1935) 62 I.A., 16, 14 Pat., 268 affirming A.I.R. 1929 Pat., 353, *Nana Ojha* v. *Parbhudat* A.I.R. 1924 Pat., 647; *Lakshmidhar* v. *Krishnachandra* A.I.R. 1929 Pat., 548; *Sadananda* v. *Baikunthanath* A.I.R. 1921 Pat., 298; *Hira Singh* v. *Mt. Manglam* (1928) 9 Lah., 324, *Pichayya* v. *Sarvayya* A.I.R. 1927 Mad., 1118.

(*p*) Dayabhaga, XII, 3-4, D.K.S., V, 4-5; *Abhai Churn Janav* v. *Mangal Jana* (1892) 19 Cal., 634, 638, following *Tarachand Ghose* v. *Pudum Lochun Ghose* 5 W.R., 249, *Gopalchunder Daghoria* v. *Kenoram Daghoria* 7 W.R., 35; and *Ramhari Sarma* v. *Trihiram Sarma* 7 Beng. L.R., 336; *Balkishen Das* v. *Ramnarain Sahu* (1903) 30 I A, 139, 30 Cal., 738, 753, *Akshay Chandra* v. *Haridas* (1903) 35 Cal., 721.

(*q*) V. May., IV, ix, 1; Mandlik, 84.

Mayukha which is paramount in Guzerat, the island of Bombay and in Northern Konkan, a valid reunion may take place between any two or more parties to the original partition. But it has been held that if their descendants think fit to reunite, it is not a reunion (*r*).

Mithila law. In the Mithila School, the Vivada Ratnakara and the Vivada Chintamani take the enumeration in the text of Brihaspati as illustrative and not as restrictive and hold that reunion is possible with any of the coheirs who have separated. Reunion therefore is possible with anyone such as a paternal uncle's son (*s*).

Evidence. § 468 As the presumption is in favour of union until a partition is made out, so after a partition the presumption would be against a reunion To establish it, it is necessary to show, not only that the parties already divided, lived or traded together, but that they did so with the intention of thereby altering their status and of forming a joint estate with all its usual incidents (*t*)

Minor. It would seem from an observation of the Privy Council in *Balabux* v. *Rakhmabai* (*u*) that no agreement for a reunion on behalf of a separated minor coparcener could be made by his father or mother as his guardian. But it must be remembered that as it is open to the father or mother as his guardian to effect a separation on behalf of the minor coparcener, it would be equally open to the father or mother as his guardian to agree to a reunion on behalf of the minor. At any rate so far as the power of the father is concerned, the text of Brihaspati and the passage in the Mitakshara, I, vi, 7 appear to be sufficient warrant (*v*).

(*r*) *Vishvanath* v *Krishnaji* (1866) 3 Bom H.C (A.C J), 69, *Lakshmibai* v *Ganpat Moroba* (1867) 4 Bom H C. (O C J.), 150, 166

(*s*) Vivada Ratnakara, XXXV, 12 (Sarkar's edn, page 91), Vivada Chintamani, 301, see as to the Mithila school, *Basanta Kumar* v *Jogendra Nath* (1906) 33 Cal, 371, 375 The Vivada Chintamani seems to go further and states that a reunion may be with a coheir or even with a stranger after the partition of wealth.

(*t*) Cited in *Rajagopal* v *Veeraperumal* (1927) 53 M L J. 232, 242, *Gopal* v *Kenaram* (1867) 7 W R, 35, *Ram Huree* v *Trihee Ram* (1871) 15 W R, 442, *Balkishen Das* v. *Ramnaram* (1903) 30 I A., 139, 150, 30 Cal, 738, *Jatti* v. *Banwari Lal* (1923) 50 I A, 192, 4 Lah, 350

(*u*) (1903) 30 I A, 130, 136, 30 Cal., 725, 734, see also *Kuta Bally* v. *Kuta Chudappa* (1864) 2 Mad H.C., 235, *Rusi Mendli* v. *Sundar Mendli* (1910) 37 Cal, 703.

(*v*) *Venkatareddi* v *Kuppareddi* (1918) M.W.N, 780 (The reference in this case to 30 Cal, 231 seems to be a mistake). See also the observations of Venkatasubba Rao J in *Babu alias Govinddoss* v *Gokuldoss* (1928) 55 M L J., 132, 141-2.

How effected.

§ 469. Reunion can be effected either by an oral agreement between the parties after the partition or by their subsequent conduct (*w*). Where the agreement to reunite is in writing, it would require registration where it affects immovable property of the requisite value (*x*). A reunion is of very rare occurrence. It must be strictly proved as any other disputed fact is proved (*y*).

Effect of reunion.

§ 470. While the effect of a reunion is to restore the undivided status of the reuniting coparceners, it is not quite clear whether in all its incidents, the new coparcenary is exactly of the same kind as the normal coparcenary before its disruption. One view is that where there has been a reunion, the reunited members are not for all purposes coparceners in the strictest sense as in an ordinary undivided family, but that on the death of one of them his share devolves in accordance with special rules of succession (*z*). The other view is that the reunion restores the joint family to its former status and position so that it does not in any essential particular differ from the status of the family before partition (*a*). The latter certainly is a simple and intelligible rule and is to be preferred to the obscure and discrepant rules on the subject as stated by the writers. In *Abhai Churn Janav* v. *Mangal Jana*(*b*), a Dayabhaga case, the Calcutta High Court held that where there has been a reunion between persons expressly mentioned in the text of Brihaspati and where their descendants continue to be members of a reunited Hindu

(*w*) *Balabux* v. *Rakhmabai* (1903) 30 I.A., 130, 30 Cal., 725; *Jatti* v. *Banwari Lal* (1923) 50 I.A., 192, 4 Lah., 350; *Palani* v. *Muthu Venkatachala* (1925) 52 I.A., 83, 48 Mad., 254; *Jag Prasad Rai* v. *Mt. Singari* (1925) 49 M.L.J., 162 P.C.; *Bhima Rout* v. *Dasarathi* (1913) 40 Cal., 323; *Gourishankar* v. *Kesheb Deo* A.I.R. 1929 All., 148.

(*x*) *Mahalakshmamma* v. *Suryanarayana* (1928) 51 Mad., 977.

(*y*) *Balabux* v. *Rakhmabai* (1903) 30 I.A., 130, 30 Cal., 725; *Jatti* v. *Banwari Lal* (1923) 50 I.A., 192, 4 Lah., 350; *Palani* v. *Muthuvenkatachala* (1925) 52 I.A., 83, 48 Mad., 254, 258; (1925) 49 M.L.J., 162 P.C. *supra*; *Babu* v. *Official Assignee, Madras* (1934) 61 I.A., 257, 57 Mad., 931 affirming the judgment of Venkatasubba Rao, J., in (1928) 55 M.L.J., 132 *supra*, *Manickam Chetty* v. *Kamalam* (1937) 1 M.L.J., 95.

(*z*) *Ramaswami* v. *Venkatesam* (1892) 16 Mad., 440.

(*a*) *Abhai Churn Janav* v. *Mangal Jana* (1892) 19 Cal., 634, *Kristraya* v. *Venkataramiah* (1903) 19 M.L.J., 723 F.B.; *Samudrala Narasimha* v. *Samudrala Venkata* (1909) 33 Mad., 165, *Kristniah* v. *Guruviah* (1921) 41 M.L.J., 503; *Babu* v. *Gokuldoss* (1928) 55 M.L.J., 132; *Nana Ogha* v. *Parbhu Datgha* A.I.R. 1924 Pat., 647, 75 I.C., 508; *Jatti* v. *Banwarilal* (1923) 50 I.A., 192, 4 Lah., 350; *Jasoda* v. *Sheo Pershad* (1889) 17 Cal., 33 (overruled by the P.C. on another point); *Jag Prasad Rai* v. *Mt. Singari* (1925) 49 M.L.J., 162 P.C., see also *Prankisen Paul* v. *Mothooramohun* (1865) 10 M.I.A., 403, 406; *Narayana Sah* v *Sankar Sah* (1933) 53 Mad, 1, 11.

(*b*) (1892) 19 Cal., 634 *supra*.

family, the law of inheritance applicable to the latter is the same as in the case of the death of any of those between whom the reunion took place. They also observed that it would be anomalous if the law of succession as between the descendants of the reunited members were different from the law as between the reunited members themselves. This principle was followed in the Mitakshara jurisdiction by a Full Bench of the Madras High Court in *Kristraya* v. *Venkataramiah* where it was held that reunited members of a Hindu family are not tenants-in-common but are coparceners with rights of survivorship *inter se* and that their sons must be deemed to be coparceners with them (*c*). This view was followed by the same Court in *Samudrala Narasimha* v. *Samudrala Venkata* which held that succession in a reunited Mitakshara family goes by survivorship (*d*). In that case on the death of one of two brothers who had reunited, his son was held to be reunited with his uncle so that on the death of the former, his widow was excluded by the uncle.

In *Ramaswami* v. *Venkatesam*, two brothers, being sons of different mothers reunited, one of them adopted a son. The adopted son, after the death of his father and uncle, besides succeeding to his father's share, sued to recover his uncle's share on the ground that he was the only surviving member of the coparcenary He was held entitled only to one-third of it as against his uncle's two divided brothers of full blood (*e*). The decision was rested on the Mitakshara II, ix, 3, 7. The succession of separated uterine brothers, not reunited, was regarded as an exception engrafted on the ordinary rule that a surviving reunited member takes the property of one deceased while in reunion with him. The observations in some of the cases (*f*) proceed upon the assumption that the sons, though not parties to the original partition, can reunite with the original coparceners—an assumption which cannot hold good after the Privy Council decision in *Ram Narain Chaudhury* v. *Pan Kuer* (*g*), but their informaly does not affect the correctness of the conclusion.

On principle, however, the male issue of the reuniting coparceners will also be coparceners with them as well as

(*c*) (1909) 19 M.L.J., 723 F.B.

(*d*) (1910) 33 Mad, 165.

(*e*) (1892) 16 Mad., 440 See this case explained in (1910) 33 Mad., 165 *supra.*

(*f*) For instance in (1909) 19 M.L.J., 723 F.B. and (1910) 33 Mad., 165 *supra.*

(*g*) (1934) 62 I.A., 16, 14 Pat., 268.

amongst themselves *inter se*. There is no need for a theory of reunion at each step in the descent (*h*) ; for, the restriction as to the persons who can validly reunite relates only to the time when they agree to reunite and is not a continuing restriction so as to prevent their progeny from being members of the reunited coparcenary. Conclusive support for this view is to be found in the Mitakshara (*i*).

Certain special rules of inheritance to the property of reunited coparceners in default of male issue will be discussed in the chapters relating to inheritance (*j*).

(*h*) (1892) 19 Cal, 634 *supra;* (1928) 55 M.L.J., 132 *supra*

(*i*) Mit., II, ix, 4: "The share or allotment of such a reunited parcener deceased, must be delivered by the surviving reunited parcener, to a son subsequently born, in the case where the widow's pregnancy was unknown at the time of the distribution. Or, on failure of male issue, he and not the widow, nor any other heirs, shall take the inheritance".

(*j*) See *post* §§ 558, 587

CHAPTER XII.

SUCCESSION UNDER MITAKSHARA LAW.

SECTION 1.

PRINCIPLES OF SUCCESSION

Early rules meagre.

§ 471. The rules of inheritance given by the ancient lawgivers are meagre. The reason probably was that property was held invariably by the members of a joint family and separate acquisitions were inconsiderable: there was no necessity to lay down detailed rules of inheritance. Partitions must have been infrequent and where they occurred they would only bring new joint families into existence. On the death of a member in a coparcenary, his male issue took his interest. Though it is now usual to speak of it as passing by survivorship to the entire coparcenary, according to the stricter conception, the interest of a coparcener, on his death, went as unobstructed inheritance to his son, grandson and great-grandson It was only when he died without male issue, it passed by survivorship to the other coparceners. The germs of inheritance are therefore to be found in the unit of the coparcenary which consisted of oneself and his son, grandson and great-grandson. On the death of a man who was divided from his coparceners, his son, grandson and great-grandson were also the persons entitled to his estate

In default of male issue, and the appointed daughter and her son, the nearer kinsmen and then the remoter kinsmen in the gotra or family succeeded Succession was at first confined to agnates or *sagotras* only The gotra or family consisted of all those descended from one common stock in the male line and such family union or connection was the source of the entire class from which a succession of heirs was derived (*a*) A text of Gautama makes the succession go not only to the members of an ordinary agnatic family or gotra but also to the members of a rishi gotra (*b*)

(*a*) *Bhya Ram* v *Bhyah Ugur Singh* (1870) 13 M.I A., 373, 391, *Harihar Pratap* v *Bajrang Bahadur* A I R. 1937 P.C., 242, 41 C.W N. 1126, (1937) 2 M L J, 711, explaining *Jadunath Kuar* v. *Bisheshar Baksh Singh* (1932) 59 I A. 173, 36 C W N, 1073, *Ratna Mudaliar* v. *Krishna Mudaliar* (1937) 1 M L J, 390, 394

(*b*) Gaut., XXVIII. 21 cited in Mit., II, 1, 18. Compare Narada, XII, 7.

§ 472. The table of succession to the estate of one dying without male issue as given in the Smritis is as follows:— Heirs according to the Smritis.

Gautama:—sapindas, sagotras, those connected by descent from the same *rishi* and the widow (*c*).

Apastamba.—the nearest sapinda, teacher, pupil, daughter, or the king (*d*).

Baudhayana —sapindas (agnates within 3 degrees), sakulyas (agnates beyond three degrees), teacher, pupil or priest, king (*e*).

Vasishtha —sapindas, teacher, pupil and the king(*f*).

Manu.—daughter, daughter's son, father, brother, mother and grandmother, other sapindas (agnates within 3 degrees), *sakulyas* (agnates beyond 3 degrees), teacher, pupil, Brahmana, or the king (*g*).

Vishnu:—widow, daughter, daughter's son, father, mother, brother, brother's son, bandhu, *sakulya*, fellow-student, Brahmana or the king (*h*).

Yajnavalkya.—wife, 'and daughters also', both parents, brothers, brother's sons, *gotrajas*, bandhu, pupil, fellow-student (*i*).

Narada.—daughters, *sakulyas*, bandhavas, castemen, the king (*j*).

Brihaspati.—wife, daughter, daughter's son, father, mother, brother, brother's sons, *dayadas* or *jnatis* (sapindas), *sakulyas* (samanodakas), cognates (bandhavas), pupil or learned Brahmin (*k*).

(*c*) Gaut, XXVIII, 21. "*Pindagotrarshisambandah riktham bajeran stri va anapatyasya*" Jha, H.L.S, II, 506, Mit., II, 1, 18, Dr. Buhler's rendering is 'sapindas, sagotras, those connected by descent from the same *rishi* and the wife'

(*d*) Apas, II, 6, 14, 2, 5

(*e*) Baudh, 1, 5, 11-13

(*f*) Vas, XVII, 81-84

(*g*) Manu, IX, 187, 130, 136, 185, 217, 188, 189

(*h*) Vishnu, XVII, 4-13, XV, 47.

(*i*) Yajn., II, 135, 136; Mit., II, 1, 2

(*j*) Nar, XIII, 50, 51

(*k*) Brih., XXV, 55-66. *Jnati* in this text means sapinda and *sakulya* means samanodaka according to the Smritichandrika, Vyavaharakanda, 697 (Mysore edn.), XI, iv, 19 *(dayadas)*, Jha, H.L.S., II, 506. Brihaspati (XXV, 66) mentions last, 'the property goes to the daughter's son'. See also Smritichandrika, XI, v, 13.

Katyayana:—widow, daughters, father, mother, brother, brother's sons (*l*).

Devala.—uterine brothers, daughter, father, step-brothers, mother, wife, in due order, co-resident *sakulyas* (*m*).

In the above summary, the heirs mentioned by Manu and Brihaspati are given, but their order is, in part, obscure.

Early terminology for heirs

§ 473. The heirs were known as *dayadas* or receivers of inheritance, a term frequently used to signify any successor other than a son (*n*) Those referred to as *sakulyas, sagotras* or *gotrajas* were all agnates (*o*). These terms were expressive of kinship only and referred to a descent in the male line from a common ancestor or a patriarch who was supposed to be the founder of the family. The term 'sapinda' has however a different history. While kinship in the family (gotra) conferred upon a man, where he was the nearest, the right to take the wealth of another, it also imposed upon him obligations as a member of the gotra in respect of funeral rites, impurity and marriage (*p*).

Original meaning of sapinda

§ 474. Sapindas meant only those *sagotras* or agnates connected by pinda offerings The Smritis leave no room for doubt on the point The text of Gautama refers to heirs as connected by pinda or gotra without using the expression

(*l*) Katyayana, cited in Mit, II, 1, 6, Jha, H L S, II, 457

(*m*) Jha, H L S, II, 450, also cited in Apararka translated in 21 M L J (Journal) 314 5, according to Kautilya's Arthasastra, the heirs are sons and daughters, father, brother, brother's sons, sapindas (nearest agnates), *kulyas* (remoter agnates) Arthas, III, 5, 9-11 (Jolly's edn), Shamasastri, 197, 201, Jha, H L S, II, 452 The rule in the Arthasastra [III, II, 32 (Jolly's edn)] refers to the remarrying widow losing the property which was given by her former husband It does not appear to refer to any property inherited by her. Dr Ganapathi Sastri's comment is clear, Bk., II, p 15, Shamasastri, p 188 Dr Jha's translation does not appear to be right Jha, H L S, II, 595 The Smritisangraha (between the 8th and 10th centuries) gives the following order of heirs —widow, daughter, mother, father's mother, father, full brothers half-brothers, line of the father, the grandfather's line, the great-grandfather's line, sapindas of higher degrees, sakulyas, preceptor, pupil, a fellow-student, a learned brahmin and king, cited in the Smritichandrika, XI, 4, 24, 26, XI, vi, 8, Jha, H L S, II, 505, Kane, 241, Parasaramadhaviya, § 73

(*n*) Mit, I, xi, 33 (Setlur's edn, 710), Manu, IX, 158-160, Brih, XXV, 66, Vedic Index I, 353, Jolly, T L L, 267, L & C, 184, Jha, H L S, II, 254 255

(*o*) Jolly, T L L, 195

(*p*) A man by reason of his kinship became not only the *dayada*, receiver of inheritance or partaker of property, but also a partaker of the gotra Baudh, Jha H L S, II, 262 Sankha and Likhita, Jha, H L S, II, 258, Manu, IX 142,

'sapinda' (*q*). Another text of his as also a text of Baudhayana treats sapindas of a deceased person as not including his mother's sapindas (*r*).

In funeral rites.

The explanation of the term 'sapinda' as applied to certain degrees of agnatic kindred is to be found in the code of funeral rites. At the ordinary *sraddha* or funeral rite, a man is bound to offer pindas to his three paternal ancestors. Apastamba says: "At that rite (sraddha) the manes of one's father, grandfather and great-grandfather are the deities to whom the sacrifice is offered" (*s*). On the death of a person, at the earliest on the twelfth day and at the latest, one year after it, the unifying rite called the *sapindikarana-sraddha* is performed (*t*). It effects the inclusion of the person who is dead among the fellowship of the manes or the ancestors of the family. As the Mitakshara puts it, by that ceremony, the deceased ceases to be a shade or ghost (a *preta*) and becomes a *pitr* (manes) (*u*). Thereafter, at a *parvana sraddha*, a man offers three undivided *pindas* to his three immediate paternal ancestors, *i.e.*, father, grandfather and great-grandfather (*v*). The wipings or *lepa*, in other words, the fragments of the cakes which remain on his hand and are wiped off with *kusa* grass, are offered to the three paternal ancestors next above those who receive the cake, that is, the persons who stand to him in the fourth, fifth and sixth degrees of ascent (*w*). A text of Matsyapūrana which is

(*q*) Gaut., XXVIII, 21

(*r*) Gaut., XV, 13; XIV, 20; Baudh., I, v, 11, 27 (refers to bandhus or cognates as persons who are not the dead man's sapindas in prescribing impurity for them)

(*s*) Apas., II, 7, 16, 3.

(*t*) Mit. citing Asvalayana, Vidyarnava's trans., 347-348; Vishnu gives it as thirteenth day; Vishnu, XXI, 19; Brih., XXV, 101.

(*u*) Mit. on Yajn., I, 254 (Vidyarnava's trans., 339, 340); '*Sapindikarana* is the reception of a dead person into the community of *pinda* offerings with the other manes'. Sankhayana Grihyasutra, IV, 3, 1 (S.B.E., Vol. XXIX, p. 109). Vishnu refers to this ceremony thus: "He for whom the ceremony of investing him with the relationship of sapinda is performed" (Vishnu, XXI, 23). This unification is brought about by kneading the *pinda* of the deceased person together with the three *pindas* of the three deceased ancestors (Vishnu XXI, 17). For a clear exposition of the *sapindikarana* rite, see note by Mr. Gharpure in his translation of V. Mayukha, pp. 83-84.

(*v*) Paraskara, III, X, 50 (S.B.E., Vol. XXX, 359); Gobhila, IV, 3, 8, 9, 24-27 (S.B.E., Vol. XXX, 107-110); Hiranyakesin, II, 5, 11 (S.B.E., Vol. XXX, 236), Sarvadhikhari, 2nd ed., 24.

(*w*) Manu, III, 215-216; Medhatithi (Manu, III, 216) says: "They were known as partakers of *lepa* or wipings"; Vishnu, LXXIII, 17-22; Arthas, III, 5. Shamasastri, 197; only the first three ancestors were named and the others were not named. Manu, III, 284. This exten-

frequently cited in the books says, "Those beginning with the fourth generation are the recipients of *lepa* and those beginning with the father are the recipients of pinda, the giver of the *pinda* is the seventh and thus sapinda relationship extends over seven generations" (*x*) It is clear therefore that the term 'sapinda' denoted seven degress of kindred inclusive of the man himself both in ascent and in descent for purposes of funeral rites, impurity and marriage (*y*) Baudhayana says in connection with impurity "But amongst sapindas, sapinda relationship extends to seventh person" (*z*) Similarly, Vasishtha (*a*), Manu and Vishnu state the same rule for purposes of impurity, marriage and funeral rites (*b*).

'Sapinda' in succession.

§ 475 For purposes of succession, however, sapindaship was originally confined to three degrees of agnatic kindred in ascent and in descent, the term 'sapinda' referring only to those who were connected by the undivided oblation

Baudhayana.

Baudhayana is quite explicit: "Moreover, the great-grandfather, the grandfather, the father, oneself, the uterine brother, the son by a wife of equal caste, the grandson, and the great-grandson—these they call sapindas but not the great-grandson's son, and amongst these, a son and a son's son together with their father are sharers of an undivided

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sion to six degrees was probably due to the ancient rules requiring a man whose father and grandfather were alive or either of them or whose father and grandfather were dead or whose father alone was dead but whose great-grandfather was alive to offer *pindas* to those ancestors to whom his father, grandfather and great-grandfather were bound to offer, thus reaching in one contingency to the fifth in ascent, that is, to the grandfather of his great grandfather as the receiver of *pinda* The sixth however was never reached, for "while his father, grandfather and great-grandfather are alive, he must offer no *sraddha* at all". Vishnu. LXXV, 1-7, Manu, III, 220-221, Mit, Vidyarnava's trans, 342

(*x*) Matsya Purana, XVIII, 29, cited in the Smritichandrika Gharpure's edn., 67, Samskara, Mysore edn, 180, Parasara Madhaviyam, Vol I, part II, 59, Madana Parijata, Calcutta edn, 129, Setlur's trans, 569, Nirnayasindhu, Setlur's trans., 560, Samskara Mayukha (Gharpure's edn), 150, Viramitrodaya, III, 1, 11 (Setlur's ed), p 392, Dig, II 568, Markandeya Purana, XXXI, 3-5

(*y*) Gaut, XIV, 13, IV, 3, 6 Apas., II, 6, 15, 2, II, 5, 11, 16.

(*z*) Baudh, I, 5, 11, 2

(*a*) Vas, IV, 17. Dealing with impurity, Vasishtha says "It has been declared in the Veda that sapinda relationship extends to the seventh person in the ascending or descending line" (according to Dr Buhler's translation) But in the Vedic Index the term 'sapinda' is not dealt with

(*b*) Manu. V, 60, Vishnu, XXII, 5, Mit. on Yajn, III, 18 explaining Manu's text (Narahariayya's trans., 30).

oblation. The sharers of divided oblations, they call *'sakulyas'* " (*c*). This division of Baudhayana is only for purposes of succession; for it is followed immediately by two sutras providing for descent of property to sapindas and on failure of them, to *sakulyas* (*d*); and is preceded by two sutras defining, for purposes of impurity, sapinda relationship as extending to seven degrees (*e*). This usage is confirmed by such a wholly secular treatise as the Arthasastra of Kautilya, which repeats the same distinction of undivided oblations up to the fourth generation and of the subsequent generations being of divided oblations (*f*) and refers to a 'sapinda' or a *'kulya'* as being bound to offer oblations (*g*).

Arthasastra

(*c*) Baudh I, V, 11. 9-10 The Viramitrodaya explains the text of Baudhayana "Since a person (when deceased) partakes of the oblations presented to the three paternal ancestors beginning with the father, by reason of the union of oblations (effected through the ceremony called *"sapindikarana"*; and since the three descendants in the male line beginning with the son present oblations to that person himself; and since he, who, while living offered oblations to an ancestor in the male line, partakes when dead, of the oblations presented to that ancestor, by reason of the union of oblations: thus the middlemost person who while living offered oblations to his ancestors, and when dead partakes of the oblations presented to them, becomes the object to whom oblations are presented by others that are living, and partakes with these latter while they are dead, of oblations presented (to him) by the daughter's son and the like. Therefore those to whom that person offers oblations, as well as those who partake of the oblations presented by him, as also those who present oblations to him, are, as partaking of undivided oblations consisting of the *pinda*, the sapindas of that person by reason of connection through the same *pinda* To an ancestor who is fifth in ascent, the middlemost person who is fifth in descent, does not present oblations, nor does he partake of oblations presented to that ancestor, similarly the fifth descendant does not confer oblations on the middlemost person, nor partakes of oblations presented to him Consequently the three ancestors beginning with the great-great-grandfather and the three descendants beginning with the great-great-grandson, that is, the three beginning with the fifth on both sides, who partake of divided oblations, and are not connected through the same *pinda*, are by the sage called *sakulyas* inasmuch as they are only connected through the *kula* or family" (III, 1, 11, Setlur's edn, 391-2) *Cf*, Dayabhaga, XI, 1, 38, Dayatattva, XI, 7. Dr. Jha gives a different translation of the last part of Baudhayana's text which seems erroneous. "These undivided coparceners, they call sapindash, tedivided coparceners, they call *sakulyas*" Jha H L S., II, 510. See Daya. Bh., XI, 1, 37 for Mr. Colebrooke's trans which accords with Dr Buhler's.

(*d*) Baudh., I, V 11, 11-12.

(*e*) Baudh., I, v, 11, 1-2.

(*f*) Arthas., III, 5, 3-5 (Jolly's edn.); Shamasastri, 197. Dr Shamasastri's translation of *pinda* as line is an error.

(*g*) Arthas., III, 6, 31 (Jolly's edn.); Shamasastri, 201. Dr. Shamasastri's translation of *kulya* as cognate is not correct. Dr. Ganapathi Sastri's gloss is to be preferred. Bk., II, p. 39.

Citing Baudhayana's definition, Chandesvara in his Vivada Ratnakara and Jimutavahana in his Dayabhaga say that it refers to inheritance and not to pollution on births and deaths of relations and the like (*h*). The former adds that as regards pollution, those that are of the same pinda are sapindas even when they partake of divided oblations; but for purposes of succession, those that partake of divided oblations are not sapindas. The text of Manu which gives a limited meaning to the word 'sapinda' for purposes of succession as distinguished from impurity, marriage and so forth is decisive on the matter: "To three ancestors, water must be offered, to three the funeral cake is given, the fourth descendant is the giver of these oblations, the fifth has no connection with them" (*i*). Following this definition, Manu says in IX, 187. "Always to that relative within three degrees who is nearest to the deceased sapinda, the estate shall belong, afterwards a *sakulya* shall be the heir, then the spiritual teacher or the pupil". As Dr. Buhler points out, since verse 186 limits sapinda relationship to three degrees, verse 187 refers only to sapindas within three degrees and *sakulyas* must be taken in the wider sense as denoting remoter members of the family. There can be no doubt that Jimutavahana understood Manu and Baudhayana aright and accordingly he limits the term sapinda to three degrees, though for reasons of his own, he includes cognates also under that term (*j*) The Viramitrodaya referring to the above texts of Manu and Baudhayana says. "This sapinda and *sakulya* relationship is declared with reference to succession, as it is mentioned in the chapter relating to that subject But with reference to impurity, marriage, etc, those also that partake of the divided oblations (*i e*, sakulyas) are considered as sapindas by reason of the text of the Matsya Purana" (*k*)

Manu.

Sakulya.

Bandhu meaning agnates.

§ 476 It is somewhat significant that the Vishnusmriti uses, in stating the order of succession, the term 'bandhu,' a term of mere relationship to denote near sapindas and the term '*sakulya*' to denote the remoter *sagotras* (*l*); this is the

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(*h*) Vivadaratnakara, XXXIV, 18 (page 86) Sastri Sarkar's translation of *pinda* as body and his reference to divided coparceners appear to be inconsistent with the distinction between inheritance and pollution which Chandesvara himself points out Dayabhaga, XI, i, 40.

(*i*) Manu, IX, 186

(*j*) Dayabhaga, XI, 6, 19

(*k*) Viramit, III, 1, 11 (Setlur, II, 392).

(*l*) Vishnu, XVII, 10, 11.

view expressed by the Vivada Ratnakara (14th century), the Vivada Chintamani (15th century), and the Viramitrodaya (1610-1640 A.D.) (*m*). As stated by the Privy Council, on the authority of the Viramitrodaya, in *Ramchandra Martand* v. *Vinayek*, the earlier Smritis appear sometimes to have used the term bandhu to mean only a sapinda (agnate) (*n*). Yajnavalkya however confines the term 'bandhu' in the principal text to cognates and uses the comprehensive term *gotraja* to denote both the sapindas and *sakulyas* of Baudhayana and Manu (*o*). Narada refers by the terms *sakulyas* and *bandhavas* to agnates and cognates respectively (*p*). Brihaspati uses *dayadas* or *jnatis* or sapindas as denoting the first six degrees of *sagotras*, *sakulyas* as denoting samanodakas and *bandhavas* as denoting cognates (*q*).

Extension of sapinda to seven degrees.

By the time of Visvarupa, the word sapinda came to include, for purposes of succession also, seven degrees of agnatic kindred including the person concerned; for, Visvarupa, commenting on Yajn., II, 135, has adopted for purposes of succession, the nomenclature which Manu gives for purposes of impurity, of sapindas and samanodakas. He also understood the term bandhu in the text of Yajnavalkya as meaning the maternal uncle and the like (*r*). He does not however depart from the earlier meaning of sapindaship as connection through pinda offerings. The anonymous author of the Smritisangraha who wrote long before the Mitakshara employed the term sapinda for purposes of inheritance to denote seven degrees of agnatic kindred (*s*).

Medhatithi.

Medhatithi, commenting on Manu, V, 60, places the interpretation of 'sapinda' beyond all doubt. He says that sapindas are persons born of the same family upto the person in the seventh grade. According to him, as the offering of the pinda is a single act upon which and in connection with which the title sapinda becomes applicable, all descendants upto the seventh grade of the great-grandfather of one's

(*m*) Vivadaratnakara, XXXIV, 15 (page 86); Vivadachintamani, 238, Viramit, Setlur's ed, 381, 424.

(*n*) (1914) 41 I.A., 290, 305, 42 Cal., 382.

(*o*) Yajn., II, 135-136. But in II, 144, it refers to kinsmen generally.

(*p*) Nar., XIII, 51.

(*q*) Brih., XXV, 59, 62; Smritichandrika, Vyavahara, 697 (Mysore edn.). See § 472, note (*k*).

(*r*) Visvarupa, 252 (Triv. edn.).

(*s*) Jha, H.L.S., 505; Smritichandrika, XI, v, 6; For Dharesvara's opinion see Smritichandrika, XI, v, 10. See *ante* § 18.

great-grandfather are his sapindas. Similarly the descending line of one's descendants and the descendants of his father, grandfather and the rest are his sapindas He adds that the degrees are to be counted from that person from whom the two lines bifurcate (*t*) Kulluka, who wrote after the Mitakshara is equally definite, according to him, sapindas mean only agnates and he explains that the maternal grandfather and the rest, though connected by pinda, are not sapindas (*u*).

Sapinda newly defined by Vijnanesvara.

It is therefore absolutely clear that the term sapinda as used in the Smritis and by the commentators before Vijnanesvara meant only those connected by funeral oblations (*v*). Vijnanesvara's definition of sapindas as those connected by particles of the same body was apparently unknown to any previous lawgiver He cites no Smriti in support of his view, but only the Vedic texts on the theory of heredity, which do not mention 'pinda' or 'sapinda' at all (*w*). As Nilakantha says "Vijnanesvara abandoned the theory of connection through the rice-ball offering and accepted the theory of transmission of constituent atoms" (*x*)

Following Visvarupa, Vijnanesvara understood by the term *gotrajas*, sapindas and samanodakas, the former denoting agnates within seven degrees; and the latter, agnates from the eighth to the fourteenth degree The term samanodaka meant literally those connected by libations of water and was originally employed to denote the remoter degrees of kindred in connection with impurity and funeral rites (*y*) In the light of Vijnanesvara's

(*t*) Jha, Medhatithi Bhashya, Vol. III part I, 73-74

(*u*) Kulluka on Manu, V, 60

(*v*) The meaning of the term '*pinda*', according to Vedic Index, I, 524 is 'a ball of flour offered to the manes especially on the evening of the new moon' For the Mitakshara exposition, see Vidyarnava's trans., 96-98 and *ante* § 108

(*w*) Jolly, T L.L., 169-171

(*x*) Samskara Mayukha (Gharpure's edn., p 50), *Lallubhoy* v. *Mankuvarbai* (1878) 2 Bom., 388, 426.

(*y*) The term 'samanodaka' was however too refractory to adapt itself to the new etymology Medhatithi on Manu, V, 60, Jha, Medhatithi Bhashya, Vol III, pt, 1, 73-74, compare Mit, on Yajn, III, 3 (Naraharayya's trans, 7). Visvarupa divides *gotrajas* as sapindas, samanodakas and members of the same *rishigotra* and apparently places them before bandhus (Triv ed, 252) Jimutavahana (XI, vi. 25) places the persons bearing the same family name (*gotra*) after the preceptor, pupil and fellowstudent, following the early text of Gautama. "Persons allied by funeral oblations, family name and patriarchal descent, shall share the heritage", (xxviii, 21).

exposition of sapinda, as connected by particles of the same body, the term samanodaka can only be understood as meaning the eighth to the fourteenth degrees of kindred and not as having any religious import (*z*).

Bandhu.

§ 477 The term 'bandhu' or 'bandhava' meant relations in general and included both agnates and cognates though it was sometimes confined to agnates in some of the Smriti texts relating to succession and gotra kinship, as for instance in the Vishnusmriti and in some of the verses in the Manusmriti (*a*). But it appears to have referred only to cognates in the texts relating to funeral rites, impurity and marriage. Manu lays down that on the death of a maternal uncle (*matula*) and on the death of the maternal relatives (*bandhavas*) impurity shall be observed for a period of one night together with the preceding and the following days (*b*). The Mitakshara explains that the term 'bandhavas' in the above text of Manu means *atmabandhus, pitrubandhus* and *matrubandhus* (*b*[1]).

Daughter's son.

§ 478. The daughter's son along with his mother was recognised by Manu as an heir on the analogy of the appointed daughter and her son. "Through that son whom a daughter, either not appointed or appointed, may bear to a husband of equal caste, his maternal grandfather has a son's son; he shall present the funeral cake and take the estate" (*c*). The gloss of Govindaraja is that the verse allows the son of a daughter not appointed to inherit his maternal grandfather's estate, an opinion shared by another early commentator Sarvajna Narayana. No doubt the

(*z*) *Atmaram Abimanji* v *Bajirao* (1935) 62 I A, 139, 142, A I R 1935 P C., 57

(*a*) Vishnu, XVII, 10, Manu, IX, 158 160, V, 58, XI, 172, 182. Medhatithi and Kulluka, commenting on Manu, V, 58 and IX, 158-160 point out that the term '*bandhu*' means agnates, partakers of gotra *(gotrabhajah)* Jha, H L S, II, 254-255. So too, the Mitakshara in dealing with Manu's verses in I. xi, 30-31 says that the term means sapindas and samanodakas. See also the texts of Harita and Sankha Likhita, Jha, H.L.S., II, 258; Jolly, L. & C., 184.

(*b*) Manu, V, 81; Gaut., XIV, 20, Apastamba, II, 5, 11, 16 *Yonisambandha*, a relation by marriage, includes, according to Haradatta, maternal grandfather, maternal aunt's sons and their sons, the fathers of wives and the rest. According to Dr. Buhler it includes all *bhinnagotra* sapindas, bandhus or *bandhavas* of the later terminology. Baudh., I, V, 11, 27 (referring to all persons who are not sapindas including bandhus or *bandhavas*) The Arthasastra of Kautilya differentiates between *matrubandhus* and *sagotras* Arthas., III, 6, 33 (Jolly's edn.).

(*b*[1]) Mit., on Yajn., III, 24, (Setlur edn., 1169); Naraharayya's trans., 56.

(*c*) Manu, IX, 136.

comments of Medhatithi and Kulluka (*d*) differ from those of Govindaraja but the text itself is fairly clear and the son of an appointed daughter had already been dealt with by Manu in the preceding verses IX, 131-135 The Mitakshara, the Dayabhaga, the Parasara Madhaviya and the Viramitrodaya expressly rest the right of the daughter's son to inheritance on the above text of Manu as well as a text of Vishnu (*e*). The text of Vishnu is. "If a man leaves neither a son, nor a son's son, nor issue, the daughter's son shall take the wealth. For, in regard to the right to performance of obsequies of ancestors. son's sons and daughter's sons are admitted as rightfully entitled" (*f*) The daughter's son is not expressly mentioned in the list of heirs by Yajnavalkya. The Mitakshara says that by the import of the particle 'also', the daughter's son succeeds to the estate There can be no doubt about this tradition; for, Manu, Vishnu and Brihaspati clearly recognise the daughter's son though Brihaspati seems uncertain about his place (*g*).

Other cognates.

§ 479. Cognates other than the daughter's son do not however appear to have been recognised as heirs till the time of Yajnavalkya (*h*) Owing to the stronger claims of the agnatic family in the earlier times and the wider ambit of the *gotra* kinship which, according to Manu (*i*), was co-extensive with the tradition of a common origin and a common family name, cognates could have no effective place and were therefore probably not recognised as heirs. No reliable data as to when exactly the bandhus were introduced into the scheme of inheritance are available, but it is

(*d*) Visvarupa understands by 'daughters' only the appointed daughter's (Trivandrum ed., 251) According to the Dayabhaga, Visvarupa mentions the daughter's son Daya Bh., XI, n. 29

(*e*) Mit., II, 2, 5, 6, Daya Bh., XI, n Madhaviya (Burnell) § 37, Viramit., III, 3 (Setlur's ed) 412.

(*f*) The Smritichandrika (XI, 2 15), the Vyavahara Mayukha (IV, 8, 13), and the Madana Parijata (Calcutta edn.672) rely on the text of Vishnu cited above Dr Jolly gives a different reading (XV, 47)- - 'No difference is made in this world between the son of a son and the son of a daughter, for even a daughter's son works the salvation of a childless man just like a son's son' The Mithila authority Vivadachintamani apparently rests the daughter's son's right on the text of Manu, IX, 132 which is understood by others to refer to the son of an appointed daughter Jolly, T.L L., 201-202.

(*g*) Manu, IX, 136, Vishnu, XV, 47, Brih, XXV, 58, 66.

(*h*) The attempt of some of the later commentators, Sarvajna Narayana and Raghavananda, to include cognates along with samanodakas under the term *sakulya* is anachronistic and opposed to the preponderance of authority and to etymology. Jha, H L.S, II, 510.

(*i*) Manu, V, 60.

reasonably certain that Yajnavalkya recognised them as heirs. In this he was followed by Narada and Brihaspati. Nearly two centuries before Vijnanesvara, Visvarupa, commenting upon the text of Yajnavalkya says that the term 'bandhu' refers to the maternal uncle and the rest. When the need was felt for giving practical recognition to the nearer ties of affection and blood, the remoter kindred or samanodakas were limited to fourteen degrees on the authority of a text of Brihat Manu (*j*). Vijnanesvara finally established the cognates' rights of succession on a clear basis by redefining the term 'sapinda' so as to cover them. He went a step further in systematizing the rules of succession. Without naming the author, he quotes a text which divides bandhus into *atmabandhus, pitrubandhus* and *matrubandhus* (*k*). The text itself is ascribed by Madhava to Baudhayana and by the Madanaparijata to Vriddha Satatapa (*l*). It must evidently have been a well-known classification of bandhus for the purpose of determining the order of persons competent to perform the obsequies, in default of nearer kinsmen (*m*). Vijnanesvara adopted the above classification of bandhus for purposes of succession also. Including bandhus in his new definition of sapinda and limiting the relationship to five degrees as laid down by Yajnavalkya, Vijnanesvara renamed bandhus or *bandhavas* as *bhinnagotra* sapindas (*n*).

Limitation of samanodaka.

From the above discussion it is plain that (1) agnates were preferred to cognates by reason of the preference of the male over the female line, a preference based upon ancient standards of propinquity; (2) that the terms 'sapinda' and 'samanodaka' which were applied to different degrees of agnatic kindred for purposes of impurity and funeral rites came to be employed in connection with inheritance also by reason of their greater precision thus superseding the vaguer terms like *'dayada', 'sakulya', 'sagotra', 'gotraja', or 'bandhu'*; (3) that cognates were recognised as heirs from the time of Yajnavalkyasmriti and were known as bandhus and (4) that sapindas of a man came to include his bandhus also who

Summary.

(*j*) Mit., II, 5, 6; see *Atmaram Abhimanji* v. *Baji Rao* (1935) 62 I.A., 139, 144, 68 M.L.J., 673, 39 C.W.N., 646.

(*k*) Mit., II, vi, 1.

(*l*) Burnell's Dayavibhaga § 41; Madana Parijata (Calcutta edn.). 674; Balambhatta on Mit., II, vi, 1 (Setlur's edn.), 788.

(*m*) Nirnayasindhu quoted in Sarvadhikari, 2nd ed., 95, 89.

(*n*) *Ramchandra Martand* v. *Vinayak* (1914) 41 I.A., 290, 306, 42 Cal., 384.

were known from Vijnanesvara's time as *bhinnagotra* sapindas.

The two systems of Inheritance.

§ 480. From the rules contained in the Smritis the Mitakshara and the Dayabhaga have established two separate systems of inheritance. While there is agreement between the two on many points, there is a remarkable divergence of opinion on others. There are two fundamental differences between the two systems. One relates to the ruling canon in determining the order of succession: in the Mitakshara, it is propinquity; in the Dayabhaga, it is religious efficacy. Another radical distinction is that there is only one course of succession in the Dayabhaga whether the family is divided or undivided and whether the property is ancestral or self-acquired. In the Mitakshara, property which is joint will follow one, and property which is separate will follow another, course of succession (*o*). The former is based on right by birth and unobstructed inheritance and the latter is termed obstructed inheritance.

The reason for the Mitakshara giving no rules of inheritance as regards the interest of a person when he dies undivided is clear enough. The Viramitrodaya points out that when a man dies unseparated, he has no specific share at all which can be taken by his heir (*p*).

Yajnavalkya's text on Inheritance.

§ 481. The text of Yajnavalkya is the foundation of the whole law of inheritance in the Mitakshara jurisdictions. It runs as follows:—"The wife, the daughters also, both parents, brothers and likewise their sons, *gotrajas* (agnates), bandhus (cognates), a pupil and a fellow-student. Of these, on failure of the preceding, the next following is heir to the estate of one who has departed for heaven, leaving no *putra*. This will extend to all (males whether or not belonging to the four)

(*o*) *Chowdhury Chintamun* v. *Mt. Nowlukho Kunwari* (1875) 2 I.A., 263, 1 Cal., 153.

(*p*) Dr. Jolly queries the opinion of Vijnanesvara on the matter, namely, that the text of Yajnavalkya refers only to the estate of one separated, T.L.L., 197-198. Criticising Jimutavahana, the Viramitrodaya states the true legal principle: "Since when the husband dies unseparated, he had no specific share at all, then what will the wife take? And if reunited, then although his share had been specified, it was lost by reason of the accrual of a common right over again. Nor can it be argued that there is certainly his undefined share although it is the subject of a common right. For although this be admitted, still on the death of one by whose relation the right became common, the succession of him alone whose right subsists is proper, but not the supposition of the accrual of another's right". Viramit., III, 1, 13 (Setlur's ed.), p. 398.

classes" (*q*). It will be observed that this applies only to cases where a man dies leaving no male issue (*r*). Though it is usual to speak of male issue taking as heirs a man's property, it is not strictly correct; for, where a man dies leaving a son, grandson and great-grandson, the inheritance as to them is unobstructed whether it is the ancestral property or the separate property of the father. In both cases, they take it by reason of their right by birth. Where it is ancestral, their right is equal and effective even during the father's lifetime; where it is not ancestral, it is an unequal or a subordinate right but is effective for purposes of succession in the absence of a disposition by the father. In other words, they take strictly speaking, in all cases, by survivorship (*s*). Accordingly the text of Yajnavalkya confines inheritance to the estate of one who leaves no male issue. The Mitakshara law of inheritance therefore applies exclusively to property which was held in absolute severalty by its last owner (*t*).

Applies only to separate property

Such property will include (1) self-acquisitions of the last male owner; (2) property inherited by him from his collaterals, mother or maternal grandfather (*u*); (3) property which was allotted to him for his share at a partition with his coparceners and (4) property which vested in him exclusively as the last surviving coparcener (*v*).

The text of Yajnavalkya is interpreted by the Mitakshara as applying to the whole estate of a man who, being separated from his coheirs and not being reunited with them subsequently, dies without leaving any male issue. The Mitakshara lays down no rules of inheritance as regards the separate property of one who dies as an undivided member of a family. But it was finally settled by the Judicial Com-

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(*q*) Yajn., II, 135-136; Mandlik, 220-222; Mit., II, 1, 2.

(*r*) The word '*putra*' stands for a son, grandson and great-grandson. Viramit. (Setlur, II, 390). Balambhatta (Setlur's edn., 778); *Buddha Singh* v. *Lallu Singh* (1915) 42 I.A., 208, 37 All., 604.

(*s*) *Venkayamma* v. *Venkatramanayamma* (1902) 29 I.A., 156, 165, 25 Mad., 678, *Murtuza Husain Khan* v. *Md. Yasin Ali Khan* (1916) 43 I.A., 269, 281, 38 All., 552; *Venkateswara Pattar* v. *Mankayammal* (1935) 69 M.L.J., 410, 416. See *ante* §§ 269, 271.

(*t*) Now under the Act the widow gets the share of a son even when a man dies leaving male issue.

(*u*) Except where he is one of two undivided brothers taking the property of a maternal grandfather and holding it along with other coparcenary property *Venkayamma* v. *Venkatramanayamma* (1902) 29 I.A., 156, 25 Mad., 678. See § 537. A father or grandfather takes his son's or grandson's property as obstructed heritage.

(*v*) As to what is separate property, see *ante* § 285.

Shivaganga case on its scope.

mittee in the *Shivaganga* case that the course of succession stated in the Mitakshara should, on principle, be extended to the separate property of a man when he dies leaving no male issue. According to the Mitakshara law therefore, there need not be unity of heirship. The law of succession follows the nature of the property and of the interest in it and the course of succession would not be the same for the family and the separate estate (*w*).

Male heir only, stock of descent.

§ 482. The heir of the last male owner is the person who is entitled to the property, whether he takes it at once, or after the interposition of another estate (*x*). If the next heir to the property of a male is himself a male, then he becomes the head of the family, and holds the property either in severalty or in coparcenary as the case may be. At his death the devolution of the property is traced from him. But if the property of a male descends to a female, she does not, except in Bombay, become a fresh stock of descent. At her death it passes not to her heirs, but to the heirs of the last male holder (*y*). And if that heir is also a female, at her death, it reverts again to the heir of the same male, until it ultimately falls upon a male who can himself become the starting point for a fresh line of inheritance.

Right of representation.

§ 483. The distinction between obstructed and unobstructed heritage is that while in the former, the nearer excludes the more remote, in the latter, the doctrine of representation excludes this rule of preference, for instance. the son of a predeceased son takes along with his uncles (*z*). This doctrine applies equally to coparcenary property and to the separate property of the father (*a*). Except in the case of sons, grandsons and great-grandsons, the right of representation does not apply and Manu's rule of proximity alone

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(*w*) *Katama Nachiar* v. *Raja of Shivaganga* (1864) 9 M.I.A., 539, 607-610, *Chowdhry Chintamani* v. *Mt. Nowlukho Konwari* (1875) 2 I.A., 263, 1 Cal., 153.

(*x*) "The rule of Hindu law is that in the case of inheritance, the person to succeed must be the heir of the last full owner," *Mt. Bhoobun Moyee* v. *Ramkishore* (1865) 10 M.I.A., 279, 311, a Dayabhaga case. The rule is the same in both the systems.

(*y*) *Moniram Kolita* v *Kerri Kolitani* (1880) 7 I.A., 115, 5 Cal., 776, 789, *Lakshmi Ammal* v. *Anantharama* [1937] Mad., 948 F.B.

(*z*) *Muttu Vaduganatha Thevar* v *Periasami* (1893) 16 Mad., 11, 15, affirmed by the Privy Council in (1896) 23 I.A., 128, 19 Mad., 451. See *ante* § 421, *post* § 526 As to the Dayabhaga rule, see D K.S., I, 1, 3-4

(*a*) Viramitrodaya, II, i, 23-a, Setlur's ed., II, 341-3, *Marudayi* v *Doraisami* (1907) 30 Mad., 348; *Gangadhar* v. *Ibrahim* (1923) 47 Bom., 556.

will apply (*b*). This doctrine involves the further consequence that where there are several grandsons by different sons, they take *per stirpes* and not *per capita* (*c*). All the other heirs take *per capita*, for example, daughter's sons, brother's sons, uncle's sons, or sister's sons, who being in the same degree of relationship are entitled to take as coheirs (*d*). Succession *per capita* is the rule, and succession *per stirpes* the exception, in each case based on a text (*e*).

Succession never in abeyance.

§ 484. The right of succession under Hindu law is a right which vests immediately on the death of the owner of the property (*f*). It cannot in any circumstances remain in abeyance in expectation of the birth of a preferable heir, not conceived at the time of the owner's death (*g*). A son or daughter who is in the mother's womb at the time of the death is, in contemplation of law, actually existing, and will, on his or her birth, divest the estate of any person with a title inferior to his or her own, who has taken in the meantime (*h*). So, in certain circumstances, will a son who is adopted after the death (*i*). But in no other case will an estate be divested by the subsequent birth of a person who would have been a preferable heir if he had been alive at the time of the death (*j*). And the rightful heir is the person who is

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(*b*) *Sher Singh* v *Basdeo Singh* (1928) 50 All., 904 (grand-nephew does not represent nephew); *Mt. Lorandi* v. *Mt. Nihal Devi* (1925) 6 Lah., 124, (female heirs—no representation).

(*c*) Jolly, T.L.L., 167-168.

(*d*) *Narsappa* v. *Bhaimappa* (1921) 45 Bom., 296 (first cousins).

(*e*) *Nagesh* v. *Gururao* (1893) 17 Bom., 303, 305. As to stridhana succession, grandchildren inheriting to the stridhana of the paternal or maternal grandmother take *per stirpes*, but representation is not complete as grandchildren do not inherit along with the children of the deceased. *Karuppai* v. *Sankaranarayana* (1904) 27 Mad., 300, 308 F.B.; Banerjee, M. & S., 5th ed., 411, 421.

(*f*) Retirement into a religious life, when absolute, amounts to civil death; 1 Stra. H.L., 185; Dig., II, 197; V. Darp., 10.

(*g*) *Nilcomul Lahuri* v. *Jotendro Mohun* (1881) 7 Cal., 178, 188, affd. on appeal (1886) 12 I.A., 137, 12 Cal., 18; *Appu Bhatta* v. *Uma Sundari Amma* (1926) 51 M.L.J., 734, 736.

(*h*) *Tagore* v. *Tagore* 9 B.L.R., 397. Supp. Vol., I.A., 47, 57; *Hira* v. *Buta* (1920) 1 Lah., 128; *Bayava* v. *Parvateva* A.I.R. 1933 Bom., 126, 35 Bom. L.R., 118 (posthumous daughter).

(*i*) *Ante* §§ 196-201.

(*j*) *Bamasoondury* v *Anund* 1 W.R., 353; *Kalidas* v. *Krishan* 2 B.L.R. (F.B.), 103; *Gordandas* v. *Bai Ramcoover* (1901) 26 Bom., 449, 467; *Narasimharazu* v. *Virabhadra Razu* (1894) 17 Mad., 287; *Venkateswara Pattar* v. *Mankayammal* (1935) 69 M.L.J., 410. In the case of unobstructed inheritance, however, it is liable to be divested by the subsequent birth of a preferable heir or coparcener or on the recovery of a disqualified person who but for the disqualification would have been a coparcener. *Krishna* v. *Sami* (1886) 9 Mad., 64, F.B; *Hira* v. *Buta* 1 Lah., 128.

himself the next of kin at that time. No one can claim through or under any other person who has not himself taken. Nor is he disentitled because his ancestor could not have claimed. For instance, in certain circumstances, a daughter's son would be heir, and would transmit the whole estate to his issue. But if he died before his grandfather, his son would never take. And the son of a congenital lunatic or idiot will inherit, though his father could not (*k*).

Propinquity, criterion of heirship from early times.

§ 485. The earlier Smritis contain the clearest indications that the only criterion of heirship is propinquity At the same time they imposed upon the nearest kinsman who took the wealth of the deceased the duty of performing his obsequies. He inherited because he was the nearest of kin to the deceased and he performed the funeral rites for exactly the same reason (*l*). Vishnu lays down, "He who inherits the wealth, presents the funeral oblations to the deceased" (*m*). Another Smriti text which is quoted by Apararka and by Chandeswara says: "He who takes one's property, shall perform the *sraddha* and shall offer the pindas to the three ancestors" (*n*). The great authority of Manu is in favour of this view: "The funeral oblation follows the family name and the estate" (*o*). It is clear therefore that succession to the estate carried with it the obligation to perform all rites which were needed for the repose of the deceased, just as it entailed the duty of discharging his debts (*p*) As Nila-

(*k*) See per Holloway, J, *Chelikani* v *Suraneni* (1866) 6 Mad. H C, 287, 288, *Balkrishna* v *Savitribai* (1879) 3 Bom, 54, and *post* § 602 The same rule will apply to any disqualified person under the Dayabhaga law, the son of a leper or other disqualified person whose disability, in respect of a right to a religious office or trusteeship, is not removed by the Hindu Inheritance (Removal of Disabilities) Act, 1928, could inherit it, though his father could not

(*l*) Dr Sarvadhikari fully agrees with this view, 1st edn, 871

(*m*) Vishnu, XV, 40, Vishnu adds. "Let a son present funeral oblations to his father even though he inherits no property" XV, 43 Vivadaratnakara, p 88. Jolly T L L, 171, L & C, 184

(*n*) Vivadaratnakara, 88 The author of the Vivadaratnakara apparently agrees with the author of the Prakasa "that by the term *sraddha* here is expressed, those *sraddhas* which are offered to the deceased alone" also cited in Dig, II, p 576, Apararka, trans., 21 M.L.J. (Journal), p 316 Jha, H.L S, II, 507.

(*o*) Manu, IX, 142, the comments of Medhatithi, Kulluka, as well as of Vijnanesvara (Mit., I, xi, 31 32) are quite clear on the point. A text of Sankha and Likhita cited in the Vivadaratnakara refers to the partaking of property and pinda, Vivadaratnakara, p. 56; Jha, H.L.S., II, 258. This, says Dr. Jolly, is in accordance with Roman and Greek precedents: T.L.L., 171-172.

(*p*) The due performance of sacrifices was one of the three debts, Manu, V, 35, 36.

kantha points out, "The funeral rites of the deceased as far as the tenth day's rites inclusive, must be performed by whoever takes the wealth, including the king himself" (*q*). As Mr. Colebrooke rightly says, "It is not a maxim of the law that he who performs the obsequies is heir, but that he who succeeds to the property must perform them" (*r*).

In the Smritis.

That propinquity determines the right of heirship is in terms enunciated as a rule of law by Manu, Apastamba and Brihaspati. The rule of Manu in substance amounts to this: "the estate of the deceased goes to the nearest sapinda" (*s*). Apastamba says: "On failure of sons the nearest sapinda takes the inheritance" (*t*). Brihaspati, who is concerned with *Vyavahara* law is decisive: "When there are several *jnatis* (sapindas), *sakulyas* (samanodakas), *bandhavas* (cognates), whosoever of them is the nearest shall take the wealth of him who died leaving no issue" (*u*). The rule as laid down in the above Smritis comes to this: in the absence of specific texts, propinquity is alone the criterion of succession (*v*).

In the Mitakshara.

The rule of propinquity laid down by Manu is accordingly applied by the Mitakshara in cases not provided for by the Smritis to determine the order of succession, as when it prefers the mother to the father, the full blood to the half-blood.

(*q*) V. May., IV, viii, 29 citing Vishnu., X, v, 40. According to a text of Katyayana cited in the Mitakshara: "Heirless property goes to the king, deducting however a subsistence for the females as well as the funeral charges" (II, 1, 27). "The king shall take the property to which there is no heir, save what may be needed for the maintenance of the women and for the sraddha of the deceased", Arthasastra, III, v, 27 (Jolly's edn.), Jha, H.L.S., II, 520.

(*r*) Stra. H.L., 242.

(*s*) Manu, IX, 187; *Buddhasingh* v. *Laltu Singh* (1915) 42 I.A., 208, 217, 37 All., 604, 613; the preceding verse in Manu, IX. 186, defines the term 'sapinda' in terms of the undivided oblations, but does not constitute the *pinda* offering the ground of title. The clause, "the fifth has no connection with them", when he undoubtedly succeeds in due order, is a very clear indication that the verse is concerned only with the definition of 'sapinda' as confined to three degrees, and not with the rights of succession. But a different view is taken by Jimutavahana, XI, vi, 17, 18, whose assumption that in verse IX, 186, Manu treats a son as nearer than a grandson, is contradicted by Manu himself in verse IX, 137; see Kulluka's gloss on IX, 137. And Manu does not rest the sakulya's right on pinda offering.

(*t*) Apas., II, 6, 14, 2.

(*u*) Brih., XXV, 61, 62; cited in V. Mayukha, IV, viii, 19 and in Viramit., III, v, 2 (Setlur ed., 419).

(*v*) Viramit., Setlur's ed., p. 419; Jha, H.L.S., II, 506.

And in dealing with succession among the samanodakas and bandhus (*w*), Vijnanesvara says comprehensively: "Nor is the claim in virtue of propinquity restricted to sapindas; but, on the contrary, it appears from this very text that the rule of propinquity is effectual, without any exception in the case of samanodakas as well as other relatives, when they appear to have a claim to the succession" (*x*).

Other commentators.

Nilakantha works out, in his own way, the principle of propinquity as enunciated by Manu and Brihaspati with reference to the succession of the sister, the paternal grandfather and the half-brother He adds, "all the sapindas and samanodakas shall take in the order of propinquity" (*y*) Nilakantha's application of Manu's text as declaring propinquity to the deceased in the matter of succession to the stridhana is most significant: for there is hardly any question of religious efficacy in that case (*y*[1]). The Vivadaratnakara and the Vivadachintamani cite and follow the rule of propinquity laid down by Manu, Apastamba and Brihaspati and do not refer to religious efficacy as an admissible test in determining succession (*z*). The Madana Parijata, whose author wrote a commentary on the Mitakshara, clearly says that heirship arises by nearness of relation and interprets the text of Manu as laying down that he who among the sapindas by particles of body is the nearest shall take the wealth of the deceased And he extends the same principle to samanodakas and bandhus (*a*). Citing Brihaspati's text, Madhava says, "he who is nearest amongst *bandhavas* takes first" (*b*). The Sarasvati Vilasa treats the text of Manu as 'enjoining' precedence in propinquity (*c*). It adds that the view of the Mitakshara is that the order of succession in Yajnavalkya's text is itself based on the rule of nearer and more remote relationship in order to remove embarrassment when there are several rival claimants (*d*). Balambhatta, the commentator on the Mitakshara compares the order of succession

(*w*) Mit, II, iii, 3, II, iv, 5, II, vi, 2.

(*x*) Mit, II, iii, 4 The word is '*samanodakadi*' It means samanodakas and bandhus

(*y*) V. Mayukha, IV, viii, 19-21

(*y*[1]) V May, IV, x, 28.

(*z*) Vivadaratnakara, XXXIV, 11, 16, 17 (pp. 84, 87), Vivadachintamani, p. 295, *et seq.*

(*a*) Madana Parijata, Cal. edn., 673-4, Setlur's trans., II, 531-2.

(*b*) Parasara Madhaviya, § 41.

(*c*) Sarasvati Vilasa, paras 568-9, 589, 595, 597.

(*d*) *Ibid*, 478. It also states that the order of succession to proprietorship is based on reason alone and is not scriptural, para 477.

with the order of competence to perform *sraddha* rites, and arrives at the conclusion that propinquity depends upon the actual degree of blood-relationship and does not depend upon any other cause such as the competence to offer pindas. In his quaint language, "propinquity is dependent upon numerousness of the parts of the same body" (*e*).

The Smritichandrika differs from the Mitakshara in the definition of sapinda itself and holds that it means connection by funeral offerings (*f*). Its views on the question therefore are of no weight. Almost alone of the Mitakshara authorities, the Viramitrodaya, while fully agreeing with the Mitakshara in its doctrine of sapindaship and in most of its details, differs somewhat on this matter from the Mitakshara. Its opinions on the question are not only opposed to the views of Vijnanesvara but are inconsistent with itself and are neither logical nor clear. For instance, dissenting from the Mitakshara, it prefers the father to the mother and the mother to the father according to their respective merits in each case (*g*). Again, it apparently accepts the Dayabhaga division of sapindas and *sakulyas*, limiting the former to three degrees of kindred (*h*). In that connection it prefers the male issue to the widow on the ground that the former confer the greatest amount of spiritual benefit—a wholly superfluous reason. It says: "Since, in the chapter on Partition of Heritage, the conferring of spiritual benefit is by the term 'therefore' set out as the reason: hence it is indicated that he alone is entitled to get the estate, on whom the estate having devolved conduces to the greatest amount of spiritual benefit of the deceased owner, and that proximity in this way is to be accepted as a general rule and reasonable" (*h*[1]). In other passages, Mitramisra emphasises his view that the capacity for presenting funeral oblations is

Viramitrodaya's views discussed.

(*e*) Sarvadhikari, 2nd edn., 380-381.

(*f*) Smritichandrika, Samskarakanda (Mysore edn), 180. So also Apararka, 21 M L J. (Journal), p. 314; See *Buddha Singh* v. *Laltu Singh* (1915) 42 I.A., 208, 223, 37 All., 604.

(*g*) "Because such propinquity being the standard whereby the succession of brothers and sisters is determined cannot reasonably be taken to be the criterion for the preference of the mother to the father and because propinquity is of no consequence in this case." Viramit., III, iv, 3 (Setlur's edn.), p. 414. And its views on the point have not been accepted.

(*h*) Viramit., III, i, 11 (Setlur's edn.), p. 393.

(*h*[1]) Viramit., III, i, 11, Setlur's ed., 393; cited in *Muthusami* v. *Muthukumaraswami* (1893) 16 Mad., 23, 30; *Jatindra Nath* v. *Nagendra Nath* (1931) 58 I.A., 372, 378.

not alone the criterion (*i*). In a passage dealing with the preference of brothers of full blood to those of half-blood, he lays down citing the texts of Manu and Brihaspati that the greatness of propinquity is alone the criterion of succession in the absence of special provision (*j*). So too, as between the sons of uterine brothers and the sons of half-brothers (*k*). He insists on the same test of proximity in dealing with samanodakas and bandhus (*l*). From his entire discussion, it is abundantly clear that Mitramisra, while supporting the Mitakshara order of succession on the ground of propinquity and authority, is anxious to show that on Jimutavahana's own principles too, the order of Vijnanesvara is fully justified. Occasionally he brings in religious efficacy merely as an additional reason to support the Mitakshara order. In no case does he determine the succession of any heir on the principle of religious efficacy alone or where it is in conflict with propinquity. It is an academical and dialectical point with him for the purpose of countering the views of the Bengal writers and supporting the conclusions of the Mitakshara even on their doctrine. The only place where he admits a departure from the order of proximity according to birth is in connection with the son, grandson and great-grandson whose succession, he says, is based on the authority of texts recognising the right by birth of all the three. Disputing with Jimutavahana on his own ground, he says that "the capacity for presenting funeral oblations is not alone the criterion of the right to heritage, since the younger brothers are entitled to the heritage although they are not competent to offer oblations while there is the elder brother" (*m*). It is the right of representation, not the pinda offering, that in the case of male issue, determines their rights.

Religious principle not the rule of the Mitakshara.

§ 486 The doctrine of religious efficacy, though it is the foundation of the Dayabhaga system as laid down by Jimutavahana, was not therefore the guiding principle of the ancient Smritis as it is certainly not of the Mitakshara system. In the chapters which treat of succession, the Dayabhaga and the Dayakrama-Sangraha appeal to that doctrine at every step, testing the claims of rival heirs by

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(*i*) Viramit., II, i, 23-a, *ib.*, 343.
(*j*) *Ibid.*, III, v, 2, Setlur's edn., p. 419.
(*k*) *Ibid.*, III, vi, 2, *ib.*, p. 420.
(*l*) *Ibid.*, III, vii, 4, 5, *ib.*, p. 424.
(*m*) *Ibid*, II, i, 23-a, (Setlur's edn., p. 343).

the numbers and nature of their respective offerings. The Mitakshara never once alludes to such a test (*n*).

§ 487. Much of the misconception in the earlier period of the administration of Hindu law has been due to the fact that throughout the Mitakshara, Mr. Colebrooke invariably translates the word 'sapinda' by the phrase "connected by funeral oblations" (*o*), and the word 'samanodaka' by the phrase "connected by libations of water"—terms which were used by Vijnanesvara purely as technical terms in the portion of his work dealing with inheritance. In dealing with marriage he had already in *Acharakanda* defined sapinda-relationship both affirmatively and negatively so as to exclude the idea of religious efficacy. He expressly stated there that the term 'sapinda' must be understood in the sense of blood-relationship throughout his work wherever it occurs(*p*). Dealing with '*sraddhas*', he recurs to the matter and states emphatically that sapinda-relationship does not depend upon the relationship of the deceased through the offering of pindas and his getting it or not, but that it depends upon having the same particles of one's body (*q*). Vijnanesvara's new definition was unmistakably intended not only to include bandhus or cognates but to divest the word 'sapinda' of its religious meaning which it had brought with it from the sphere of religion and ritual into the sphere of law. This was in keeping with the new orientation which he gave to *vyavahara* or civil law by treating property and inheritance as purely secular matters. As the crucial text of Yajnavalkya was specially expressed to be applicable to all men and all classes (*r*), he rested the rules of law on purely practical and rational considerations. Combating the view that the wealth of a regenerate man is designed for religious uses exclusively, Vijnanesvara says: "If that were so, other purposes of opulence and gratification, which are to be effected by means of wealth, must remain unaccomplished: and if that be the case, there is an inconsistency in the following passages of Yajnavalkya, Gautama and

Mitakshara orientation deliberate.

(*n*) This passage is cited with approval by the Judicial Committee in *Balasubrahmanya* v. *Subbayya* (1938) 65 I.A., 93, 102, A.I.R. 1938 P.C., 34.

(*o*) Jolly, T.L.L., 168; *Buddha Singh* v. *Laltu Singh* (1915) 42 I.A., 208, 217, 37 All., 604.

(*p*) *Ante* § 108.

(*q*) Mit. on Yajn., I, 253-4; Vidyarnava's trans., p. 340.

(*r*) Yaj., II, 135-136.

Manu, "Neglect not religious duty, wealth or pleasure in the proper season" (*s*).

The significance of the change which Vijnanesvara effected is apparent when his views are contrasted with those which were current in his time and which were vigorously reasserted by Jimutavahana. According to the latter, wealth is designed only for religious purposes and rules of inheritance must subserve them. "Two motives are indeed declared for the acquisition of wealth; one temporal enjoyment, the other the spiritual benefit of alms, and so forth Now, since the acquirer is dead and cannot have temporal enjoyment, it is right that the wealth should be applied to his spiritual benefit" (*t*).

Agnates exclude cognates.

§ 488. This preference of consanguinity, or family relationship, to efficacy of religious offerings, is further shown by the rule laid down in the Mitakshara, and the works which follow its authority, according to which the bandhus, or relations through a female, never take until the direct male line, down to, and including the last samanodaka has been exhausted (*u*). This is consistent with the earlier ideas of propinquity preferring the male line to a descent through females, but it is vitally inconsistent with the doctrine of religious efficacy, since the samanodakas offer no pindas to the ancestors of the deceased while some of the bandhus who are postponed to them are not only sapindas, but very close sapindas and offer oblations to the ancestors of the deceased such as the sister's son, paternal aunt's son and father's paternal aunt's son and the maternal uncle. The libations of water by the samanodakas are graphically described by Medhatithi (*v*) and their efficacy from the religious point of view is of the most negligible description

Propinquity, not offerings, the test of heirship.

(*s*) Mit., II, i, 22.

(*t*) Daya Bh, XI, 6, 13, XI, 6, 31.

(*u*) Narada, XIII, § 51: Mitakshara, II, 5 and 6, Vivada Chintamani, 297-299, V May, IV, 8, § 22. *Rutcheputty* v *Rajunder* (1839) 2 M.I.A, 132; *Srimuti Dibeah* v. *Rany Koond* (1870) 4 M I.A., 292, 7 W.R, 44; *Bhyah Ram* v. *Bhyah Ugur* (1870) 13 M.I A, 373, 14 W R, 1, *Thakoor Jeebnath* v. *Court of Wards* (1875) 2 I A, 163, 23 W R., 409; *Narain Kuar* v *Chandi Din* (1887) 9 All, 467; *affd* in Privy Council, (1892) 14 All., 366. See *Ram Baran* v. *Kamla Prasad* 32 All, 594, where a *samanodaka* of the 14th degree was preferred to a sister's son.

(*v*) Mit. on Yajn., III, 3, 5: "In the case of persons within samanodaka relationship, all that people should do is to enter a river or some other water-reservoir till the water reaches up to the navel. —they should face south and having offered water with the right hand upward without looking back, should return home". Jha, Medhatithi Bhashya, Vol. III, part I, 77.

Again, Jimutavahana prefers the father to the mother, because he presents two oblations in which the deceased son participates, while the mother presents none (*w*). Vijnanesvara takes exactly the opposite view on the ground that 'her propinquity is greatest' (*x*). To take yet another instance, he agrees with Jimutavahana in preferring the whole blood, among brothers, to the half. But he rests his preference on the same text "to the nearest *sapinda* etc.," saying, very truly, that "those of the half-blood are remote through the difference of mothers"; while the Dayabhaga grounds it on the religious principle, that the brother of the whole-blood offers twice as many oblations in which the deceased participates, as the brother of the half-blood (*y*). So the right of a daughter to succeed is rested by Jimutavahana upon the funeral oblations which may be hoped for from her son, and the exclusion of widowed, or barren, or sonless daughters, is the logical result (*z*). The Mitakshara follows Brihaspati in basing her claim upon simple consanguinity. As a son, so does the daughter of a man proceed from his several limbs. How then should any other person take her father's wealth? And he excludes neither the widowed nor the barren daughter, but prefers one to another, according as she is unmarried or married, poor or rich, that is, according as she has the best natural claim to be provided for (*a*).

Duty of daughter's son optional.

The right of a daughter's son when he succeeds on the death of the widow and daughter certainly rests far more upon consanguinity than on religious efficacy. The preference of the daughter's son to agnates, whose claims based upon pinda offerings are stronger, can only be explained by propinquity. No doubt according to Manu, Vishnu and Yajnavalkya, a daughter's son should perform *sraddha* for the maternal grandfather (*b*). But from the way Vishnu expresses it, the rule appears to be recommendatory (*c*). According to the Mitakshara, the *sraddha* of the maternal grandfather is not obligatory but is only optional except when the mother's *sapindikarana* has taken place

(*w*) D. Bh., XI, 3, § 3.

(*x*) Mit., II, iii, §§ 3, 4.

(*y*) Mit., II, iv, § 5; D. Bh., XI, v, 12.

(*z*) D. Bh., XI, ii, 1-3, 17.

(*a*) Mit., II, ii, 2-4; Viramit., III, iii, pp. 412-3.

(*b*) Manu, IX, 13, Vishnu, LXXV, 7; Yajn., I, 228-243.

(*c*) Vishnu, *ib.*; of course where on the maternal grandfather's death, the daughter's son performs his first obsequies and *sapindikarana*, he would, in practice, perform the annual *sraddhas* as well.

with the maternal grandfather (*d*). This latter practice appears to be obsolete. Dr. Sarvadhikari says that sons are legally bound to perform *parvana* rites in honour of their paternal ancestors and that the daughter's son is not legally, but morally, bound to offer *sraddhas* to his maternal ancestors (*e*). It would be more correct to say that the sons are under a religious obligation to perform them and that their failure would entail sin. It is wholly optional with the daughter's son who would incur no sin by his failure to perform the *sraddha* but who would earn merit if he did it (*f*). Dealing with the obsequial rites of a deceased person, the Mitakshara is clear that after the *sapandikarana*, all the annual and *parvana sraddhas* should be done by the son alone as an obligatory duty; for persons other than the sons, the duty is not obligatory (*g*).

Parvana Sraddha not a test.

§ 489. Neither the assumption that every bandhu or sapinda is bound to offer *parvana sraddhas* or tri-ancestral rites to the paternal ancestors of the deceased nor the assumption that the *parvana sraddha* has to be or is performed by the male issue, whether aurasa or adopted, in all parts of India and in all cases as an obligatory rite appears to be correct (*h*). Therefore the foundation for the view that the deceased participates in the oblations made to his three immediate paternal or maternal ancestors, when they happen to be the maternal or paternal ancestors of the bandhu claimant, is far too slender to support the theory of religious efficacy. No doubt for the purposes of the application of that theory it would make no difference whether a man in fact

(*d*) Mit on Yajn., I, 243 (Vidyarnava's trans., 327, 347) According to the Sarasvativilasa, "Laxmidara long ago pointed out the differences on this matter between the schools. But Vijnanayogi and others say that the conjoined *sraddha* of the maternal grandfather is optional" (para 707, p. 138).

(*e*) Sarvadhikari, 2nd edn., p. 664.

(*f*) Mit. on Yajn., I, 228, 243 (Vidyarnava's trans., pp. 327, 347). See the whole question discussed in Dr. Bhattacharya's Hindu Law, 2nd ed., p. 488

(*g*) Mit., on Yajn., I, 255, Vidyarnava's trans., p. 350, Vishnu says that the *sraddhas* addressed to uncles, brothers, etc., must be performed without mantras, Vishnu, LXXV, 7, Jolly, T L L, 169

(*h*) Dr. Jogendranath Bhattacharya says: "As a *sraddh*, the *Parvana* is not of much importance . . . Practically, the *Parvana sraddhas* are very seldom celebrated even by the most pious Hindus" (H.L., 2nd ed., p. 488) What he says is probably true of Bengal, but it is performed in the *parvana* form in the South, (Vaidyanatha Dikshitiyam, Grantha edn, 338 9) The conflicting usages in the different parts of India are set out in the Mitakshara It is apparently optional with a man to perform *sraddha* in either the *parvana* or the *ekoddishta* form according to family usage. (Vidyarnava's trans., p. 358) See also Sarkar, H.L., 7th edn., 629.

performed *sraddhas* or not, if he was under a religious duty (h^1). But in order that it may have validity it would certainly be necessary that a man should be under an imperative religious duty in all cases to offer the tri-ancestral *sraddha*, in other words, to make the pinda offerings to his three paternal and maternal ancestors. If then the duty is not a uniform rule in the books and is at best only optional and usage is various, no general principle can be deduced from that which is not a universal injunction. Jimutavahana was however perfectly justified on his own premises, namely that sapinda-relationship meant *only* connection by pinda offering and that *the wealth of a deceased person must be devoted to his spiritual benefit*, in evolving rules of succession on the basis of the *parvana-sraddha* offerings to ancestors, whether he wished to make them obligatory or whether at the time he wrote his work, they were in his school, a common customary observance (i). But the express ruling in the Mitakshara on the *sraddha* rites that sapinda relationship with the deceased is wholly independent of his being benefited by the pindas or not, is decisive and is consistent only with the conclusion that propinquity must be judged without reference to the grades, number or quality of the funeral offerings (j).

Propinquity among bandhus.

§ 490. The Mitakshara not only expressly states the principle of propinquity in connection with bandhus, but makes it quite clear that their enumeration and classification are independent of any capacity to confer spiritual benefit on the deceased. The Mitakshara enumerates nine bandhus: (A) *Atmabandhus*: (1) Paternal aunt's son; (2) Maternal aunt's son; (3) Maternal uncle's son; (B) *Pitrubandhus*: (4) Father's paternal aunt's son; (5) Father's maternal aunt's son; (6) Father's maternal uncle's son; (C) *Matrubandhus*: (7) Mother's paternal aunt's son; (8) Mother's maternal aunt's son, and (9) Mother's maternal uncle's son (k). Of these, on the principle of religious efficacy, the Dayabhaga recognises only (1), (2), (3), (4) and (7) as bandhus and excludes the remaining four. The accompanying diagrams will show that these four bandhus, namely, the father's maternal aunt's son, father's maternal uncle's son, mother's maternal aunt's son and the mother's maternal

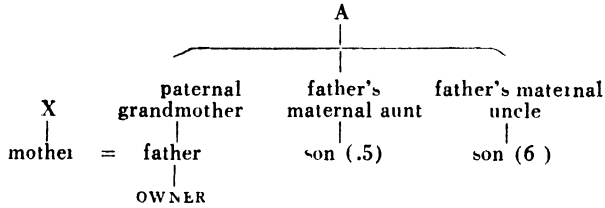
(h^1) *Jatindra Nath* v. *Nagendra Nath* (1931) 58 I.A., 372, 379, 59 Cal., 576.

(i) *Guru Gobind Shaha Mondal* v. *Anand Lal Ghose* (1870) Beng. L.R., 15 F.B.

(j) Mit., on Yajn., I, 254; Vidyarnava's trans., 340.

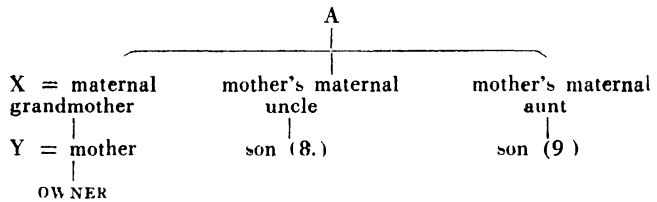
(k) Mit., II, vi, 1-2.

uncle's son are not bound to offer pindas to any ancestor to whom the owner was bound to offer (k^1).



Cognates through father's mother.

Here it will be seen that the sons of the father's maternal aunt, and of the father's maternal uncle, that is, the father's cognate kindred on his mother's side, are only connected with the owner through his paternal grandmother. Now, neither of these persons presents offerings to anyone to whom the owner presents them. Their offerings are presented to A and his ancestors. Those of the owner are presented to his father's line, and to his mother's line, that is, the line of X. Consequently, their offerings are neither shared in by the owner, nor do they operate in discharge of any duty which he is bound to perform. Similarly, the sons of the mother's maternal uncle and aunt, that is the mother's cognate



kindred, on *her* mother's side are only connected with the owner through his maternal grandmother. The same observation as before applies to them. Their offerings are presented to A and his line. Those of the owner are presented to the lines of Y and X, that is, to his own male ancestors. and those of his mother. Here again there is no conceivable community of religious benefit. But on Vijnanesvara's principles, the whole scheme is thoroughly intelligible. The first of the three classes contains the owner's first cousins; the second contains his father's first

Cognates through mother's mother.

(k^1) Dr. Sarvadhikari says (p. 746) (1st edn.) "We at once admit that the father's and the mother's bandhus could not possibly be brought within any system which depends upon religious merits accruing from parvana rites alone. But they could surely be brought within a system which lays down that any benefit whatsoever is a sufficient title to inherit." He suggests that these persons are competent to perform the *ekoddhishta* or individual rites of the deceased. But so are strangers, such as a pupil, a friend or the king But the whole point that is missed is that they were not considered by Jimutavahana himself as persons conferring any spiritual benefit.

cousins, and the third contains his mother's first cousins. All of them are postponed to the samanodakas, because they are connected through a female, and are therefore members of a different family from that of the owner. But when they are admitted, they are brought in upon natural principles (*l*). The Bombay and Madras authorities give full effect to them as they include under the term 'bandhu' females who can make no offerings at all such as the daughters of a brother or of a sister.

Religious efficacy not the measure of propinquity.

§ 491. The Mitakshara order of succession amongst bandhus is itself conclusive against religious efficacy being a measure of propinquity. For instance, (1) it prefers the father's maternal uncle's son and the father's maternal aunt's son as *pitrubandhus* to the mother's paternal aunt's son who is a *matrubandhu*. While the latter offers *pindas* to the maternal ancestors of the deceased, the former offer none either to the paternal or the maternal ancestors of the deceased. (2) It prefers the maternal uncle, the maternal uncle's son and the maternal aunt's son as *atmabandhus* to the father's paternal aunt's son who is a *pitrubandhu*. While the latter offers pinda to the paternal ancestor of the deceased, the former offer them only to the maternal ancestors, which are admittedly of inferior religious efficacy. (3) Again, it prefers, as an *atmabandhu*, the paternal aunt's son's son who offers no *pindas* either to the paternal or the maternal ancestors of the deceased to the father's paternal aunt's son (*pitrubandhu*) and the mother's paternal aunt's son (*matrubandhu*) who offer pindas respectively to one paternal ancestor and to two maternal ancestors of the deceased.

No concordance between right to inherit and obsequial duty.

Lastly, it should be observed that the order of those competent to perform *sraddhas* is substantially different from the order of those entitled to succeed. For instance, in the Mitakshara school, in the matter of sraddhas the brother and the brother's son have precedence over parents; the father is preferred to the mother; the daughter-in-law, sister and sister's son are preferred to the sapindas and samanodakas, and the married daughter to the unmarried daughter (*m*).

(*l*) The Viramitrodaya distinctly states that the cognates come in the above order "by reason of greater propinquity". III, vii, 5 (Setlur's edn., 424).

(*m*) Nirnayasindhu, Sarvadhikari, 2nd edn., pp. 96-99; Balambhatta, *ib.*, pp. 380-1; for the order in Benares school, see *ib.*, p. 88; Sraddha Mayukha (Gharpure's edn., 20-25); a similar order is given for Southern India in Vaidyanatha Dikshitiyam (Kumbakonam edn.), 575; for the order in the Bengal school, see Sarvadhikari, 2nd edn., 92-94; Bhattacharya, H.L., 2nd edn., 657-658. See Appx., I-B.

Conclusion.

§ 492. The conclusion therefore is irresistible that the Mitakshara does not admit religious efficacy either as a basis of heirship or as a measure of propinquity. The rules governing the right to perform *sraddhas* or the offering of pindas, though in part determined by propinquity are also in part influenced by different considerations. Religious efficacy as deduced from these rules can therefore furnish no safe or satisfactory test as regards the order of succession. When Vijnanesvara has taken such great pains by his elaborate exposition of sapindaship to get rid of the doctrine of religious efficacy in the matter of succession, the re-introduction of that principle for ascertaining the heir in any case not already determined by the commentators would probably lead to uncertainties and anomalies in the law of succession.

Full blood preferred to half-blood.

§ 493. The preference of the whole to the half-blood is recognised in the Mitakshara law of succession which rests it on the greater propinquity of the one over the other. It applies in the succession not only of brothers but of all classes of heirs, such as sapindas, samanodakas, and bandhus. The preference is however confined to sapindas of the same degree of descent from the common ancestor (*n*). Amongst such sapindas those who are descended from the same mother as the propositus are nearer in propinquity than those descended from a different mother (*n*[1]); for instance, a maternal uncle of the half-blood is postponed to a maternal uncle of the full blood (*o*); a paternal uncle of half-blood is preferred to sons of uncles of full blood (*p*); a father's half-sister's son is preferred to mother's full sister's son (*q*); a father's brother of whole blood is preferred to a father's brother of the half-blood (*r*). Hindu law recognises no difference between the full blood and the half-blood except in a competition *inter se* (*s*). In *Jatindra Nath Roy* v. *Nagendra Nath Roy*, the Judicial Committee approved of

(*n*) *Muthuswami* v. *Muthukumaraswami* (1896) 23 I.A., 83, 19 Mad., 405, *Suba Singh* v *Sarfaraz Kunwar* (1896) 19 All., 215, F.B.; *Ganga Sahai* v. *Kesri* (1915) 42 I.A., 177, 37 All., 545; *Jatindra* v. *Nagendra* (1931) 58 I.A., 372, 59 Cal., 576; *Garuddas* v. *Laldas* (1933) 60 I.A., 189 overruling *Shanker* v. *Kashinath* (1926) 51 Bom., 194; *Vithal* v. *Ram Rao* (1899) 24 Bom., 317 and *Samat* v. *Amra* (1881) 6 Bom., 394; *Sham Singh* v. *Kishen Sahai* (1907) 6 C.L.J., 190 (a Mitakshara case), *Ardhanari* v. *Ramaswami* (1913) 25 M.L.J., 8; *Nachiappa Gounden* v. *Rangasami Gounden* (1915) 28 M.L.J., 1 F.B.

(*n*[1]) (1896) 19 All., 215, 232 F.B.

(*o*) (1896) 23 I A , 83, 19 Mad , 405 *supra* affg (1893) 16 Mad.. 23.

(*p*) (1915) 42 I.A., 177, 37 All., 545 *supra.*

(*q*) (1931) 53 I.A., 372, 59 Cal., 576 *supra* affg. (1927) 55 Cal., 1 ¶55.

(*r*) (1933) 60 I.A., 189, 64 M.L.J., 660, 37 C.W.N., 637.

(*s*) See cases cited in note (*n*) *supra.*

the decision in *Bhola Nath* v. *Rakhal Dass*, a Dayabhaga case, that the sons of a step-sister share equally with the sons of a full sister and observed that the rule was equally applicable to Mitakshara succession (s^1). But the distinction between full blood and half-blood is not confined to sapindas tracing descent from a male ancestor in the male line. *Bhola Nath's* case merely rests on a Dayabhaga authority (s^2).

Women's Rights of Succession.

§ 494. It has often been stated that women were, as a rule, excluded from inheritance in the earliest times. Certainly, the rights of women as heirs have been the subject of controversy till the age of the commentators. Undue importance has been attached to the omission in the Smritis to name all female relations as heirs for we find the rules of inheritance themselves were very scanty. While in some respects the position of women particularly that of the daughter, the wife and the mother, was high, passages derogatory to women scattered in the earliest literature have been generally taken to spell the inferior status of women (t). On the other hand numerous laudatory references to women are also to be found and must be set against the former. "The father protects a woman in her childhood, husband during her youth, her son in old age; a woman is never fit for independence" (u). This obviously has no bearing on women's rights of succession. One or two obscure references in the Vedas are often relied upon not only by modern writers but by some commentators to support the view that women are in general incompetent to inherit. Baudhayana cites a text of the Veda, 'Women are considered to be destitute of strength and of a portion' (v). Madhava explains the Vedic dictum as meaning only that the wife does not get a share of

In Smritis.

(s^1) (1931) 58 I.A., 372, 59 Cal., 576 approving (1884) 11 Cal., 69; *Shashi Bhushan* v. *Rajendra* (1913) 40 Cal., 82.

(s^2) The dictum in *Shankar* v. *Raghoba* A.I.R. 1938 Nag., 97, 100 preferring a full sister's son to a half-sister's son is opposed to the observation in *Jatindra's* case, as also the obiter dictum in *Krishnabihari* v. *Sarojinee* (1932) 60 Cal., 1061, that when an heir is named, it cannot include both whole blood and half-blood.

(t) Jolly, T.L.L., 192, 193.

(u) Manu, V, 148, IX, 3; Baudh., II, 2, 3, 44-46; Yajn., I, 85; Nar., XIII, 31; Vishnu, XXV, 12.

(v) Taittiriya Samhita, VI, 5, 8-2; Vedic Index, I, 353, II, 486; Nirukhta, III, 4; Baudh., II, 2, 3, 44-46; I, 5, 11, 1-14. Satapatha Brah., IV, iv, 2, 13. "And in like manner does he now by that thunderbolt, the ghee, smite the wives and unman them and thus smitten and unmanned, they neither own any self nor do they own any heritage". This appears to be too slender a basis for the general exclusion of women. Nirukhta, "Therefore it is known that the male is the taker of wealth and that a female is not a taker of wealth." See *Jogdamba* v. *Secretary of State* (1889) 16 Cal., 367, 371, where a different translation is given. See Jha, H.L.S., II, 470.

the soma beverage (*w*). The Viramitrodaya states however, as the better opinion, that the text refers only to those women whose right to inherit has not been expressly declared (*x*). The Smritichandrika puts a different interpretation on the Vedic text (*y*). Madhava's interpretation of it is accepted as correct by Varadaraja as well as by Messrs. West & Buhler, Dr. Jolly, Mr. Kane and by the Bombay High Court (*z*).

As the normal condition of the family was undivided. occasion would seldom arise for recognition of the rights of women. The dictum in Manu that the wife, a son, and a slave are declared to have no property (*a*), merely meant that they were not independent: for as Kulluka points out, Manu himself enumerates six kinds of stridhana (*b*). The early importance of stridhana is by itself sufficient to show that women had substantial rights though their position was inferior to that of men. For the purpose of inheritance to stridhana, the first acquirer at least was considered a fresh stock of descent and women were preferred to men. Probably the explanation is that in the case of inheritance to the property of men, males were preferred to women as heirs, while in the case of inheritance to woman's property, women were preferred to men as heirs, but neither were completely excluded from inheritance to the other's property (*b*[1]).

Entitled to shares on partition

What is clear, however, is that notwithstanding the Vedic text, when a partition took place, we find from the earlier writings, that shares were allotted to the wife, mother and grandmother (*c*). The daughter, the mother and the grandmother were evidently first recognised as heirs to one who died without male issue (*d*). The status of the appointed

(*w*) Madhaviya § 44; Dr. Jolly also says that this refers only to the *soma* beverage, L. & C., 186, Kane, note at p. 6.

(*x*) Viramitrodaya, Setlur's ed, pp 406, 423, Daya Bh., XI, vi, 8, 11.

(*y*) See the Smritichandrika, IV, 5-11.

(*z*) Jolly L. C, 186, T L L., 219, Kane, note at p 6, *Lallubhai* v. *Mankuvarbai* (1878) 2 Bom, 388, 428.

(*a*) Manu, VIII, 416.

(*b*) Manu, IX, 194; for the text of Katyayana, see Jha, H.L.S, II, 528-9, 551-2, Yajn., II, 143.

(*b*[1]) Mit, I, iii, 10.

(*c*) Manu, IX, 217; Yajn., II, 115 (mother); Bri., XXV, 64 (mother and daughter).

(*d*) Manu, IX, 130 (daughter), IX, 217 (mother and grandmother); Yajn., II, 135 (mother); Arthas, III, 5; Shamasastri, 197-8; Vishnu, XVII, 5, 7.

daughter even from Vedic times was undoubtedly very high. As early as Kautilya's Arthasastra, in the absence of sons, the daughters born to a man of approved marriage took his estate. The right of the widow, so long as remarriage was permitted and common was nebulous; but when her remarriage was prohibited, her succession was at once fully admitted. Even the right of a sister would seem to have obtained occasional recognition (*e*).

Mitakshara on women's rights.

§ 495. The rights of women in the family to maintenance were in every case very substantial rights and, on the whole, it would seem that some of the later commentators erred in drawing adverse inferences from the vague references to women's succession in the earlier Smritis. The views of the Mitakshara on the matter, which are unmistakable, ought to be decisive. Vijnanesvara nowhere endorses the view that women are incompetent to inherit, he does not even refer to the Vedic text. He points out that the text of Narada which declares dependence of women is not incompatible with their acceptance of property (*f*). Vijnanesvara does not accept the position that the claims of such females only are to be admitted as have the support of express texts. On the other hand, he holds that the paternal great-grandmother who is not mentioned in any special text is entitled to inherit as a *gotraja* sapinda; and from what he says in II, v, 5, it is quite clear that the wives of the other lineal ancestors also are entitled to succeed as *gotraja* sapindas. Vijnanesvara's views on these points which are followed by the other commentators and by the Courts are conclusive against the assumption that there is any general principle of Hindu law that women are excluded from inheritance unless named in the ancient texts. His definition of sapinda and his postponing the father to the mother, the grandfather to the grandmother and the great-grandfather to the great-grandmother, as well as his treatment of stridhana are clear indications in the same direction.

(*e*) As to sister, Manu, IX, 118, IX, 212; Yajn., II, 124; Bri., XXV, 75, 64; as to widow, *cf.* Arthas, III, ii, 32; Shamasastri, 188, Narada, XII, 97-101.

(*f*) Mit., II, 1, 22-25 Narada, XIII, 31. Vijnanesvara goes so far as to say that unmarried sisters share with their brothers their father's estate, Mit., I, vii, 14. In *Mari* v. *Chinnammal* (1885) 8 Mad., 107, Muttusami Aiyar, J., erroneously thought (p. 129) that the Mit. speaks of the Vedic rule of exclusion of women. The Mit. (II, 1, 14, 26) does not refer to the Vedic text or to Baudhayana but to some unknown author's dicta which he controverts. Balambhatta is clear on the point. See Mr. Colebrooke's note to Mit., II, 1, 14.

Female heirs.

§ 496. The law in all the provinces except in Madras and Bombay, however, is that women are, in general, excluded from inheritance to the estate of a man who dies without male issue. Till recently, the recognised exceptions were the widow, the daughter, the mother, the father's mother and the father's father's mother (*g*); and also other female lineal ancestors above the last (*h*).

Statutory heirs.

§ 497. Now, by the Hindu Law of Inheritance (Amendment) Act, 1929, a son's daughter, daughter's daughter and sister have been admitted as heirs under the Mitakshara law and placed immediately after a father's father and before a father's brother.

Daughter-in-law and grand-daughter-in-law.

The Hindu Women's Rights to Property Act, 1937, has made the widow of a man's predeceased son and the widow of a predeceased son of his predeceased son as well as his own widow heirs to his property, both along with and in default of his male issue(*i*).

Right of a widow.

§ 498. The right of the widow to succeed as heir to her husband was recognised at least two thousand years ago. Vriddha Manu, Yajnavalkya, Vishnu, Brihaspati, Katyayana, Sankha Likhita and Devala fully recognise her right to succeed to her husband (*j*). Narada's refusal to recognise her, evidently after the time of Vishnu and Yajnavalkya, is puzzling. It must have been due to a difference in the usages of his country where remarriage evidently prevailed as about

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(*g*) *Guru Gobind* v *Anand Lal* (1870) 5 Beng L R., 15, 37 (F B); *Nanki* v *Gauri Shankar* (1905) 28 All, 187, *Jagan Nath* v. *Champa* (1906) 28 All, 307; *Tirath Ram* v *Mt Kahan Devi* (1920) 1 Lah., 588. *Mt. Sujan Devi* v *Jagiri Mal, ib*, 608, *Jang Bir* v. *Mt Jumna* (1931) 12 Lah., 534, *Krishna* v *Bhaiya Rajendra* (1927) 2 Luck., 43, A I R 1927 Oudh, 240, (1885) 8 Mad, 107, 127 *supra*

(*h*) *Jogdamba* v *Secretary of State* (1889) 16 Cal., 367, 373.

(*i*) See *post* Chapter XIV The Act does not affect succession to estates descendible to a single heir

(*j*) Vishnu, XVII-4, Yajn, II, 135, Manu, IX, 185, 212, 217 and Kulluka's gloss Dig, II, 522 *sqq* For Katyayana's text, see Mit., II, 1, 6; For Vriddha Manu's text, see Mit, II, 1, 6, "The widow of a childless man, keeping unsullied her husband's bed, and persevering in religious ceremonies, shall present his funeral oblations and obtain his entire share"; Brih., XXV, 46, 47, 55. Apastamba, Vasishtha and Narada do not apparently recognise the right of the widow as heir. For Sankha Likhita's and Devala's texts, see Dig., II, 532; Narada, XIII, 28, 29. For other texts, see Jha, H.L.S., II, 475.

the same time, Brihaspati is most emphatic in her favour. She is in fact the first heir to the property of a man who dies without male issue (*k*).

In all the authoritative Digests and Commentaries, the widow's right of succession to her husband is universally acknowledged (*l*). The elaborate discussion in them was more to resolve the seeming conflicts in the Smritis and to discuss how far her property was to be used for temporal and spiritual purposes as well as her obligation to remain chaste.

Widow heir to separate property.

§ 499. Vijnanesvara's conclusion is that the widow is entitled to inherit to her husband, if he died separated and not reunited and left no male issue; it is immaterial whether the division was in status only or was followed by a division by metes and bounds. The text of the Mitakshara is: "Therefore, it is a settled rule, that a wedded wife, being chaste, takes the whole estate of a man, who being divided from his coheirs and not subsequently reunited with them, dies leaving no male issue"(*m*). And this rule which necessarily followed from the view taken by the Mitakshara of the rights of undivided members, applied, till recently, in the Mitakshara jurisdictions. Even where a man died undivided but left separate or self-acquired property, his widow succeeded to it though the undivided property passed by survivorship to his coparceners, as was settled by the *Shivaganga* case. Their

(*k*) *Katama Natchiar* v. *Raja of Sivaganga* (1863) 9 M.I.A., 539, 2 W.R. (P.C.), 31. As to Benares, 2 W. MacN., 21, see *Hiranath* v. *Baboo Ram* (1872) 9 B L.R., 274, 17 W.R., 316; *Chowdry Chintamun* v. *Nowlukho* (1875) 2 I.A., 263; *Rup Singh* v. *Baisni* (1885) 11 I.A., 149, 7 All., 1; Mithila, Vivadachintamani, 290; *Pudmavati* v. *Baboo Doola* (1847) 4 M.I.A., 259, 264, 7 W.R. (P.C.), 41; *Mt. Anundi* v. *Khedoo* (1872) 14 M.I.A., 416, 18 W.R., 69. Bombay V. Mayukha, IV, 8, § 6; *Goolab* v. *Phool* 1 Bor., 154 (173); *Govind Das* v. *Muhalukshumee ib.*, 241 (267); *Mankoonwar* v. *Bhugoo* 2 Bor., 139 (157); *Gun Joshee* v. *Sugoona* 2 Bor., 401 (440); W. & B., 82. In some cases in the Punjab and among the Jains a widow appears to succeed to her husband's estate, even though undivided. But the general practice seems to follow the Mitakshara; Punjab customs, 56. *Sheosingh* v. *Mt. Dakho* (1874) 6 N.-W.P., 382, 406. So by local custom, a widow is sometimes excluded from succession by the brothers even where the property is self-acquired. *Ramchan* v. *Perachi* (1892) 15 Mad., 281.

(*l*) Mit., II, 1; (Narada's texts, XIII, 25, 26, 28, are explained by Vijnanesvara in Mit., II, 1, 20 and 27). Daya Bh., XI, 1; Smriti-chandrika, XI, 1; Madhaviya, para 65; Sarasvati Vilasa, paras 399, 478-535; Vivada Ratnakara, XXXIV; Vivada Chintamani, 289-291; Vyavahara Mayukha, IV. iv, 18; Viramit., III-1. Apararka (21 M.L.J. Journal, 308-317) contributes an interesting discussion. Visvarupa alone (on Yajn., II, 135) limits the word 'wife' to a pregnant wife on the authority of a text of Vasistha. For Sulapani's view, see Dipakalika, Ghose H.L., Vol. II, 546.

(*m*) Mit., II, 1, 39; *Rewan Pershad* v. *Mt. Radha* (1846) 4 M.I.A., 137, 148, 152; *Suraneni* v. *Suraneni* (1869) 13 M.I.A., 113; *Gajapathi* v. *Gajapathi ib.*, 497.

Lordships referring to the Mitakshara (II, 1, 39) observed: "The text is propounded as a qualification of the larger and more general proposition in favour of widows; and consequently in construing it, we have to consider what are the limits of that qualification rather than what are the limits of the right" (*n*). According to the Dayabhaga, on the other hand, which proceeded on the ground of her right to offer funeral oblations to her deceased husband, a widow succeeded to her husband's share when he was undivided, just as she would to the entire property of one who was separated (*o*). But as in a Dayabhaga joint family the husband's interest is held in quasi-severalty, the distinction is merely a verbal one (*p*). Now, however, the two systems are assimilated in this respect by the Hindu Women's Rights to Property Act, 1937, which has repealed the rules of the Mitakshara and the Dayabhaga so as to make a Mitakshara widow succeed to the coparcenary interest of her husband in the partible property of the joint family and, along with his male issue, to his separate property, and to enable a Dayabhaga widow to succeed along with the male issue both to the coparcenary interest and the separate property of her husband.

Before recent Act.

§ 500. According to the Mitakshara, the wives of sagotra sapindas are themselves sagotra sapindas and they are included in Yajnavalkya's term '*gotrajah*' (*q*). But while the wives of the ancestors are expressly recognised by the Mitakshara as heirs, it is silent as regards the wives of descendants and collaterals. The son's widow, the grandson's widow, the brother's widow, and the widows of other sapindas, cannot come in as there is no place for them in the compact series of heirs up to the brother's son and grandson. Nor can they come in before the male sapindas upto the seventh degree (*r*). There does not seem to be any insuperable objection why wives of descendants and collaterals within seven degrees should not come in after all the male sapindas

(*n*) *Katama Natchiar* v. *Raja of Sivaganga* (1863) 9 M.I.A., 539, 607-611, W. & B, 378, 2 W. MacN., 92; *Tikari* v. *Tekari* (1878) 5 I.A., 160, 4 Cal., 190, *Periaswami* v *Periaswami* (1878) 5 I.A., 61, 1 Mad., 312. See *ante* § 481.

(*o*) Daya Bhaga, XI, 1, §§ 25, 26, 27, D.K.S., II, 2, § 41, F. MacN., 5. See cases 1 M. Dig, 316, per West, J, *Lakshman* v. *Satyabhamabai* (1877) 2 Bom., 508; *Durga Nath* v. *Chintamoni* (1904) 31 Cal., 214

(*p*) Dr. Jolly was impressed by this difference. T L L, 192. But see Daya Bh., XI, 1, 26.

(*q*) Mit., II, v, 1, 3, 5, *Lullubhoy* v. *Cassibai* (1881) 7 I.A., 212, 5 Bom., 110, 118, 121, 123, 125, *Mari* v *Chinnammal* (1885) 8 Mad., 107, 127; *Jogdamba* v. *Secy. of State* (1889) 16 Cal, 367, 373.

(*r*) Mit., II, v, 5.

are exhausted and before the samanodakas (Mit. II, v, 6). But the decisions of all the Courts, except in Bombay, have refused to recognise their rights.

Widow is only heir to husband.

A widow therefore can only succeed to her husband's property or rights, that is, to the property which was actually vested in him, either in title or in possession, at the time of his death (*s*). She must take at once at his death, or not at all. No fresh right can accrue to her as widow in consequence of the subsequent death of some one to whom her husband would have been heir if he had lived (*t*). Hence, no claim as heir could, before the new Act, be set up on behalf of the widow of a son (*u*), or of a grandson (*v*); or can even now be set up on behalf of the widow of a daughter's son (*w*), or of a brother (*x*), or of an uncle (*y*), or of a cousin (*z*). While in some of the cases the contest was between the widow of a sapinda and some other heir, who was held to have a preferential title, in others, however, she was excluded on the general principle that she did not come within the line of heirs at all (*a*). Finally it was held that the Crown would take by escheat in preference to her (*b*). This is still the law of Bengal, Benares and Madras (*c*) subject, of course, to the two new statutory exceptions (*d*).

Statutory exceptions

(*s*) Viramit., p. 164, § 13, p. 197, § 2. If his title was vested, though his enjoyment postponed, she will equally take. *Rewun Persad* v. *Radha Beeby* (1846) 4 M.I.A., 137, 176; *Hurrosoondery* v. *Rajessuree* 2 W.R., 321.

(*t*) *Balamma* v. *Pullayya* (1895) 18 Mad., 168.

(*u*) 2 W. MacN., 43, 75, 104, 2 Stra. H.L., 233, 234; *Ananda Bibee* v. *Nownit* (1883) 9 Cal, 315; Punjab Customs, 64. The claim of a daughter-in-law is supported by Nanda Pandita and by Balambhatta, Jolly, T.L.L., 199; *Thayammal* v. *Annamalai* (1896) 19 Mad., 35, 37. According to Visvarupa, § 2, where an equal partition was made by a father, the widows of sons and grandsons were entitled to a share equal to that which their husbands would have taken. (Yajn., II, 129, Triv. ed., 242.)

(*v*) *Ambawow* v. *Rutton* Bom. Sel. Rep., 132.

(*w*) 2 W. MacN., 47.

(*x*) 2 W. MacN., 78, 2 Stra. H.L., 231; *Peddamuttu* v. *Appu Rau* (1864) 2 Mad. H.C., 117.

(*y*) *Upendra* v *Thanda* (1869) 3 B.L.R. (A.C.J.), 349; *sub nomine*, *Wopendra* v. *Thanda* 12 W.R., 263; *Gauri* v. *Rukko* (1880) 3 All., 45.

(*z*) *Soorendranath* v. *Mt. Heeramonee* (1868) 12 M.I.A., 81.

(*a*) *Gauri* v. *Rukko* (1880) 3 All., 45; *Ananda Bibee* v. *Nownit* (1883) 9 Cal., 315.

(*b*) *Jogdamba Koer* v. *Secretary of State* (1889) 16 Cal., 367.

(*c*) *Per curiam*, *Lulloobhoy* v. *Cassibai* (1881) 7 I.A., 230, 5 Bom., 110; *Vithaldas* v. *Jeshubai* (1880) 4 Bom., 221; per West, J., (1887) 11 Bom., p. 292; per Muttusami Iyer, J., (1885) 8 Mad., pp. 119, 127, 129.

(*d*) See *ante* §497.

Widows in Bombay.

§ 501. The law in Bombay has been, however, different. According to it, the widows of gotraja sapindas as such are entitled to inherit as collaterals and are to be preferred to male gotrajas in a more remote line. This proceeds on the view that succession goes in the order of sapindaship. The High Court of Bombay in *Lullubhai* v. *Manku varbai* (*e*) accept the text of Manu (ix, § 187) with the gloss of Kulluka so that it runs:—"To the nearest *sapinda*, male or female, after him in the third degree, the inheritance next belongs." Sapindaship as explained by Vijnanesvara makes even the wives of brothers, sapindas to each other, because they produce one body with those who have sprung from one body; on the same principle the daughter-in-law is a *sapinda* (*f*). According to Messrs. West and Buhler, the Western lawyers "prefer the sister-in-law to the sister's son, and to a male cousin, and more distant male sagotra-sapindas, the paternal uncle's widow to the sister, the maternal uncle, and the paternal grandfather's brother, and they allow a daughter-in-law, and a distant gotraja-sapinda's widow to inherit" (*g*). The result of this doctrine is, that "the members of the compact series of heirs specifically enumerated take in the order in which they are enumerated (V. M., IV, 8, § 18) preferably to those lower in the list and to the widows of any relatives, whether near or remote, but where the group of specified heirs has been exhausted, the right of the widow is recognized to take her husband's place in competition with the representative of a remoter line" (*h*). The females in each line of gotrajas are excluded by any males existing in that line within the limits to which the gotraja relationship extends. For instance,

(*e*) W. & B, 114, 122; (1878) 2 Bom, 388, *affd.* (1880) 7 I.A., 212, 5 Bom, 110, following and affirming *Lakshmibai* v. *Jayram* (1869) 6 Bom. H C. (A C J), 152. The Privy Council, in affirming the decision in (1878) 2 Bom, 388 *supra*, expressly rest the right of widows "on the ground of positive acceptance and usage". (1880) 7 I.A., 212, 237, 5 Bom., 110, *Vithaldas* v *Jeshubai* (1880) 4 Bom, 219.

(*f*) W. & B., 451-455 As to the paternal aunt, see *Ganesh* v. *Waghu* (1903) 27 Bom., 610.

(*g*) The rule, however, is limited to women who, by marriage into a particular *gotra*, become *gotraja-sapindas*. Hence the widow of a daughter's son would not inherit the estate of the maternal grandfather. *Vallubdas* v. *Sakerbai* (1901) 25 Bom., 281, p. 285; *Nahalchand* v. *Hemchand* (1885) 9 Bom., 31 (brother's son's widow); *Madhavram* v. *Dave* (1897) 21 Bom., 739 (brother's son's widow); *Kesserbai* v. *Valab* (1880) 4 Bom., 188 (father's widow or step-mother), *Rachava* v. *Kalingappa* (1892) 16 Bom., 716 (paternal uncle's widow); *Lallubhai* v. *Cassibai* (1880) 7 I.A, 212, 5 Bom., 110 (paternal uncle's son's widow); *Roopchund* v. *Poolchund* (1824) 2 Bor., 670 (son's widow). The sister takes after the paternal grandmother and before the paternal uncle's widow.

(*h*) *Nahalchand* v. *Hemchand* (1885) 9 Bom., 31 at 34.

the son's widow is the first amongst the widows of gotrajas (*i*). A paternal uncle's son or grandson is preferred to the widow of another paternal uncle of the propositus (*j*), or of his son (*k*). But the widow of a brother is a nearer heir than the paternal uncle's son (*l*).

Daughter.

§ 502. The daughter was from the earliest times recognised as an heir, probably at first as an appointed daughter and later whether appointed or not. By the time of Kautilya, daughters were clearly heirs (*m*). A text of Manu states her right of inheritance: "A son is even as one's own self, and the daughter is equal to the son; so long as she is there as the father's own self, how can any other take the property" (*n*). Some of the commentators on Manu read the text as referring only to an appointed daughter. But the word used is *'duhita'* (daughter) and not *putrika* (appointed daughter). The appointed daughter is already disposed of in Manu, IX, 127-128. Brihaspati who closely follows Manu clearly understood it to refer to an unappointed daughter, for he himself says, "A daughter, like a son, springs from each member of man; how then should any other mortal inherit the father's property while she lives?" (*o*). Vishnu, Yajnavalkya and Katyayana also recognise the right of a daughter (*p*). The Mitakshara, citing the texts of Katyayana and Brihaspati declares that "the daughters inherit in the absence of the wife" (*q*). Apararka holds that "in the case of daughters, ownership in the father's wealth arises by birth itself as in the case of sons" (*r*). The Smritichandrika and following it, the Viramitrodaya, as well as the Vivadachinta-

(*i*) *Vithaldas* v. *Jeshubai* (1880) 4 Bom., 219, 221 (son's widow succeeds before paternal uncle's son), *Appaji* v. *Mohun Lal* (1930) 54 Bom, 564, 591 F.B. (son's widow preferred to brother's son's son); *Rachava* v. *Kalingappa* (1892) 16 Bom., 716; *Pranjivan* v. *Bai Bhikhi* (1921) 45 Bom., 1247, *Raghunath Shankar* v. *Laxmibai* (1935) 59 Bom, 417 (widow of paternal uncle preferred to father's sister).

(*j*) *Kashibai* v. *Moreshvar Raghunath* (1911) 35 Bom., 389.

(*k*) *Lallubhoy* v. *Cassibai* (1880) 7 I A, 212, 5 Bom., 110.

(*l*) *Basangavda* v. *Basangavda* (1915) 39 Bom., 87.

(*m*) Arthas., III, 5; Shamasastri, 197.

(*n*) Manu, IX, 130; Jha, H.L S., II, 481.

(*o*) Brih., XXV, 56.

(*p*) Vishnu, XVII, 5; Yajn., II, 135; Katyayana cited in the Smritichandrika, XI, ii, 20; Parasara cited in the Dayabhaga XI, ii, 5; Mit., II, ii, 1-5; Dayabhaga, XI, ii; Vivadaratnakara, XXXIV, 5-7; Vivadachintamani, 291-292; V. Mayukha, IV, 8, 10-12; Parasara Madhaviya, S. 36; Sarasvativilasa, para. 536-561; Varadaraja, 34.

(*q*) Mit., II, ii, 2.

(*r*) Apararka trans. in 21 M.L.J. (Journal), 317.

mani understand the text of Manu as referring to the unappointed daughter and reject the contrary view of the other commentators (*s*).

Right of mother.

§ 503. The mother is not mentioned as an heir by Gautama, Baudhayana, Apastamba, Vasishtha or Kautilya. Her claim, however, and that of the grandmother, are expressly asserted by Manu: "A mother shall obtain the inheritance of a son who dies without leaving issue, and, if the mother be dead, the paternal grandmother shall take the estate" (*t*). Vishnu also inserts the mother in the list of heirs next to the father (*u*), and Yajnavalkya places both parents after the daughters (*v*). Her claim is also mentioned by Brihaspati and Katyayana (*w*). Narada states her right to a share on partition by the sons after the death of their father, but does not refer to her as an heir (*x*).

Great-grandmother

§ 504. The right of the paternal great-grandmother, though not mentioned in any text, is expressly deduced by the Mitakshara on the analogy of the paternal grandmother. The Mitakshara says "In this manner upto the seventh must be understood the succession of *samanagotra* sapindas" (*y*). The Subodhini commenting on the Mitakshara carries the enumeration further by including as heirs the paternal great-grandfather's mother and grandmother and states that the same rules apply in the case of samanodakas (*z*). Accordingly in *Jogdamba Koer* v. *Secretary of State*, the wives of lineal ancestors beyond the great-grandmother were held to be heirs (*a*)

Women born in the family.

§ 505. On the view taken in all the provinces, except in Bombay and Madras, of the general incapacity of women to inherit, the daughters of *sagotra* sapindas, whether descendants, ascendants or collaterals, are not recognised as heirs(*b*).

(*s*) Smritichandrika, XI, ii, 7-19, 21, Viramit, III, ii, 5 (Setlur's II, 406-412), Vivadachintamani, 292. This was also the opinion of Vijnanesvara Mit., II, 2, 5.

(*t*) Manu, IX, 217, *cf.* ix, 185, where Manu makes the father and then the brothers take

(*u*) Vishnu, XVII, 7.

(*v*) Yaj., II, 136.

(*w*) Brih., XXV, 63, Dig, II, 550 552.

(*x*) Narada, XIII, 12.

(*y*) Mit, II, v, 5.

(*z*) Subodhini, Setlur's edn, 787, 788

(*a*) (1889) 16 Cal., 367, 373, *Buddha Singh* v. *Laltu Singh* (1915) 42 I.A., 208, 226, 37 All., 604, approving of the judgment of Telang, J., in *Rachava* v. *Kalingappa* (1892) 16 Bom., 716.

(*b*) *Nanhi* v *Gauri Shankar* (1906) 28 All., 187; *Jagan Nath* v. *Champa* (1906) 28 All., 307; *Jang Bir* v. *Mt. Jamna* (1931) 12 Lah., 534.

But the son's daughter, the daughter's daughter and the sister have now been brought in as heirs by the Hindu Law of Inheritance (Amendment) Act, 1929. Though the controversy as regards the sister is now settled in her favour by this Act, the principles upon which her rights have been recognised in Madras (§ 509) are of general application to all daughters born in the family.

Sister.

§ 506. The sister is declared in some of the Smritis as entitled to take a share either upon an original partition or after a reunion (*c*). Brihaspati says, "If there be a sister, she is entitled to a share of his property. This is the law regarding the wealth of one destitute of issue and who has no wife or father" (*d*). According to Sankha and Likhita, "the daughter shall take the woman's property, and she alone, is heir to the wealth of her mother's son who leaves no male issue" (*e*). A text of Brihaspati is quoted in Jagannatha's Digest: "But she who is his sister is next entitled to take the share; the law concerns him who leaves no issue, nor wife, nor father nor mother" (*f*). And Kulluka, explaining Manu, IX, 212, referring to a reunited brother affirms the sister's succession if he leaves neither son nor wife nor father nor mother (*g*). Nanda Pandita and Balambhatta interpret the text of the Mitakshara which gives the inheritance to brethren, as including sisters, so that the brothers take first, and then the sisters (*h*). But this view is opposed to the whole spirit of the Benares law. It is not accepted even by the Mayukha, which makes the sister come in after the grandmother under a different text (*i*), and has been rejected by the Judicial Committee (*j*).

(*c*) Manu, IX, 118, 212; Vishnu, XVIII, 35; Yajn., II, 124; Brih., XXV, 75, 64, Narada, XIII, 13; Dig., II, 534.

(*d*) Brih, XXV, 75.

(*e*) Dig., II, 353. The comment of Jagannatha, following Ratnakara, is that it refers to the succession as sister of one who was an appointed daughter and therefore had the status of a brother. See Vivadaratnakara, XIX, 10-11.

(*f*) Dig., II, 534.

(*g*) This seems to be the opinion of Sarvajna Narayana and Raghavananda. See Dr. Buhler's note on Manu, IX, 212.

(*h*) Mitakshara, II, 4, § 1, note. This interpretation was accepted in *Sakharam* v. *Sitabai* (1879) 3 Bom., 353, as one ground for admitting a sister to succeed. *Kesserbai* v. *Valab* (1880) 4 Bom., 188, 204; *Rudrapa* v. *Irava* (1904) 28 Bom., 82. Chandavarkar, J., in *Bhagwan* v. *Warubai* (1908) 32 Bom., 300 rejected this interpretation, confining it to cases governed by the Mayukha alone.

(*i*) V. May., IV, 8, § 19; *Bhagwan* v. *Warubai* (1908) 32 Bom., 300, 311.

(*j*) *Thakoorain* v. *Mohun* (1867) 11 M.I.A., 386, 402; *Chinnammal* v. *Venkatachala* (1892) 15 Mad., 421, 422.

Her right admitted in Bombay.

§ 507. In Bombay, however, a sister's right has long been settled beyond dispute. She is considered a *gotraja* sapinda, on the ground that this term is satisfied by her having been born in her brother's family, and that she does not lose her position as a *gotraja* by acquiring on her marriage her husband's gotra. That being so, her place among the *gotrajas* is determined by nearness of kin, and is settled to be between the grandmother and the grandfather (*k*), before the half-brother, and after the full brother's son under the Vyavahara Mayukha (*l*) but under the Mitakshara only after the half-brother and his son (*m*). The sister however as Nilakantha takes care to point out is not on her marriage of the same gotra as her brother (*n*). The Mayukha is in conflict with the Mitakshara as the latter makes it beyond doubt that *gotrajas* mean *samanagotra* sapindas; but the former has been followed (*o*).

(*k*) V. Mayukha, IV, 8, 19-20, *Vinayak* v *Luximabaee* (1864) 9 M.I A., 516 affirming 1 Bom H.C, 117; per West, J, *Lallubhai* v. *Mankuvarbai* (1878) 2 Bom, 388, 445, Westropp, C J., prefers resting her right upon her affinity as *sapinda* even though not a *gotraja*, and upon the express authority of Brihaspati and Nilakantha, *ib*, 421 See as to her position in Sholapur, *Lakshmi* v. *Dada Nanaji* (1880) 4 Bom., 210, *Biru* v *Khandu* (1880) 4 Bom, 214, in Dharwar, *Rudrapa* v *Irava* (1904) 28 Bom, 82, *Mulji* v *Cursandas* (1900) 24 Bom., 563. The reason for the inclusion is not, as was originally supposed, that the term 'brothers' under the Mitakshara included 'sisters' but that the Mitakshara and the Mayukha must be so construed as to harmonise both, *Bhagwan* v *Warubai* (1908) 32 Bom., 300, 311, 312, *Appaji* v. *Mohanlal* (1930) 54 Bom., 564, 595 F.B., *Bai Kesserbai* v *Hunsraj* (1906) 33 I A, 176, 30 Bom, 431, 442

(*l*) *Sakharam* v. *Sitabai* (1879) 3 Bom., 353, (1900) 24 Bom., 563 *supra*, (1900) 32 Bom., 300 *supra*.

(*m*) *Hari Annaji* v. *Vasudev Janardan* (1914) 38 Bom., 438; *Bhagwan* v. *Warubai* (1908) 32 Bom., 300. At page 314, it is suggested that it is not unreasonable to infer that she (sister) may be deemed to be a sagotra sapinda of her brother. This is opposed both to Nilakantha's express view and to reason and proceeds upon a misconception of a passage in the Mitakshara which relates to the gotra to be used in offering pinda to a deceased mother when her *sapindikaranam* is performed with her father and others and not with her husband and others and is only of historical interest; for, it is a clear rule of modern Hindu law that a wife on her marriage enters her husband's gotra and cannot retain at her or her son's option, her father s gotra. See the dictum of West, J., in *Lallubai* v. *Mankuvarbai* (1878) 2 Bom., 388, 446, "The blood gotraship of women cannot safely be extended beyond the sister." Vijnanesvara's clear rule is that every wife is a sagotra sapinda of her husband Mit on Yajn., I, 52 (Vidyarnava's trans., 94).

(*n*) "Indeed she has no *sagotrata*, *i e*, membership of the same gotra but that has not been mentioned here as an operating cause for her succession". V. May., IV, 8, 19.

(*o*) Mit., II, v, 1, 3.

Female bandhus in Bombay.

§ 508. In Bombay, the daughters of descendants, ascendants and collaterals within five degrees inherit as bandhus in the order of propinquity (*p*), such as the son's daughter (*q*), the daughter's daughter, the brother's daughter (*r*), the paternal uncle's daughter (*s*) the sister's daughter (*t*), the mother's sister, the father's sister (*u*) and so on. The father's sister however according to the Mayukha is a *gotraja* sapinda and comes in before bandhus but after all other *gotraja* sapindas (*v*). But the question whether under the Mitakshara law as administered in Western India, the father's sister is to be regarded as a sagotra or a bhinnagotra sapinda is left open. "It is enough to say that she is not more remote than a bandhu" (*w*).

Sister in Madras.

§ 509. In Madras also, it has long been settled that the sister is an heir. In *Lakshmanammal* v. *Thiruvengada Mudali*, the Madras High Court observed: "In discussing the right of the widow, Vijnanesvara explains the texts cited in support of the doctrine that women are incompetent to inherit in a sense which would justify the recognition of the claims of female heirs generally. He nowhere expressly accepts the position that the claims of such females only are to be admitted as have the support of express texts. He himself declares that certain female ancestors not denoted in express texts are *sagotra* heirs, *e.g.*, the great-grandmother. He does not pretend to give an exhaustive list either of the *sagotra* or *bhinnagotra* sapindas. Vijnanesvara recognised the texts excluding females so far as to give priority to males and he indicates with sufficient clearness the rules which are to be observed in ascertaining the order of succession . . . As a *bhinnagotra* sapinda, a sister falls

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(*p*) *Shidramappa* v. *Neelawabai* (1933) 57 Bom., 377, 383.

(*q*) West & Buhler, 4th edn., 465

(*r*) *Balkrishna* v. *Ramkrishna* (1921) 45 Bom., 353.

(*s*) *Kenchava* v. *Girimallappa* (1929) 51 I.A., 368, 48 Bom., 569.

(*t*) *Dattatraya* v. *Gangabai* (1922) 46 Bom., 541; *Bai Vijli* v. *Bai Prabhalakshmi* (1907) 9 Bom. L.R., 1129 (father's paternal aunt's son's daughter).

(*u*) *Vijiarangam* v. *Lakshuman* (1871) 8 Bom. H.C., O.C.J., 244.

(*v*) (1871) 8 Bom. H.C. (O.C.J.), 244 *supra*; *Ganesh* v. *Waghu* (1903) 27 Bom., 610; *Bai Vijli* v. *Prabhalakshmi* (1907) 9 Bom. L.R., 1129.

(*w*) *Saguna* v. *Sadashiv* (1902) 26 Bom., 710, 713-714; *Ganesh* v. *Waghu* (1903) 27 Bom., 610; *Lallubhai* v. *Mankuvarbai* (1878) 2 Bom., 388, 446.

within the definition of a bandhu and, except on the construction of the rule respecting female inheritance that it absolutely excludes all but certain excepted females, and does not merely postpone their claims, there seems no sufficient reason for refusing her the position to which this Court has declared her entitled" (*x*). They referred to the text of Sankha-Likhita already cited but did not notice the unambiguous text of Brihaspati cited by Jagannatha (*y*). The reasoning of the judgment is unassailable and equally applies to daughters of all descendants, ascendants and collaterals within five degrees. This view is reaffirmed after an examination of the authorities by Subramania Ayyar and Davies, JJ., in *Venkatasubramaniam* v *Thayarammal* (*z*).

Female bandhus.

Accordingly it has been held that a father's sister, a son's daughter, a daughter's daughter, a brother's daughter, and a sister's daughter are *bhinnagotra* sapindas or bandhus within the meaning of the Mitakshara and are not precluded by their sex and are in the line of heirs (*a*). Of these, the rights of the son's daughter, the daughter's daughter and the sister have, in all the provinces, been placed by legislation beyond dispute in all Mitakshara successions.

§ 510. Undoubtedly, the daughters of descendants, ascendants and collaterals belonging to the same agnatic family are sapindas of the propositus in the Mitakshara sense of the term inasmuch as they have community with him of particles of the same body and they are *sagotras* before their marriage. After their marriage, not being *sagotra* sapindas or samanodakas, they can come in only as *bhinnagotra* sapindas or bandhus; for they have been transferred by marriage to a gotra other than that of their birth This derives further support from a passage in the Mitakshara explaining the term 'sapinda' in the *Acharakanda* and also

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(*x*) *Lakshmanammal* v. *Tiruvengada* (1882) 5 Mad, 241, 249, 250 (half-sister) following *Kutti* v. *Radhakristna* (1875) 8 M H C, 88 (sister).

(*y*) Dig, II, 534. See § 506

(*z*) (1898) 21 Mad, 263.

(*a*) *Venkatasubramaniam* v. *Thayarammal* (1898) 21 Mad., 263 (brother's daughter); *Venkata Narasimha* v. *Surenani Venkata* (1908) 31 Mad., 321, *Avudai Ammal* v *Ramalinga* A I.R. 1926 Mad., 1163 (son's daughter), *Navaneetha Krishna* v *The Collector of Tinnevelly* (1935) 69 M L J, 632, 668, 669, *Narasimma* v. *Mangammal* (1890) 13 Mad., 10 (father's sister); *Nallanna* v *Ponnal* (1891) 14 Mad, 149 (son's daughter); *Chinnammal* v. *Venkatachella* (1892) 15 Mad, 421 (father's sister), *Ramappa* v. *Arumugath* (1894) 17 Mad, 182 (daughter's daughter), *Sundarammal* v *Rangasami* (1895) 18 Mad, 193, 198 (sister's daughter).

from the enumeration of bandhus in the *Vyavaharakanda*. The former mentions two sisters or a sister and a brother as heads of two different branches of sapindas (*b*). The latter leaves no room for doubt that the mothers of male bandhus referred to therein must themselves be bandhus as the sapindaship of their sons is only through them and as in the computation of degrees, the mothers are counted as bandhus (*c*). But the daughters of daughters born in the family, such as the daughter's daughter, sister's daughter, and paternal aunt's daughter will necessarily be *bhinnagotra* sapindas or bandhus both before and after their marriage.

The dictum, however, expressed in *Lakshmanammal* v. *Thiruvengada Mudali* and in *Venkatasubramaniam* v. *Thayarammal* (*d*) that even before marriage the daughters of sapindas must be regarded as *bhinnagotra sapindas* because of their capability of losing by their marriage membership of the *gotra* in which they were born does not appear to be valid. No doubt, marriage of daughters is in a sense obligatory but there have always been exceptions in theory and practice (*e*). Before they are married, it is difficult to see on what principle or under what text the daughters of descendants, ascendants and collaterals in the agnatic family can be excluded from *sagotra* sapindas and included in *bhinnagotras;* if a fiction is permissible, the question what is that gotra to which they are to be assigned has to be answered. The view that daughters born in the family are not entitled to inherit if they are not married, but that if they are married, they and their daughters are entitled to inherit appears to be illogical.

Step-sister.

§ 511. A step-sister is an heir in Bombay both under the Mitakshara and the Mayukha (*f*). In Madras also, she would come in as a bandhu after marriage (*g*), though before

(*b*) Mit., on Yajn., I, 53, Vidyarnava's trans., 110.

(*c*) Mit, II, vi, 1-2. As to their order among bandhus, see § 553.

(*d*) (1882) 5 Mad., 241; (1898) 21 Mad., 263.

(*e*) *e.g.*, Manu, IX, 89.

(*f*) *Jana* v. *Rakhma* (1919) 43 Bom., 461; *Trikum Purshottam* v. *Natha Daji* (1912) 36 Bom., 120 (Mayukha); *Kesserbai* v. *Valab* (1880) 4 Bom., 188, 207.

(*g*) *Kumaravelu* v. *Viranu* (1882) 5 Mad., 29.

marriage, she would only be a *sagotra* sapinda. The Hindu Law of Inheritance (Amendment) Act, 1929, confers upon the half-sister as upon a full sister rights of succession in cases governed by the Mitakshara law in all the provinces. The conflict of opinion on the interpretation of the Act is referred to subsequently (§§ 544, 554).

Step-mother.

According to the Mitakshara, it is clear that a stepmother cannot succeed to her stepson (*h*) It is equally clear that she is his *gotraja* sapinda. It would seem therefore that she could come in as such after all his male sapindas (§ 512). Accordingly, in Bombay, she succeeds as the wife of a *gotraja* sapinda (§ 501) (*i*). But it is fairly well-settled that neither she nor the widow of any other *gotraja* sapinda is entitled to succeed as heir in any other province (§ 500) (*j*)

Exclusion of women discussed.

§ 512. It must be admitted that the decisions of courts refusing to recognise as heirs the wives of sagotra sapindas are neither consistent with the Mitakshara nor with the established analogies and the rules of justice and equity which have been applied in deducing rules of succession. The general incapacity of women to inherit which is not admitted in Madras and Bombay but which is treated as a rule of the Mitakshara law in the other provinces does not rest upon the leading Sanskrit authorities of the Mitakshara school or upon reasons which are either uniform or logical. In the first place, if it was a Vedic rule of exclusion of women from inheritance, it would have been followed by all the Smritis and the commentaries But both the Smritis and the commentaries have recognised the rights of several female heirs (§§ 494-495, 502-504) In the second place, if it was a Smriti rule of exclusion that women are not entitled to rights of inheritance unless they are named in the texts, it has long ago been departed from by all the commentators and courts. For instance, by Visvarupa who recognises the rights of the widows of the son and the grandson, by Vijnanesvara and

(*h*) *Lallubhai* v *Mankuvarbhai* (1879) 2 Bom., 388, *Kesserbai* v. *Valab* (1880) 4 Bom, 188, 208

(*i*) *Kesserbai* v *Valab* (1880) 4 Bom, 188, 208; *Russoobai* v. *Zoolekhabai* (1895) 19 Bom, 707, *Rakmabai* v *Tukaram* (1887) 11 Bom, 47

(*j*) *Ramasami* v *Narasamma* (1885) 8 Mad, 133, *Mari* v. *Chinnammal* (1885) 8 Mad., 107, *Kumara Velu* v *Viranna* (1879) 5 Mad, 29, *Muttammal* v. *Vengalakshmi* (1882) 5 Mad, 32, *Seethai* v. *Nachiar* (1914) 37 Mad, 286; *Navaneethakrishna* v *Collector of Tinnevelly* (1935) 69 M L.J, 632, 668-670, *Rama Nand* v. *Surgiani* (1894) 16 All, 221, *Lala Joti* v *Mt Durani* (1864) B L R Sup Vol, 67, F.B, *Tahaldai* v *Gaya Pershad* (1910) 37 Cal, 214, *Sundar Mani* v. *Gokulanand* (1913) 19 C.W.N., 160.

Mitramisra who declare the great-grandmother to be an heir, though not mentioned in any text, by Nilakantha who brings in the sister as a near sapinda even before paternal grandfather and by the Subodhini as well as the courts which have recognised the other lineal female ancestors as heirs, though not mentioned in any text or in the Mitakshara. The clear and uniform recognition in Madras of the rights of female bandhus and the anomalous exclusion of female sagotra sapindas only on the ground that their order is difficult to fix, are against the rule of general incapacity of women to inherit (*k*). The Mitakshara and all the authorities following it establish that the term '*gotraja sapindas*' includes wives of sapindas as well as sapindas. The only question is whether the order of succession is fixed in the Mitakshara in such a way as to leave no room for wives of sapindas, unmarried daughters of sapindas and female bandhus. All the Sanskrit lawyers, however, recognised in connection with the succession to the property of a male a general preference of males over females. Accordingly, as it is quite clear from Mit., II, v, 6 and Viramit., III, vii, 4 that samanodakas succeed only in default of samanagotra sapindas, there is nothing in Mit., II, v, 5 to prevent female sapindas coming in after the male sapindas. Similarly there is nothing to prevent female bandhus coming in after the male bandhus in each class of bandhus.

§ 512-A. The principle of incapacity to inherit by reason of certain personal disqualifications or defects is recognised by Hindu law in both the schools. But in the Mitakshara school, this principle has been almost abrogated by statute (Ch. XV).

Obligation of chastity only on widow.

It is now settled in the Mitakshara school that the obligation of chastity is only imposed on the widow and does not disqualify either the daughter, mother or any other woman who takes as heir (*k*[1]).

Three divisions of heirs.

§ 513. The heirs according to the Mitakshara law fall into three divisions: (I) *Samanagotra* or *sagotra* sapindas, (II) Samanodakas, and (III) *Bhinnagotra* sapindas or

(*k*) *Navaneetha Krishna* v. *The Collector of Tinnevelly* (1935) 69 M.L.J., 632, 668-670.

(*k*[1]) *Advyapa* v *Rudrava* (1880) 4 Bom., 104 (daughter); *Kottyadu* v. *Lakshmi* (1882) 5 Mad, 149 (mother); *Ganga* v. *Ghasita* (1879) 1 All, 46 F.B. (daughter); *Vedammal* v. *Vedanayaga* (1908) 31 Mad., 100 (mother); *Dal Singh* v. *Mt. Dini* (1910) 32 All., 155 (mother); *Baldeo* v. *Mathura* (1911) 33 All., 702 (mother); *Tara* v. *Krishna* (1907) 31 Bom., 495; *Annapurnamma* v. *Venkamma* (1926) 51 M.L.J., 387 (daughter); *Ram Pergash* v. *Mt. Dahan* (1924) 3 Pat., 152 (daughter). It is otherwise now under the new Act, § 593.

bandhus (*l*). The first two divisions are comprehensively known as *gotrajas* (*m*). The explanation of sapinda relation as well as the limitation of degrees have been already fully explained in the Chapter on Marriage (*n*).

Sagotra sapindas.

Sagotra sapindas are (1) a man's six descendants in the male line, his six ancestors in the male line with himself as the seventh, (2) descendants in the male line within the seventh degree reckoned from and inclusive of each of the six paternal ancestors, (3) the wives of all these male sapindas, and (4) daughters of the sapindas before their marriage if they are within the seventh degree (§ 510). All these relations are one's sapindas (Table A).

Except the widows of the deceased and of his predeceased son and grandson and his lineal female ancestors, the other female sapindas are not heirs except in Bombay

Samanodakas.

§ 514. The second division of heirs consists of samanodakas. They are (1) all the descendants in the male line from the eighth to the fourteenth degree from and including the propositus, (2) all his ancestors in the male line from the eighth to the fourteenth degree; (3) all the descendants in the male line from the eighth to the fourteenth degree reckoned from and inclusive of each of the first six paternal ancestors of the propositus, and (4) all descendants in the male line within the fourteenth degree of his eighth to the fourteenth paternal ancestors (Table A). While sapindas are only six degrees in ascent or descent exclusive of the man himself or six degrees in the collateral lines exclusive of his ancestor from whom the line divides, the samanodakas extend to seven degrees from the eighth to the fourteenth, the reason for the distinction is not clear. It is now settled by the decision of the Judicial Committee that the samanodaka relationship does not extend beyond the fourteenth degree (*o*). The decision does not in terms overrule the decision of the

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(*l*) *Atmaram Abhimanji* v *Baji Rao* (1935) 62 I A, 139 A I R. 1935 P C, 57.

(*m*) Mit, II, vi, 1, according to the Vyavahara Mayukha, the term '*gotraja*' includes those women born in the family but transferred by marriage into another gotra V May, IV, viii. 18-20

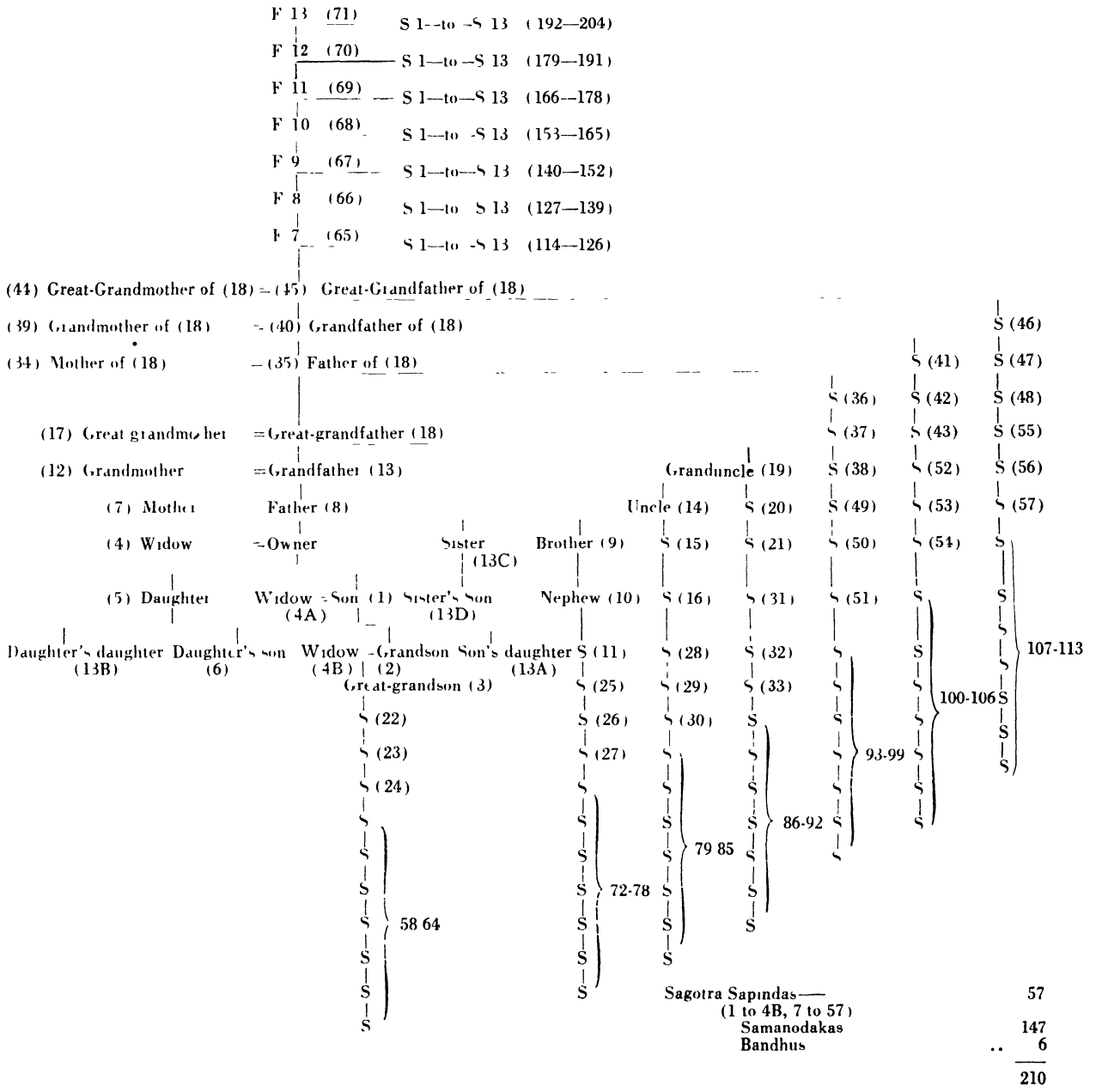
(*n*) See *ante* §§ 107-116.

(*o*) (1935) 62 I.A, 139, A.I.R 1935 P C, 57 *supra*, approving *Rama Rao* v. *Kuttiya* (1917) 40 Mad, 654, 659 and overruling *Ram Baran* v. *Kamla Prasad* (1910) 32 All, 594; see also *Mahabir Singh* v. *Mt. Radha* (1933) 8 Luck., 646, A.I.R. 1933 Oudh, 231.

TABLE A.

SAGOTRAS (SAPINDAS AND SAMANODAKAS).

(according to the Mitakshara Law)



The numerals affixed to the sapindas (Nos 1—57) indicate their respective places in the order of succession Nos 5, 6, 13A to 13D are not sagotra sapindas but their rank is fixed by express texts or by statute Nos 4A and 4B are the new female heirs

For the Mayukha order of heirs, see §§554-557

The order amongst Samanodakas (Nos 58-204), being of little practical importance, is not marked.

Bombay High Court in *Bai Devkore* v. *Amrit Ram* (*p*) that samanodakas included all agnates without any limit of degree. That was a case from Guzerat governed by the Mayukha. Nilakantha merely cites the text of Manu and does not appear to lay down any positive rule and it is improbable that he intended to postpone indefinitely cognates whom he favoured even more than the Mitakshara to all agnates without any limit of degree. He does not refer to the text of Brihat Manu quoted in the Mitakshara and this is certainly an instance in which the Mayukha and the Mitakshara should be construed together so as to set a limit of fourteen degrees (*p*[1]).

§ 515 The third division of heirs consists of bandhus (Table B). They are the sapindas related through a female, being within five degrees from and inclusive of the common ancestor, in the line or lines in which a female or females intervene (§§ 111-116). In the portion of his work relating to succession, Vijnanesvara styles them as sapindas of a different gotra The term 'bandhu' has therefore acquired in the system of the Mitakshara a distinctive and technical meaning and signifies *bhinnagotra* sapindas (*q*). They are of three classes: (1) *atmabandhus* or one's own bandhus, (2) *pitrubandhus* or the father's bandhus and (3) *matrubandhus* or the mother's bandhus. The relevant passage in the Mitakshara is as follows:—"Cognates are of three kinds: related to the person himself, to his father, or to his mother, as is declared by the following text. The sons of his own father's sister, the sons of his own mother's sister, and the sons of his own maternal uncle must be considered as his own cognate kindred. The sons of his father's paternal aunt, the sons of his father's maternal aunt, and the sons of his father's maternal uncle, must be deemed his father's cognate kindred. The sons of his mother's paternal aunt, the sons of his mother's maternal aunt, and the sons of his mother's maternal uncle, must be reckoned his mother's cognate

Bandhus.

(*p*) (1886) 10 Bom., 372.

(*p*[1]) *Gojabai* v *Shahajirao* (1892) 17 Bom., 114, 118; *Kesserbai* v *Hunsraj* (1906) 33 I A, 176, 30 Bom., 431, 442, *Bhagwan* v. *Warubai* (1908) 32 Bom., 310, 312.

(*q*) *Ramchandra* v. *Vinayak* (1915) 41 I.A., 290, 306, 309, 42 Cal, 384 As to when one of two collateral lines consists of the agnate descendants of the common ancestor, see § 518. The daughters of one's sagotra sapindas within six degrees will, on their marriage, be his *bhinnagotra* sapindas just as one's daughter or sister is his *bhinnagotra* sapinda, though not related through a female in the technical sense. See Jolly, T.L.L., 214, 221.

kindred (q^1). Here, by reason of near affinity, the cognate kindred of the deceased himself, are his successors in the first instance; on failure of them, his father's cognate kindred; or if there be none, his mother's cognate kindred. This must be understood to be the order of succession here intended" (r).

Enumeration only illustrative.

§ 516. Evidently the enumeration of the above nine bandhus was not intended to be exhaustive, and is only illustrative. When defining sapinda, Vijnanesvara says, "So also is the nephew a sapinda relation of his maternal aunts and uncles and the rest, because particles of the same body (the maternal grandfather) have entered into his and theirs; likewise does he stand in sapinda relationship with paternal uncles and aunts and the rest" (s). In the light of this, his definition of bandhus or *bhinnagotra* sapindas makes it clear that maternal aunts and uncles and their descendants as well as paternal aunts and their descendants are bandhus and that his enumeration is purely illustrative. Visvarupa and Mitra Misra in his Viramitrodaya recognised this by including the maternal uncle and the like in the term 'bandhu' purely by way of illustration. Referring to the maternal uncle's sons, the Viramitrodaya says that it would be extremely improper that their sons are heirs but they themselves though nearer, are not heirs (t). After some fluctuation of opinion, it was finally settled that the enumeration of bandhus in the Mitakshara is not exhaustive but illustrative only (u). Accordingly, in addition to the nine bandhus named in the Mitakshara, the following relations have been held to be bandhus: father's maternal uncle (v), maternal uncle (w), sister's son including step-

(q^1) This is the correct translation of the text as given in the original (1810) translation by Mr. Colebrooke. By some misprint, it is incorrectly given in Stokes, H.L.B., p. 448. See 2 W., MacN., 96. Smritichandrika. XI, v, 14, *Amrita* v. *Lakhinarayan* (1868) 2 Beng. L R, F.B., 28, 37.

(r) Mit, II, vi, 1-2.

(s) Mit., Vidyarnava's trans., p. 94.

(t) Viramit., III, vii, 5, Setlur's ed, 424.

(u) *Girdhari Lall* v *The Govt of Bengal* (1868) 12 M.I.A, 448; *Muthusami* v. *Muthukumaraswami* (1896) 23 I.A., 83, 19 Mad., 405; *Vedachela* v *Subramania* (1921) 48 I.A., 349, 44 Mad., 753, 762; *Adit Narain* v. *Mahabir Pershad* (1921) 48 I.A, 86, 6 Pat. L.J., 140; *Amrita* v. *Lakhi Narayan* (1868) 2 Beng. L.R., F B., 28.

(v) No. 51, *Girdhari Lall* v *The Govt. of Bengal* (1868) 12 M.I.A., 448. The numbers given to bandhus refer to the numbers in Table B and Appx. II.

(w) No. 22, (1868) 12 M I.A., 448 *supra*; *Muthuswami* v. *Simambedu Muthukumaraswami* (1896) 23 I.A., 83, 19 Mad, 405; *Vedachala* v. *Subramania* (1921) 48 I.A., 349, 44 Mad., 753.

sister's son (*x*), brother's daughter's son (*y*), sister's daughter's son (*z*), maternal grandfather's brother's grandson (*a*), mother's maternal uncle's son's son (*b*), daughter's son's son (*c*), father's paternal aunt's son's son (*d*), great-great-grandfather's son's son's daughter's son (*e*), maternal grandfather (*f*), mother's maternal uncle's daughter's son (*g*), paternal aunt's daughter's son (*h*), sister's son's son (*i*), daughter's daughter's son (*j*), maternal aunt's son's son (*k*), father's paternal uncle's daughter's son (*l*), paternal uncle's daughter's son (*m*), paternal aunt's son's son (*n*), paternal aunt's son's daughter's son (*o*), mother's paternal uncle's

(*x*) No F in Table B, *Amrita* v *Lakhinarayan* (1868) 2 B L R, 28 F B, *Gunesh Chunder* v *Nilkomul* 22 W R., 264, *Chelikani* v *Venkata* (1871) 6 M H C R, 278, *Srinivasa* v *Rangasami* (1879) 2 Mad, 304, *Lakshmanammal* v *Thiruvengada* (1882) 5 Mad., 241, *Subbaraya* v *Kailasa* (1892) 15 Mad, 300 (stepsister's son); *Narain Kuar* v *Chandi Din* (1887) 9 All, 467; *Raghunath* v *Munnan Misr* (1898) 20 All, 191, *Kuppal Naicker* v. *Lakshmi Ammal* A.I R, 1937, Mad., 555.

(*y*) No 11, *Mt Doorga Bibee* v *Janki* (1873) 10 Beng L R., 341.

(*z*) No 13, *Umaid Bahadur* v *Udoichand* (1881) 6 Cal, 119 F B.; *Umashankar* v *Nageswari* (1918) 3 P L J, 663 F B; *Sham Dei* v. *Birbadra Prasad* (1921) 43 All, 463

(*a*) No 174, *Padmakumari* v *The Court of Wards* (1881) 8 I A., 229, 8 Cal, 302

(*b*) No 178, *Ratnasubbu* v *Ponnappa* (1882) 5 Mad, 69

(*c*) No 2, *Krishnayya* v *Pitchamma* (1888) 11 Mad, 287, *Sheobarat* v. *Bhagwatiprasad* (1895) 17 All, 523, *Thirumalachariar* v. *Andalammal* (1907) 30 Mad, 406.

(*d*) No 56, (1896) 23 I A, 83, 89, 19 Mad, 405, *Sethurama* v. *Ponnammal* (1889) 12 Mad, 155, *Chamanlal* v. *Ganesh* (1904) 28 Bom, 453

(*e*) No 91 (& No 218), *Manik Chand* v. *Jagat Settani* (1890) 17 Cal 518.

(*f*) No. 21, *Chinnammal* v *Venkatachela* (1892) 15 Mad., 421.

(*g*) No 179, *Babu Lal* v *Nanku Ram* (1895) 22 Cal, 339.

(*h*) No 30, *Parot Bapalal* v. *Mehta Harilal* (1895) 19 Bom, 631; *Venkatagiri* v *Chandru* (1900) 23 Mad, 123, *Krishna* v *Venkatarama* (1909) 29 Mad, 115

(*i*) No 12, *Balusami* v *Narayana* (1897) 20 Mad, 342.

(*j*) No 3, *Tirumalachari* v *Andalammal* (1907) 30 Mad., 405; *Ajudhia* v *Ram Sumer* (1909) 31 All 454, *Ramphal* v *Pan Mati* (1910) 32 All, 640, *Kalimuthu* v *Ammamuthu* (1934) 58 Mad., 238.

(*k*) No 31, *Bai Vijli* v *Bai Prabalakshmi* (1907) 9 Bom. L R, 1129, *Adit Narayan* v *Mahabir Prasad* (1921) 48 I.A, 86, 6 P L J., 140.

(*l*) No. 55, *Paramanandas* v. *Parbhudas* (1912) 14 Bom. L R., 630, *Ram Sia* v *Bua* (1925) 47 All., 10.

(*m*) No. 26, *Tirath Ram* v *Mt Kahan Devi* (1920) 1 Lah., 588.

(*n*) No. 29, *Harihar* v. *Ram Daur* (1925) 47 All, 172.

(*o*) No. 38 (& No 206), *Kesar Singh* v. *Secretary of State* (1926) 49 Mad., 652, 680, but see *Gajadhar* v *Gauri Shankar* (1932) 54 All., 698 F B.

grandson's son (*p*), mother's paternal aunt's son and his son (*q*) and the granduncle's son's daughter's son (*r*). In Madras and Bombay female bandhus have also been held to be heritable bandhus and entitled to inherit (§§ 508, 509).

Mutuality of Sapindaship.

§ 517. It is well settled that in order to entitle a man to succeed to the inheritance of another he must be so related to the latter that they are sapindas of each other (*s*). This rule of mutuality has been rested (*t*) upon the text of Manu, IX, 187 "which has been translated differently by different writers but which in substance amounts to this, that the estate of a deceased goes to his nearest sapinda" (*u*). The interpretation of Manu's text by Visvesvarabhatta and Balambhatta is: "The property of a near sapinda shall be that of a near sapinda" (*v*). This rule, while it is expressive of mutuality, does not at all mean that there can be cases in which A can be a sapinda of B without B being a sapinda of A, as has sometimes been supposed. In Hindu law, the term sapinda is itself a term of correlation. In the words of the Mitakshara, "sapinda relationship arises between two people through their being connected by particles of one body". "Wherever the word sapinda is used there exists between the persons to whom it is applied a connection with one body either immediate or by descent"(*w*). Therefore it necessarily implies in all cases

(*p*) No. 182. *Chengiah* v. *Subbaroya* (1930) 58 M.L.J., 562.

(*q*) Nos. 171, 176, (1921) 48 I.A, 86 *supra*, (1930) 58 M.L.J., 562 *supra*.

(*r*) No. 62, *Naranjan* v. *Bakhtawar* (1938) 40 P.L.R., 37.

(*s*) *Ramchandra Martand* v. *Vinayak* (1914) 41 I.A., 290, 311, 312, 42 Cal., 384, *Adit Narayan* v. *Mahabir Prasad* (1921) 48 I.A., 86, 95, 6 P.L.J, 140, *Umaid Bahadur* v. *Udoi Chand* (1881) 6 Cal., 119; *Babu Lal* v. *Nanku Ram* (1895) 22 Cal., 339; *Kesar Singh* v. *Secy. of State* (1926) 49 Mad, 652; *Gajadhar* v. *Gauri Shankar* (1932) 54 All, 698 F.B.

(*t*) (1895) 22 Cal., 339, 345, 346, *supra;* (1914) 41 I.A., 290, 312, *supra*.

(*u*) *Buddha Singh* v *Laltu Singh* (1915) 42 I.A., 208, 217, 37 All., 604.

(*v*) Madanaparijata, Calcutta edn., 673; Balambhatti, Setlur's edn., 773; *Ramchandra Martand* v. *Vinayak* (1914) 41 I.A., 290, 312, 42 Cal., 384; *Babu Lal* v. *Nanku Ram* (1895) 22 Cal., 339, 346; *Sarvadhikari*, 2nd edn., 443, 444. While as stated in *Umaid Bahadur* v. *Udoi Chand* (1881) 6 Cal, 119, 127, the word 'sapinda' in the text of Manu, IX, 187, must be understood as connection by consanguinity as opposed to connection by pinda offerings, it cannot mean seven degrees in that text; it is limited to three degrees by IX, 186 and has been so limited by the Viramitrodaya which explains that the sagotra sapindas beyond the three degrees, the samanodakas and the three classes of bandhus are included in the term '*sakulya*' in the text of Manu. Viramit., III, vii, 4; Setlur, II, 424. See also Dr. Buhler's note to Manu, IX, 187 and *ante* § 476.

(*w*) Mit. on Yajn., I, 52. Vidyarnava's trans., 94. See *ante* § 108.

mutuality in the Mitakshara system as Balambhatta in his gloss on the Mitakshara on Marriage fully explains (*x*). If A is connected with B by particles of one body, it is impossible to conceive how B is not similarly connected with A The text of Manu therefore expresses only that which is implicit in all sapinda relationship; it merely states the rule of propinquity upon which is based the right of collaterals to succeed to the estate of a deceased person (*y*). Accordingly the Mitakshara applies it merely as a rule of propinquity and that without exception to samanodakas and bandhus (*z*)

Mutuality among Bandhus.

§ 518. It is admitted that amongst agnates, the relationship of sapindas is always mutual and so it must be among samanodakas But it is said that among cognates, the relationship is not mutual in a few cases (*a*); that sapinda relationship extends to the seventh degree in the father's line but only to the fifth degree in the mother's line and that therefore A may sometimes be a sapinda of B without B being a sapinda of A (*b*). This is contrary to the necessary import of the word 'sapinda' as explained in the previous paragraph As bandhus must first be sapindas, though of a different gotra, there will be without exception the mutuality of sapinda relationship amongst all bandhus.

The father's line is the line of the father's lineal male ancestors (*b*[1]), and where the assumption of seven degrees as the

(*x*) Balambhatti (Gharpure's edn), page 194, see article by Prof. K V Venkatasubramaniam 31 M L W, 9, at 16, see *ante* § 114

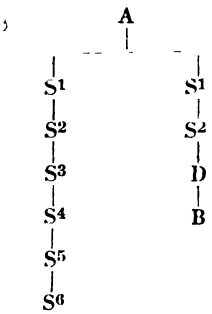
(*y*) *Buddha Singh* v *Lalta Singh* (1915) 42 I A, 208, 217, 37 All, 604

(*z*) Mit, II, 3, 4 The Vyavahara Mayukha applies it also in the topic of stridhana, V May, IV, x, 28.

(*a*) Bhattacharya, H L, 2nd edn, 459, cited in *Ramchandra Martand* v. *Vinayak* (1914) 41 I.A, 290, 311, 42 Cal, 384, 419

(*b*) Sarvadhikari, 2nd edn, 572 573.

(*b*[1]) The words "seventh from the father" in Yajn, I. 53, have been clearly interpreted by the Mitakshara. "In the same way, beginning from the father and *counting his father etc*, till the line reaches the seventh ancestor is the meaning of the phrase, seventh from the father" It is in that father's line [so defined], after the seventh ancestor, the sapinda relationship ceases. The mother's line is similarly defined. "Beginning from the mother and counting *her father*, and grandfather, etc., till the fifth ancestor is reached" and it is in that mother's line [so defined] after the fifth ancestor, the sapinda relationship ceases, Vidyarnava's trans., 109-110 §§ 110, 113.



limit of sapinda relationship in one of the two collateral lines, for example, the father's line is correct, both A and B are necessarily sapindas of each other. In the marginal diagram S^6 is an agnate sapinda, and B is a cognate sapinda, of the common ancestor. Both are therefore bhinnagotra sapindas of each other. In *Babu Lal* v. *Nanku Ram* (*c*), collateral descendants within the fifth degree, reckoned from and inclusive of any of the three maternal ancestors, beginning with the mother's father were alone assumed to be a man's sapindas. But the sixth agnate descendant of the maternal grandfather is the latter's sapinda and must therefore be a sapinda of his daughter's son who is only the second in descent (*d*). The view that in such a case the bandhu relationship should be limited to the fourth agnate descendant of the common ancestor is to ignore the sapinda limit in that line and cannot be supported as the relationship between the propositus and the claimant in the two lines is only through their common ancestor. The assumption, however, that a father's line extends, in the Mitakshara scheme of sapinda relationship, where a female intervenes, to seven degrees is incorrect (*e*). For according to the Mitakshara as has already been explained (*f*) the correct rule for all *bhinnagotra* sapindas, whether they are related through the mother or through the father, is that the sapinda relationship ceases with the fifth degree. It is immaterial whether the relationship is traced through one's own mother or father's mother or grandfather's mother or contrariwise through one's daughter, son's daughter or grandson's daughter.

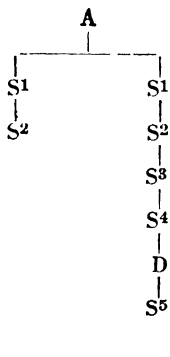
(*c*) (1895) 22 Cal., 339.

(*d*) See group 5 in 22 Cal., 339, 345 *supra*, where there is no discussion; but see Sarvadhikari, 2nd edn., 599.

(*e*) Though according to the Dayabhaga School the prohibited degrees for the purpose of marriage extend to relations through the father's mother upto seven degrees, they are not sapindas of the propositus and are not entitled to inherit. § 490. See *ante* § 117, see Rule 1 (b) in Banerjee, M & S, 5th edn., 67.

(*f*) See *ante* § 110-116.

With reference to the marginal diagram, it is said that S^5 on the right being seventh in degree would be sapinda of S^2 on the left; but that counting from S^5 who claims through his mother D, S^5's sapindaship would terminate with S^2 on the right and therefore there is no mutuality between S^5 and S^2 (*g*). This view seems erroneous. In the first place, S^5 on the right and the common ancestor A are admittedly not sapindas of each other. How then, in the first premiss, can S^5 be taken to be a sapinda of S^2 on the left? Not certainly in the Mitakshara sense nor according to the Mitakshara computation. The fallacy appears to consist in assuming that S^5 is in the father's line of S^2 on the left and that seven degrees are therefore to be computed from A In the first place, S^5 is not in the father's line of S^2 (on the left). In the second place, the limitation of seven degrees is as mentioned by Vijnanesvara in connection with the father's agnatic line (*h*) and applies only to sagotra sapindas (*i*). And the error is due to taking the words "from the father" and "from the mother" in different and mutually inconsistent senses on each of the occasions. The process of first extending the line of *bhinnagotra* sapindas through the father to seven degrees and then cutting it down to five degrees is certainly not consistent with the Mitakshara.



§ 519. As has already been explained, the five degrees in the mother's line must be understood to refer to all *bhinnagotras*, in the line in which a female or females intervene, the term '*mother*' indicating a female, as Balambhatta says. This limitation has been laid down by the Privy Council in *Ramchandra Martand* v. *Vinayak* and *Adit Narain* v. *Mahabir Prasad*. In the former case, the plaintiffs claiming the succession were the owner Laxman Rao's paternal grandfather's son's son's daughter's daughter's sons and they were held not to be his *bhinnagotra* sapindas, though they were within seven degrees from Laxman Rao's paternal

(*g*) *Gajadhar* v. *Gauri Shankar* (1932) 54 All., 698, 723 *per* Mukerji, J.

(*h*) See *ante* §§ 107-116 Similar objections apply to the diagram in Dr. J. N Bhattacharya's H. L, 2nd edn, 259, where S^5 is not a sapinda of the common ancestor at all.

(*i*) *Ramchandra* v. *Vinayak* (1914) 41 I.A., 290, 307-308, 42 Cal, 384.

grandfather (*j*). It is therefore a decisive authority against the view that the line, where a female intervenes, can be extended to seven degrees even with reference to the agnate descendants of the common ancestor (*k*). The simple test in all cases therefore is whether the claimant and the propositus are each of them bandhus of the common ancestor or whether one of them is a bandhu and the other, either a bandhu or an agnate sapinda of the common ancestor.

On the basis of the rule of five degrees as applicable to all *bhinnagotra* sapindas tracing descent from a common male ancestor in the line where one or more females intervene, there will be mutuality in all cases without exception just as in the case of sagotra sapindas.

Bandhus, only of three classes.

§ 520. There can be no doubt that the Mitakshara intended, as Mitter, J., thought in *Amrita Kumari* v. *Lakhi Narain*, to establish the threefold classification of bandhus (*k*[1]). In *Ramchandra Martand* v. *Vinayak*, the question whether the classes can be added to was raised but was left open by the Privy Council (*l*). The preponderance of authority is in favour of the view that there are only three classes, namely, *atmabandhus*, *pitrubandhus* and *matrubandhus* (*m*). Vijnanesvara says not only that cognates are of three kinds but he states the order of succession only as regards the three. He

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(*j*) (1914) 41 I.A., 290, 312, "The plaintiffs are his (Laxman Rao's) *bhinnagotras* beyond the fifth degree," (1921) 48 I.A., 86, 6 P L.J., 140; *Brij Mohan* v. *Kishun Lall* A I B, 1938 All, 443

(*k*) See *ante* § 113 Balambhatta's comment on the term 'mother' is fully supported by the comment of the Mitakshara on Yajnavalkya's text on impurity, (Mit, on Yajn, III, 24; II, 135; Naraharayya's trans, 54, 55, 56), which says that by the use of the term *matula* (maternal uncle) are indicated by synecdoche all those related to him by blood through a female *(yonisambandhas)* that is, *atmabandhus*, *matrubandhus* and *pitrubandhus* and they have been explained in connection with the text "the wife, daughters" etc Explaining the text of Gaut (XIV, 20) which uses the term *yonisambandha*, Vijnanesvara takes it to include not only a maternal uncle and mother's sister's son but also a father's sister's son. (Mit., Setlur's edn., 1170). Dr. Jolly takes the same view. "The extension of the bandhus to four degrees only is in accordance with the rule that sapindaship in the female line does not extend beyond four degrees". T.L.L., 214.

(*k*[1]) (1868) 2 Beng. L.R., 28, 38 F.B.

(*l*) (1914) 41 I.A., 290, 42 Cal., 384, 416, 417.

(*m*) *Muthuswami* v. *Muthukumaraswami* (1893) 16 Mad., 23, 30, affirmed in (1896) 23 I.A., 83, 19 Mad., 405, (1868) 2 Beng. L.R., 28 *supra*; *Vedachala* v. *Subramania* (1921) 48 I A., 349, 44 Mad., 753; *Gajadhar* v. *Gauri Shankar* (1935) 54 All., 698, 710, 726 F.B.; *Babu Lal* v. *Nanku Ram* (1895) 22 Cal., 339. Dicta to the contrary in *Umashankar* v. *Mt. Nageswari* (1918) 3 P.L.J., 663, 683, *Rami Reddi* v. *Gangi Reddi* (1925) 48 Mad., 722 and *Kalimuthu* v. *Ammamuttu* (1935) 58 Mad., 238, 243 are opposed to the Mitakshara.

recurs to this matter in another connection when dealing with impurity where again he divides all blood relations through a female only into the same three classes (*n*). But this three-fold classification of bandhus is itself opposed to the assumption that there are bandhus within the limit of five degrees who are outside the three classes.

For, what the Mitakshara means is that all bandhus are divisible into the three classes. In *Adit Narain* v. *Mahabir Prasad*, the Privy Council laid down: "Of course a bandhu must in order to be heritable in a female line, fall within the fifth degree from the common male ancestor and must be so related to the deceased person that they were mutually sapindas of one another, that is to say, where the Mitakshara applies, persons connected by particles of one body; but if these conditions are satisfied, that rule [of class propinquity] takes effect" (*o*). This certainly seems to be the simplest and most logical view, one too that is fully supported by the Mitakshara and the Mayukha (*p*).

The limits of the three classes.

§ 521. From the illustrations given of *atmabandhus*, *pitrubandhus* and *matrubandhus*, the Mitakshara makes it clear where the dividing line between the three classes is to be drawn *Atmabandhus* comprise a man's own cognate descendants, his father's cognate descendants, his grandfather's cognate descendants, and his maternal grandfather and his descendants The upward limits so far as *atmabandhus* are concerned are therefore the father's father and the maternal grandfather Since the *pitrubandhus* are illustrated in the Mitakshara by the great-grandfather's cognate descendant [No. 52] and the father's maternal grandfather's descendants [Nos. 53 and 54], the great-grandfather and the father's maternal grandfather [No. 50] form the lower limits of that class But the upper limits of that class are (1) the great-grandfather of the great-grandfather in the agnatic line, (2) paternal grandfather's maternal grandfather [No. 79], (3) father's maternal grandfather's father [No. 106] and (4) father's maternal grandmother's father [No. 107]. Similarly *matrubandhus* are represented in the Mitakshara by the descendants [Nos. 171, 172, 173] of the maternal grand-

(*n*) Mit. on Yajn., III, 24 (Setlur's edn., 1170); Naraharayya's trans, 54-56.

(*o*) 48 I A., 86. 95, 25 C.W N., 842, 40 M.L.J., 270 citing *Ram Chandra's* case (1914) 41 I.A., 290, 309, 42 Cal., 384. See also *Ram Parshad* v. *Idu Mal* (1931) 134 I.C., 122 (1).

(*p*) V. May., IV, viii, 23.

father's father [No. 166] and the maternal grandmother's father [No. 167] who form the lower limits of that class The upper limits are (1) maternal grandfather's paternal grandfather [No. 202], (2) maternal grandfather's maternal grandfather [No. 203], and (3) maternal grandmother's paternal and maternal grandfathers [Nos. 234 and 235, the numbers refer to Table B].

Dr. Sarvadhikari's view discussed.

§ 522. Dr. Sarvadhikari would restrict the heritable bandhus (1) to the owner's descending line, (2) to the owner's father's family, (3) to the owner's maternal grandfather's line, (4) to the father's maternal grandfather's line, and (5) to the mother's maternal grandfather's line (*q*).

This proceeds upon his central assumption that Vriddha Satatapa's classification cannot be accepted (*r*), that bandhus who according to that text would be *pitrubandhus* and *matrubandhus* should be classed as *atmabandhus* (*s*), and that that text though approved by the Mitakshara should be read with certain additional words and retranslated in a way quite different from what it is (*t*). Cognate descendants of the owner's great-grandfather and descendants of the maternal grandfather's father are according to him *atmabandhus* (*u*). These are undoubtedly *pitrubandhus* and *matrubandhus* respectively according to the Mitakshara and the contrary view of Dr. Sarvadhikari is opposed to all the Mitakshara authorities and to the decisions of the Privy Council and of Courts in India (*v*).

(*q*) Sarvadhikari 2nd edn., 591-2, *Kesarsingh* v. *Secy. of State* (1926) 49 Mad., 652, 684, 685; *Gajadhar* v. *Gauri Shankar* (1935) 54 All., 698, 701 F.B.

(*r*) Sarvadhikari, 2nd edn, 625, 626.

(*s*) *Ibid*, 627; see note (*v*) *infra*.

(*t*) *Ibid*, 629. Dr. Sarvadhikari's tables were not accepted in *Vedachela* v. *Subramania* (1921) 48 I.A., 349, 364, 44 Mad., 753. His conclusions were not accepted by the Court in *Kesar Singh* v. *Secy. of State* (1926) 49 Mad., 652. His classification was not accepted by Sulaiman, J., in *Gajadhar* v. *Gourishankar* (1932) 54 All, 698, 707, 708, F.B.

(*u*) Sarvadhikari, 2nd edn., 606-a, 606-b.

(*v*) *Muthuswami* v. *Muthukumaraswami* (1896) 23 I.A., 83, 19 Mad., 405 affg. 16 Mad., 23; *Adit Narain* v. *Mahabeer Prasad* (1921) 48 I.A., 86 (mother's paternal aunt's son, atmabandhu) approving *Krishna* v. *Venkatarama* (1906) 29 Mad., 115 and *Bai Vijli* v. *Bai Prabha Lakshmi* (1907) 9 Bom. L.R., 1129. See also Sarvadhikari, 2nd edn., 609. Father's paternal aunt's sons and a mother's maternal and paternal aunt's sons who are undoubtedly *pitrubandhus* and *matrubandhus* are *atmabandhus* according to Dr. Sarvadhikari.

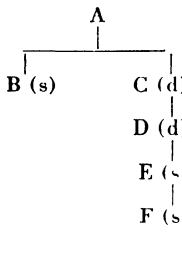
Neither the text of Vriddha Satatapa classifying the bandhus nor the Mitakshara adopting it makes any distinction between bandhus for marriage and impurity and bandhus for the purpose of succession, in other words, heritable bandhus as is quite evident from the comment of the Mitakshara on Yajn, III, 24. The only possible difference is between male and female bandhus which is expressed either in excluding or in postponing the latter.

Kesar Singh v Secretary of State.

§ 523. In *Kesar Singh* v. *Secretary of State*, the Madras High Court after a full examination of the authorities held that a father's sister's son's daughter's son was a heritable bandhu and refused to accept Dr. Sarvadhikari's theory that heritable bandhus are limited to particular lines or to particular families, even though they were within the prescribed degrees of kindred, as that theory derived no support from the texts and commentaries (*w*).

Umaid Bahadur's case.

In *Umaid Bahadur* v. *Udoi Chand*, where it was held that a sister's daughter's son was an heir and that a bandhu must be an *atmabandhu*, *pitrubandhu* or *matrubandhu*, there is an *obiter dictum* that a sister's daughter's son's son will not be a heritable bandhu (*x*). He would be an *atmabandhu* according to the Mitakshara. In the marginal diagram, F would be an *atmabandhu* of B and B would be a *pitrubandhu* of F. But it was supposed, probably relying upon Dr Sarvadhikari's theory which was not referred to and which was based on an altogether different classification that B would not be an *atmabandhu* or *pitrubandhu* or *matrubandhu* of F, though they were within the prescribed degrees. No reasons are given in that judgment. A man and his sister's daughter's son's son are undoubtedly related as *bhinnagotra* sapindas



Babu Lal v. Nanku Ram.

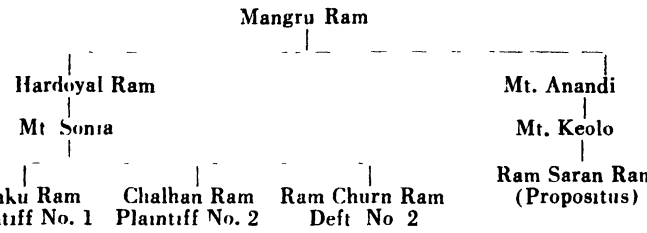
In *Babu Lal* v. *Nanku Ram*, the Court rightly held that the plaintiffs who were within five degrees were bandhus, that sapindaship must be mutual and that a bandhu must either be an *atmabandhu*, *pitrubandhu* or *matrubandhu* (*y*).

(*w*) (1926) 49 Mad, 652.

(*x*) (1881) 6 Cal, 119, 128 F B.

(*y*) (1895) 22 Cal, 339, 345, 346. The groups given in this case are not exhaustive of sapindas and appear to be inaccurate. It includes cognate descendants to the seventh degree from the six paternal ancestors which is contrary to the Mitakshara and to the decision of the Privy Council in *Ramchandra Martand* v *Vinayak* (1914) 41 I.A,

But the Court observed, "that Ram Saran [in the accompanying diagram] was the third in descent from Mangru Ram,



who was the plaintiff's maternal great-grandfather, and so he was their sapinda *directly*. Thus we find that the plaintiffs and Ram Saran are mutually related as sapindas, *the former through the mother and the latter directly*", that is as an *atmabandhu*. Ram Saran certainly was not an *atmabandhu* of the plaintiffs. He was their *matrubândhu* because he was their mother's paternal aunt's daughter's son and the dictum is clearly opposed to authority (*z*). The assumptions made in *Umaid Bahadur's* case (*x*) and in *Babu Lal's* case (*y*) apparently based on Dr. Sarvadhikari's erroneous classification are neither correct nor authoritative. Neither a decision on the point was necessary nor were any reasons given.

Allahabad view discussed.

In *Gajadhar* v. *Gauri Shankar*, the question was discussed at length by the Allahabad High Court, which differing from the view of the Madras High Court, held that a father's sister's son's daughter's son was not a heritable bandhu (*a*). That decision rightly held that the three classes of bandhus in the Mitakshara are exhaustive and cannot be added to. The learned judges, however, while refusing to accept Dr. Sarvadhikari's classification and propositions (*b*) arrived at similar results and held that a bandhu though within five degrees and covered by the rule of mutuality, cannot be in the father's mother's mother's agnatic line or in

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290, 42 Cal., 384. It does not include those who ought to be included, namely, the descendants of the father's maternal grandfather as well as those in the mother's maternal grandfather's line and grandfather's maternal grandfather's line.

(*z*) *Muthusami* v. *Muthukumarasami* (1896) 23 I.A., 83, 19 Mad., 405; *Adit Narayan's* case (1921) 48 I.A., 86; *Vedachela's* case (1921) 48 I.A., 349.

(*a*) (1932) 54 All., 698, F.B.

(*b*) (1932) 54 All., 698, 710, 725, F.B.

the mother's mother's mother's agnatic line (*c*). They hold that the words '*pitrubandhus*' and '*matrubandhus*' in the text do not, as a matter of Sanskrit, mean father's bandhus and mother's bandhus, but mean only a person's bandhus through the father and through the mother and that the two expressions have different meanings (*d*). But both these reasons are opposed to the authority of the Vyavahara Mayukha which explicitly reads the terms '*pitrubandhu*' and '*matrubandhu*' as the equivalents of '*pituh bandhuh*' and '*matuh bandhuh*' and explains that there is no distinction between the father's bandhus and the mother's bandhus on the one hand, and one's bandhus related through the father and through the mother on the other and that therefore they are entitled to inherit (*e*). It says: "What title then can the *bandhavas* of the father or the mother of the deceased have to the wealth? . . . the word *bandhavah* in its primary sense would apply to those enumerated as the father's and mother's cognate relations, in the same way as it does to the maternal uncle of the father, the paternal uncle of the father, and the like. Hence the text is intelligible only by the acceptation of the enumerated paternal and maternal bandhus (cognates) as being bandhus in reference to succession to the property" (*f*).

It would be an error to suppose that the bandhus of the father and of the mother are related to the father and the mother and not to the owner himself; for the paternal aunt's son, the maternal aunt's son and the maternal uncle's son are also related to the father and the mother and they are called *atmabandhus* only for the purpose of classification. Similarly the bandhus of the father and mother can only be related through their ancestors and are equally the bandhus of the propositus, for instance, the father's maternal uncle's son, the mother's maternal uncle's son, the maternal grandfather's brother's grandson and mother's paternal aunt's son. No distinction of substance can therefore be drawn between bandhus of the father and of the mother and bandhus related through them. They must, of course, be within five degrees and, amongst them, the succession will be regulated by the rules relating to class and individual propinquity.

(*c*) (1932) 54 All, 698, 713, F.B. *supra*.

(*d*) (1932) 54 All., 698, 711, 725, 726, F.B The learned judges admit at p 711 that if the terms pitrubandhus and matrubandhus meant father's bandhus and mother's bandhus, the conclusion would be different

(*e*) Mandlik, 55.

(*f*) V. May., IV, viii, 23; Mandlik, 82-83.

The Full Bench of the Allahabad High Court further observed (1) that unless the bandhus were so restricted, great-grandparents would be *atmabandhus* (*g*), and (2) that one would have to count a common ancestor in the fifth degree from the father or the mother. Neither objection is valid. Great-grandparents are not and need not be *atmabandhus* for the upper limit of the *atmabandhus* consists of, as already mentioned (*h*), the paternal and maternal grandfathers. If the father's bandhus are bandhus of the propositus, it would not follow that all bandhus within five degrees from the father are also bandhus of the propositus but only such of them as are within five degrees with reference to him.

Mukerji, J., treats the bandhus named in the text cited by the Mitakshara not as illustrative of each class of bandhus, but as the upper limit of the class itself (*i*). On this line of reasoning, as the sister's son, the brother's daughter's son, the son's daughter's son, and the daughter's son's son are omitted in the list, it could equally be maintained that *atmabandhus* should exclude father's cognate descendants and one's own cognate descendants. The instances of *atmabandhus*, *pitrubandhus* and *matrubandhus* taken together only enable us to mark off the limits which divide the three classes of bandhus. As they do not, in the case of *atmabandhus*, give the lower limit which has to be supplied, they do not give the upper limits of *pitrubandhus* and *matrubandhus* which have also to be understood in accordance with the Mitakshara definition and limitation of *bhinnagotra* sapinda relationship. The Mitakshara emphatically says that the rule of propinquity applies in the case of bandhus as amongst sapindas and samanodakas (*j*). There is therefore no warrant for the restriction of heritable bandhus by imposing any conditions in addition to the five degrees, mutuality and male sex. As the Mitakshara says that *bhinnagotra* sapindaship extends to five degrees, it can be cut down only on the authority of established commentaries. The decision of the Madras High Court in *Kesar Singh* v. *Secretary of State*, though not all the reasoning and dicta therein, appears therefore to be correct.

Madras view.

Conclusion.

§ 524. All bandhus on the father's side who are not *atmabandhus* are *pitrubandhus* and all bandhus on the mother's

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(*g*) (1932) 54 All., 698, 711, F.B. *supra.*

(*h*) See *ante* § 521.

(*i*) (1932) 54 All., 698, 727, F.B. *supra.*

(*j*) Mit., II, iii, 4; II, v, 3.

side who are not *atmabandhus* are *matrubandhus*. On this view, there is no want of mutuality between any two *bhinnagotra sapindas* who are within the limit of five degrees. Where these two conditions of five degrees in the female line and mutuality are satisfied they are, as laid down by the Judicial Committee in *Adit Narain* v. *Mahabir Prasad*, heritable *bandhus* (*j*[1]).

SECTION II.

ORDER OF SUCCESSION.

§ 525. Next as to the ORDER OF SUCCESSION under the Mitakshara law. As already stated, it only applies to property held in severalty (§ 481). This is, of course, subject to the exception recently created by statute in favour of the widow of a coparcener in an undivided family. If the estate has once vested in any male, he becomes a fresh stock, and on his death the descent is governed by the law of survivorship or of inheritance, according as he has left undivided coparceners or not. Where the estate has vested in a female, or in any number of females successively, on the death of the last, succession is again traced to the last male holder, except in certain cases under Bombay law (§§ 535, 614).

Order altered by statute.

The Hindu Women's Rights to Property Act, 1937, has radically altered the order of succession as it stood before it. The old rule that the widow succeeds to a man's estate in the absence of male issue has been altered by making the widow heir to his property along with his son, grandson and great-grandson where they are in existence. The widows of a predeceased son and of the predeceased son of a predeceased son are also entitled to succeed along with the male issue. The altered rules of succession apply to all cases of succession, whether governed by the Mitakshara or the Dayabhaga law. But as the Act is not retrospective and does not apply to estates descendible to a single heir, it is necessary to state also the order as it stood before it came into force.

Male issue.

§ 526. Subject to the operation of this Act, the following rules apply. If a man has become divided from his sons, and subsequently has one or more sons born, he or they

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(*j*[1]) (1921) 48 I A, 86, 95, 6 P.L.J, 140, *Manik Chand* v. *Jagat Settani* (1890) 17 Cal, 518, 530, where a man and his great-great-grandfather's grandson's daughter's son were held to be bandhus of each other. Equally mutuality exists between the sixth agnate descendant and the fourth cognate descendant of a common ancestor, § 518.

take his property exclusively (*k*). If he is undivided from his sons, his property passes to the whole of his male issue, which term includes his legitimate sons, grandsons, and great-grandsons (*k*[1]). If he is undivided only from some of them, those who remain united with him take it with those subsequently born. This rule also applies to his self-acquired property even if the division took place only after he acquired such property (*l*). All of these take at once as a single heir, either directly or by way of representation. Suppose, for instance, a man has had three sons, and dies leaving his eldest son A, and B, the son of A; two grandsons, C1 and C2, by his second son, and three great-grandsons, D1, D2 and D3, by his third son; A takes for himself and B, C1 and C2 take for themselves, and D1, D2 and D3 take for themselves, and these three lines all take at once, and not in succession to each other. The mode in which they take *inter se*, and the nature of the interests which they take in the coparcenary property, have been discussed

Take simultaneously.

(*k*) *Nawal Singh* v. *Bhagwan* (1882) 4 All., 427; *Fakirappa* v. *Yellappa* (1898) 22 Bom., 201; an undivided son takes the father's self-acquired property to the exclusion of the divided son. *Nana Tawker* v. *Ramachandra* (1909) 32 Mad., 377; *Narasimhan* v. *Narasimhan* (1932) 55 Mad., 577.

(*k*[1]) Baudh., I, v, 11, 9; Manu, IX, 137, 185; Mit., I, 1, 3; II, 8, 1; Apararka cited by Sarvadhikari, 2nd edn., 649 cited in *Ananda Bibee* v. *Nownit Lall* (1883) 9 Cal, 315, 320; Daya Bh., III, 1, 18, IX, 31-34; V. May., IV, 4, 20-22; Viramit., p. 154, 11; Vivada Chintamani, 295; *Rutcheputty* v. *Rajunder* (1839) 2 M.I A., 132, 136; *Bhyah Ram* v. *Bhyah Ugur* (1872) 13 M.I.A., 373, 14 W.R.P.C., 1. The Viramitrodaya points out that the grandsons and the great-grandson take together with the son as "there is not here an order of succession following the order of proximity according to birth; but is based on the authority of the text establishing the equality of the grandson's ownership in the grandfather's property. Even where the father of the grandson and the father and grandfather of the great-grandson are alive, the Dayabhaga view is wrong since the capacity to present funeral oblations is not alone the criterion of the right to heritage and the fitness for presenting oblations is not wanting in grandsons too, while their father is alive." (Viramit., II, 1, 23-a; Setlur's edn., pages 341-342).

(*l*) *Fakirappa* v. *Yellappa* (1898) 22 Bom., 101; *Nana Tawker* v. *Ramachandra Tawker* (1909) 32 Mad. 377 followed on this point in *Narasimhan* v. *Narasimhan* (1932) 55 Mad., 577; *Vairavan Chettiar* v. *Srinivasachariar* (1921) 44 Mad., 499 F.B. In the last case, the decision that an undivided son takes the separate property of the deceased by inheritance and not by survivorship is contrary to the rule in the Mitakshara, for if he took by inheritance he could not exclude the divided son whose propinquity is equal. Succession by survivorship applies to all cases of unobstructed inheritance and inheritance to separate property is unobstructed. See *ante* §§ 271-273. *Venkateswara Pattar* v. *Mankayammal* (1935) 69 M.L.J., 410; *Murtuza Hussain Khan* v. *Md. Yasin Ali Khan* (1916) 43 I.A., 269, 281.

already (*m*). At first sight, this might seem to be an exception to the general rule, that among heirs of different degrees, the nearer always excludes the more remote. But this exception is one which necessarily follows from the right of sons and grandsons to the estate of the grandfather (*n*). Accordingly, it has been held that as regards the sons, grandsons and great-grandsons, the right of representation exists even in cases of succession to the divided property of the last male owner as in the case of undivided family property, and the divided son will not exclude the grandson in the succession to the divided property of the ancestor (*o*).

This is merely an illustration of the rule that property, which is held separate in one generation, always becomes joint in the next generation. If it is held by a father who is himself the head of a coparcenary, it passes at his death to the whole coparcenary, and not to any single member of it, all of them having under the Mitakshara equal rights by birth (*p*). The rights of an adopted son in competition with a legitimate son have already been discussed (*q*).

(*m*) See *ante* §§ 266-268, 421

(*n*) *Khettur* v. *Poorno* 15 W R., 482.

(*o*) *Marudayi* v. *Doraiswami* (1907) 30 Mad., 348 following *Ramappa Naicken* v. *Sithammal* (1878) 2 Mad, 182, 184, *Muttuvaduganatha* v. *Periasami* (1893) 16 Mad, 11, 15. The Mitakshara gives to the grandson an 'unobstructed right' by his birth to the separate property of his grandfather [*vide* remarks of Telang, J., in *Apaji Narhar* v *Ramchandra* (1892) 16 Bom., 29, 56] and partition does not annul it or convert it into an obstructed right; therefore the existence of a son cannot defeat it although both son and grandson are separated from their ancestor and from one another; (1907) 30 Mad., 348, 352 *supra*, *Gangadhar* v. *Ibrahim* (1923) 47 Bom, 556.

(*p*) This rule was illustrated in the following case. A grandson sued his grandfather and uncles for a partition. He obtained a decree as to all the joint property, but failed as to part which was held to be the separate property of the grandfather. On the death of the grandfather he brought a fresh suit for a share of this, contending that by descent it had become joint property. This was perfectly true, but the answer to the plaintiff was that he was no longer a member of the coparcenary. On the grandfather's death, his interest in the joint property passed to the remaining coparceners by survivorship. His own separate property passed to his united sons as heirs, and in their hands became an addition to the joint property, in which the divided grandson had no interest. *Fakirappa* v. *Yellappa* (1898) 22 Bom., 101.

(*q*) See *ante* § 192.

Illegitimate sons.

§ 527. Illegitimate sons in the three higher classes never take as heirs, but are only entitled to maintenance from the estate of the father. The right is a personal right and not heritable (*r*).

of a Sudra.

The illegitimate son of a Sudra may, however, in certain circumstances, inherit either jointly or solely. His rights have already been referred to under the head of Partition (*s*), but it will be necessary to go a little more fully into them here. His position rests upon two texts. Manu says (*t*), "A son begotten by a man of the servile class on his female slave, or on the female slave of his male slave, may take a share of the heritage, if permitted (by the other sons)". Yajnavalkya enlarges the rule as follows: "Even a son begotten by a Sudra on a female slave *(dasiputra)* may take a share by the father's choice. But, if the father be dead, the brethren should make him partaker of the moiety of a share; and one who has no brothers may inherit the whole property in default of daughter's sons" (*u*). The Mitakshara explaining the latter part says: "However, should there be no sons of the wedded wife, the son of the female slave takes the whole estate, provided there be no daughters of a wife, nor sons of daughters. But, if there be such, the son of the female slave participates for half a share only" (*v*). Jimutavahana referring to the text of Manu explains it: "The son of a Sudra by a female slave, or other unmarried Sudra woman, may share, equally with other sons, by consent of the father"; he paraphrases the text of Yajnavalkya by the words, "begotten on an unmarried woman, and having no brother, he may take the whole property: provided there be not a daughter's son" (*w*).

(*r*) *Chuoturya* v. *Sahub Purhulad* (1857) 7 M I.A, 18, *Roshan Singh* v. *Bulwant Singh* (1900) 27 I A., 51, 22 All., 191, *Bhaiya Sher Bahadur* v *Bhaiya Ganga Baksh* (1913) 41 I.A, 1, *Vellaiyappa* v. *Natarajan* (1931) 58 I A, 402, 408, 55 Mad, 1; *Ananthaya* v. *Vishnu* (1894) 17 Mad., 160, 161.

(*s*) See *ante* §§ 424-425.

(*t*) IX, § 179. The words 'by the other sons' in Sir W. Jones' translation are taken from the gloss of Kulluka Bhatta. Dr. Buhler translates the same text, 'if permitted (by his father).' This agrees with the rule laid down by Yajnavalkya.

(*u*) For the meaning of the term '*dasi*' see Jolly, T L.L., 187-188; Jha's Medhatithi Bhashya on Manu, IX, 179, Vol. V, 158, Yajnavalkya, II, 133, 134; Mitakshara, I, xii, 1; V. May., IV, iv, 32.

(*v*) Mit., I, xii, 2.

(*w*) Daya Bh., IX, 29, 31. Mr. Colebrooke's translation has been accepted as substantially correct by a Full Bench of the Calcutta High Court in *Rajani Nath* v. *Nitai Chandra* (1921) 48 Cal., 643, 683 F.B.

Meaning of dasiputra

§ 528. The term *dasiputra* has been responsible for conflicting judicial opinions (*x*). It has been held that the term '*dasi*' is not exclusively applicable to a female slave (*y*) but includes a Sudra woman kept as a concubine (*z*).

The first question that arises upon these texts is as to the class of women and the nature of connection meant by them. It is now settled that an illegitimate son of a Sudra is entitled as a *dasiputra* to a share of the inheritance provided that his mother was in the continuous and exclusive keeping of his father and he was not the fruit of an adulterous or incestuous intercourse (*a*). A Full Bench of the Madras High Court held that an illegitimate son of a Sudra woman who was by profession a prostitute before she came into a man's continuous and exclusive keeping is a *dasiputra* within the meaning of the text and that it is not necessary that a marriage could have taken place between the father and the

(*x*) *Narain Dhara* v *Rakhal Gain* (1875) 1 Cal, 1, *Kirpal* v. *Sukurmoni* (1892) 19 Cal, 91, *Ram Saran* v. *Tekchand* (1901) 28 Cal, 194

(*y*) At the time of the earlier Smritis, the term '*dasi*' could have meant only a slave or a serf and undoubtedly slavery of some sort was then known Manu, VIII, 415, IX, 55 (Manu mentions seven kinds of slaves), Arthas. III, 13, Shamasastri, 222, Dig., II, 12-13. Slavery was formally abolished by Act V of 1843, but centuries before, it had evidently become extinct, though a kind of serfdom probably continued longer Accordingly, even by the time of Medhatithi, the term *dasi*' came to mean a concubine or a servant woman in the house. A Sudra's son by a '*dasi*' meant a son begotten by him on an unmarried or an unauthorised woman Medhatithi on Manu, IX, 179, Jha's Medhatithi Bhashya, Vol V, 158, Jolly, T.L L, 187.

(*z*) (1921) 48 Cal, 643 F B *supra*

(*a*) *Rajani Nath* v. *Nitai Chandra* (1921) 48 Cal, 643 F B overruling (1875) 1 Cal, 1. (1891) 19 Cal., 91 and (1901) 28 Cal, 194 *supra*, *Chatterbhuj Patnaik* v *Krishna Chendra Patnaik* (1912) 17 C W N., 442, *Annayyan* v *Chinnan* (1910) 33 Mad, 366, *Datti Parisi* v. *Datti Bangara* (1869) 4 Mad H C, 204, 215, 4 Mad Jur, 136, *Venkatachella* v. *Parvatham* (1875) 8 Mad H C, 134, *Kuppa* v *Singaravelu* (1885) 8 Mad, 325, *Dalip* v *Ganpat* (1886) 8 All, 387, *Karuppannan* v. *Bulokam* (1900) 23 Mad, 16, *Rahi* v *Govind* (1875) 1 Bom, 97; *Sadu* v *Baiza* (1880) 4 Bom, 37 F B., *Soundararajan* v. *Arunachalam Chetty* (1916) 39 Mad, 136 F B, *Subramania* v *Ratnavelu* (1918) 41 Mad, 44 F B, *Gangabai* v *Bandu* (1916) 40 Bom, 369, *Ram Kali* v. *Janima* (1908) 30 All, 508, *Bai Nagubai* v *Bai Monghibai* (1926) 53 I.A., 153, 50 Bom, 604 reversing (1923) 47 Bom, 401 Referring to an *avaruddhastri*, Lord Darling said: "The word 'concubine' has long had a definite meaning whether expressed in the language of India or of Europe. The persons denoted by it had and have still where it remains applicable a recognised status below that of wife and above that of harlot. . . . Harlots solicited to immorality, concubines were reserved by one man" [53 I A., 153, 158, 159]. In *Raoji Valad* v. *Kunjalal Hiralal* (1930) 57 I A, 177, 54 Bom, 455, Sir George Lowndes remarked that the term *dasiputra* no doubt originally meant sons of a female slave. In Southern India, the term "dasi" was originally used to denote a dancing girl who had to do the dancing and singing in connection with temple festivals.

mother according to the custom of the caste to which the mother belonged (*b*).

The requirement that the *dasi* should be an unmarried woman does not, it has been held, mean that she should not have been married to another before; accordingly an illegitimate son born to a widow or a common prostitute kept as a continuous concubine is entitled to inherit (*c*). So too, it would seem that the condition that the illegitimate son should not be the offspring of an adulterous connection is satisfied if a connection with a married woman had ceased to be adulterous before the son is conceived, as where her husband dies before the son is conceived (*d*). The concubine however must be a Hindu and not a Christian or a Muhammadan in order to entitle her illegitimate son to inheritance (*e*). It has been held by the Privy Council that the illegitimate son of a Sudra by a continuous concubine has the status of a son and that he is a member of the family and that the share of inheritance given to him is not in lieu of maintenance but in recognition of his status as a son (*f*).

Rights of an illegitimate son.

§ 529. Next, as to the rights of an illegitimate son of a Sudra. Upon this the Mitakshara says in explanation of the texts of Manu and Yajnavalkya, "The son begotten by a Sudra on a female slave, obtains a share by the father's choice, or at his pleasure. But after the demise of the father, if there be sons of a wedded wife, let these brothers allow the son of the female slave to participate for half a share, that is, let them give him half as much as the amount of one brother's allotment." It adds that in default of legitimate sons, the illegitimate son takes the whole estate, but if there are

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(*b*) *Soundararajan* v. *Arunachalam Chetty* (1916) 39 Mad., 136 F.B. dissenting from *Sundaram* v. *Minakshi Achi* (1912) 16 I.C., 787 (where the son of a dancing girl was held not entitled to inherit); (1921) 48 Cal., 643 F.B. *supra*.

(*c*) *Rahi* v. *Govind* (1876) 1 Bom., 97; *Subramanya* v. *Rathnavelu* (1918) 41 Mad., 44 F.B.; *Gangabai* v. *Bandu* (1916) 40 Bom., 369.

(*d*) *Tukaram* v. *Dinkar Bisbat* A.I.R. 1931 Bom., 221, 33 Bom. L.R., 289, *sed quare*.

(*e*) *Sitaram* v. *Ganpat* A.I.R. 1923 Bom., 384, 25 Bom. L.R., 429; *Lingappa* v. *Esudasan* (1904) 27 Mad., 13. A son of a Sudra by a Brahmin mistress is not a *dasiputra*. Jimutavahana makes this clear D. Bh., XI, 29. *Ramchandra* v. *Hanamnaik* (1936) 60 Bom., 75; *Datti Parisi* v. *Datti Bangaru* (1869) 4 M.H.C., 204, 214.

(*f*) *Vellayappa* v. *Nataraja* (1932) 58 I.A., 402, 414, 55 Mad., 1; *Bhagwant Rao* v. *Punja Ram* A.I.R. 1938 Nag., 1; see § 424 and note (*k*) to it.

daughters or daughter's sons, he 'participates for half a share only' (*g*). The Bengal authorities are to the same effect, but say nothing of his right to share with the daughters (*h*). The only writer who refers to his right where there is a widow, is the author of the Dattaka Chandrika. He says, "If any, even in the series of heirs down to the daughter's son, exist, the son by a female slave does not take the whole estate, but on the contrary shares equally with such heir" (*i*). Accordingly, in default of male issue, the illegitimate son takes as coheir along with the widow, daughter or daughter's son (*j*).

Text refers to separate estate.

An illegitimate son is not a coparcener with his father or his coparceners or even with his own legitimate brothers in respect of the joint family estate (*k*). It is settled that the text of Yajnavalkya declaring the rights of an illegitimate son refers only to the estate of a separated householder (*k*[1]). But when a legitimate son and an illegitimate son succeed to their father's separate estate, they take as coparceners with mutual rights of survivorship (*l*).

The half share which an illegitimate son of a Sudra takes in the estate of his deceased father is the half of that which he would have taken had he been legitimate, not a half of the share which the other participants take. A legitimate

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(*g*) Mit, I, xii, 2.

(*h*) D. Bh, IX, 29, 31, D K S, VI, 32-35.

(*i*) Dattaka Chandrika, V, 30, 31. *Minakshi* v. *Appakutti* (1910) 33 Mad. 226.

(*j*) *Ramalinga* v. *Pavadai* (1902) 25 Mad, 519, 521; (1910) 33 Mad, 226 *supra*, *Kamulammal* v. *Visvanathaswami* (1923) 50 I.A., 32, 46 Mad. 167.

(*k*) See *ante* § 424. *Ram Sumran Singh* v *Mahabir Sewak Singh* (1934) 63 I.A., 106, A.I.R 1934 P.C., 74, *Krishnayyan* v. *Muttusami* (1884) 7 Mad., 407, *Ranoji* v. *Kandoji* (1885) 8 Mad., 557; *Thangam Pillai* v. *Suppapillai* (1889) 12 Mad., 401; *Ramalinga Muppan* v. *Pavadai* (1902) 25 Mad, 519, *Packirisawmy* v. *Dorasamy* (1931) 9 Rang, 266, *Ayiswaryanandaji* v. *Sivaji* (1926) 49 Mad., 116; *Raju Thambiran* v. *Arunagiri* A I.R. 1933 Mad., 397, 64 M.L.J., 500, *Shamu* v. *Babu Aba* (1928) 52 Bom., 300.

(*k*[1]) *Vellayappa* v. *Nataraja* (1932) 58 I.A., 402, 407, 55 Mad., 1 approving of *Ramalinga* v. *Pavadai* (1902) 25 Mad., 519 and *Gopalasami Chetty* v. *Arunachalam Chetty* (1904) 27 Mad., 32; *Ranoji* v. *Kandoji* (1865) 8 Mad., 557; *Parvathi* v. *Thirumalai* (1867) 10 Mad., 334.

(*l*) See *ante* § 424; *Sadu* v. *Baiza* (1880) 4 Bom., 37 F.B.; *Raja Jogendro* v. *Nityanund* (1891) 17 I.A., 128, 18 Cal., 151; (1932) 58 I.A., 402, 55 Mad., 1 *supra*; A.I.R. 1938 Nag., 1 *supra*.

son and an illegitimate son will therefore take three-fourths and one-fourth respectively (*m*). So too, it has been held that as between an adopted son and an illegitimate son, the former will be entitled to three-fourths and the latter to one-fourth, for the adopted son will have the same rights as a legitimate son in competition with an illegitimate son (*n*). As against a widow, daughter or daughter's son, an illegitimate son, in accordance with the decision of the Privy Council in *Kamulammal's* case (*o*), will take a half, not a third, of the estate.

Share affected by the Act.

Now that under the Hindu Women's Rights to Property Act, 1937, a widow is entitled to the same share as a son, notwithstanding any rule of Hindu law or custom to the contrary, in a case of succession governed by the Act, the illegitimate son's share in competition with the widow will be only one-fourth; it will be one-sixth in competition with a legitimate son and a widow. Similarly as the widow of a predeceased son or of the predeceased son of a predeceased son will succeed as well along with the male issue and the widow as in their default for the share of a son or of a grandson as the case may be, the illegitimate son's share will correspondingly be reduced.

In default of the widow, daughter and daughter's son as well as the new statutory heirs, he will of course take the whole estate (*p*).

Where a widow who has taken a share of the inheritance dies, her share descends to her daughter or daughter's son as the case may be and an illegitimate son is not entitled to any part of it (*q*). This is distinguished, if not doubted, by the Nagpur High Court in *Bhagwant Rao* v. *Punja Ram*, where on a partition between the legitimate and illegitimate sons, the widow was allotted a share and on her death, the illegitimate son was held entitled to a share in that pro-

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(*m*) *Kamulammal* v. *Viswanathaswami* (1923) 50 I.A., 32, 46 Mad., 167; *Shesgiri* v. *Girewa* (1890) 14 Bom., 282; *Meenakshi* v. *Appakutti* (1910) 33 Mad., 226; *Chellammal* v. *Ranganadha* (1911) 34 Mad., 277.

(*n*) *Maharaja of Kolhapur* v. *Sundaram* (1925) 48 Mad., 1.

(*o*) *Kamulammal* v. *Viswanathaswami* (1923) 50 I.A., 32, 46 Mad., 167 *supra*. The Privy Council decision being based on the authorities of all the schools is applicable to all Hindus. The view in *Gangabai* v. *Bandu* (1916) 40 Bom., 369 is no longer law. *Karuppayee* v. *Ramaswami* (1932) 55 Mad., 856; *Sakharam* v. *Sham Rao* A.I.R. 1932 Bom., 234.

(*p*) *Saraswati* v. *Manu* (1879) 2 All., 134.

(*q*) *Karuppayee* v. *Ramaswami* (1932) 55 Mad., 856.

perty (q^1). But the decision of the Madras High Court, in *Karuppayee* v. *Ramaswami* appears to be right upon the express texts of the Mitakshara read with the Dattaka Chandrika (V, 30, 31). The illegitimate son, though he inherits on the death of his putative father, along with or in default of male issue, widow or daughter, cannot come in as a reversionary heir on the death of the widow or daughter, as he is undoubtedly neither a sagotra nor a bhinnagotra sapinda of the last male-holder within the text of Manu. Where a widow succeeding after the Act dies, the illegitimate son will not, for the same reason, be entitled to any increased share on her death.

Where a Sudra dies without leaving legitimate male issue, the legitimate son of his predeceased illegitimate son is entitled to succeed to his estate exclusively against the divided brother of the propositus and will succeed along with the widow, daughter or daughter's son as well as with the daughter-in-law and the grand-daughter-in-law But an illegitimate son of a predeceased illegitimate son cannot succeed, as the right to represent an ancestor under Hindu law is confined by the texts only to one's legitimate male issue (r).

The illegitimate son can only inherit to his father and not to collaterals nor *vice versa* (s). Illegitimacy does not prevent two illegitimate brothers claiming to each other (§ 563). Nor is there any absence of heritable blood as between bastards and their mother (t) or their father (u).

Widow and widows of son and grandson.

§ 530 By virtue of the Hindu Women's Rights to Property Act, 1937, the widow and the widows of a predeceased son and of the predeceased son of a predeceasd son succeed to the separate estate of a man

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(q^1) A I R 1938 Nag, 1.

(r) *Ramalinga* v *Pavadai* (1902) 25 Mad, 519 (where the question was left open) *Viswanatha* v *Doraiswami* (1925) 48 Mad, 944 (legitimate descendants of two sons of a Hindu dancing girl are entitled to succeed to each other) Where the Sudra leaves legitimate male issue, see § 424

(s) *Subramania* v *Rathnavelu* (1918) 41 Mad, 44 F B, *Ayiswaryanandaji* v *Sivaji* (1926) 49 Mad., 116, *Rathinasabapathi* v *Gopala Odayar* (1929) 56 M L J, 673, *Ravji Valad* v *Sakuji Valad* (1910) 34 Bom, 321, *Dharma* v. *Sakharam* (1920) 44 Bom, 185; *Zipru* v. *Bomptya* (1922) 46 Bom., 424, *Shome Shankar* v *Rajesar* (1899) 21 All, 99, *Raj Fateh Singh* v *Baldeo Singh* (1928) 3 Luck, 416; *Bhagwant Rao* v. *Punja Ram* A I.R. 1938 Nag, 1.

(t) *Pandiya* v. *Puli* (1863) 1 M H.C, 478, *Mayna Bai* v. *Uttaram* (1864) 2 M H.C, 196, (1861) 8 M.I.A, 400, *Sivasangu* v. *Minal* (1889) 12 Mad, 277, *Narasanna* v *Ganga* (1890) 13 Mad., 133, *Arunagiri* v. *Ranganayaki* (1897) 21 Mad., 40; *Tripura Charan* v. *Harimati Dassi* (1911) 38 Cal, 493; *Jagarnath Gir* v. *Sher Bahadur* (1935) 57 All, 85.

(u) *Subramania* v. *Rathnavelu* (1918) 41 Mad., 44 F B.

along with the male issue for their respective shares. Except in cases of succession governed by the Act, the old rule applies. In default of male issue, joint with or separate from, their father, the next heir is the widow (*v*). Where there are several widows, all inherit jointly, according to a text of the Mitakshara, which should come in at the end of II, i, § 5, but which has been omitted in Mr. Colebrooke's translation; "The singular number 'wife', in the text of Yajnavalkya, signifies the kind; hence, if there are several wives belonging to the same, or different classes, they divide the property according to the shares prescribed to them and take it" (*w*). All the wives take together as a single heir with survivorship, and no part of the husband's property passes to any more distant relation till all are dead (*x*). Where the property is impartible, as being a Raj or ancient zamindary, of course it can only be held by one, and then the senior widow is entitled to hold it, subject to the right of the others to maintenance (*y*). In other cases the senior widow would, as in the case of an ordinary coparcenership, have a preferable right to the care and management of the joint property. But she would hold it as manager for all, with equality of rights, not merely on her own account, but with an obligation to maintain the others (*z*). A widow takes only a limited interest in her husband's estate. It is not her *stridhana* and on her death it reverts to her husband's heirs (*a*). In Mithila, however, she takes an absolute estate

Co-widows take jointly.

(*v*) Mit., II, 1, Daya Bhaga, XI, 1, § 43; V. May., IV, 8, §§ 1-7; Viramit., p. 31, ch. III; *Ramappa* v. *Sithammal* (1879) 2 Mad., 182; *Balkrishna* v. *Savitribai* (1879) 3 Bom., 54. See *ante* § 522, *et seq.* The same rule prevails among the Thiyans of the Malabar coast who follow the Makkattayam law, *Imbichi Kandan* v. *I. Pennu* (1896) 19 Mad., I. So the widow succeeds at once on renunciation of his rights by the prior heir, *Rubee* v. *Roopshunker* 2 Bor., 656, 665 [713]; *Ram Kannye* v. *Meernomoyee* 2 W.R., 49

(*w*) Smriti Chandrika, XI, 1, § 57, note 1; Viramit., III, i, 2, Setlur's ed., p. 373; *Jijoyiamba Bayi Saiba* v. *Kamakshi Bayi* (1868) 3 Mad. H.C., 424, 451.

(*x*) *Jijoyiamba* v. *Kamakshi* (1868) 3 Mad. H.C., 424; *Bhugwandeen* v. *Myna Baee* 11 M.I.A., 487, 9 W.R. (P.C.), 23; *Gajapathi Nilamani* v. *Gajapathi Radhamani* (1877) 4 I.A., 212, 1 Mad., 290; *Venkayyamma* v. *Venkataramanayyamma* (1902) 29 I.A., 165, 25 Mad., 678; *Gaurinath* v. *Gaya Kuar* (1928) 55 I.A., 399, 55 M.L.J., 339; *Dulhin Parbati* v. *Baijnath* (1935) 14 Pat., 518; *Bulakhidas* v. *Keshavlal* (1882) 6 Bom., 85.

(*y*) *Vutsavoy* v. *Vutsavoy* 1 Mad. Dec., 453; *Seemevullala* v. *Tungama* 2 Mad. Dec., 40.

(*z*) *Jijoyiamba* v. *Kamakshi* (1886) 3 Mad. H.C., 424.

(*a*) (1900) 11 M.I.A., 487. So also the grandmother and great-grandmother as well as the daughter and sister and other women of the family in every school except in Bombay where daughters born in the family such as the sister, father's sister take absolutely (§ 614).

in the movable property of her husband (*b*). This will not be the case in successions governed by the Act of 1937(*b*[1]).

Rights of co-widows.

§ 531. The rights of two or more widows who succeed to the estate of a man as well as the rights of two or more daughters who take as coheirs have been authoritatively restated in a recent decision of the Privy Council in *Gauri Nath* v. *Gaya Kuar* (*c*). "If a Hindu dies leaving two widows, they succeed as joint tenants with a right of survivorship. They are entitled to obtain a partition of separate portions of the property so that each may enjoy her equal share of the income accruing therefrom (*d*). Each can deal as she pleases with her own life interest, but she cannot alienate any part of the corpus of the estate by gift or will so as to prejudice the rights of the survivor or a future reversioner (*e*). If they act together, they can burden the reversion with any debts contracted owing to legal necessity, but one of them acting without the authority of the other, cannot prejudice the right of survivorship by burdening or alienating any part of the estate. The mere fact of partition between the two, while it gives each a right to the fruits of the separate estate assigned to her, does not imply a right to prejudice the claim of the survivor to enjoy the full fruits of the property during her lifetime" (*f*). But the Privy

(*b*) *Sureshwar* v *Maheshrani* (1921) 47 I A, 233, 48 Cal, 100; *Latur Rai* v. *Bhagwan Das* A I.R 1936 Pat, 80, 82, *Jagarnath Prasad* v *Suraj Deo* A I R. 1937 Pat, 483.

(*b*[1]) For the law before and after the Act of 1937, see §§ 591, 643.

(*c*) (1828) 55 I A, 399, 33 C W N, 39

(*d*) *Bhugwandeen* v. *Myna Baee* (1866) 11 M I A, 487, *Gajapathi Nilamani* v. *Gajapathi Radhamani* (1877) 4 I.A, 212, 1 Mad., 290; *Mt. Sundar* v. *Parbati* (1889) 16 I A, 186, 12 All, 51, *Jijoyiamba* v. *Kamakshi* (1886) 3 M.H C R, 424, *Rindamma* v. *Venkataramappa* (1886) 3 M.H C R, 268, *Kanni Ammal* v. *Ammakannu Ammal* (1900) 23 Mad, 504, *Chitter* v *Gaura* (1912) 34 All., 189; *Gurinath Kakaji* v. *Gaya Kuar* (1928) 55 I A., 399, A I R. 1928 P.C, 251, dissenting from *Jai Narain* v *Munnilal* (1928) 50 All, 488, *Appalasuri* v *Kannamma* (1925) 49 M.L J., 479; *Dulhin Parbati* v. *Baijnath* (1935) 14 Pat., 518, *Uchmatan* v. *Rajendra* (1938) 67 C.L.J, 115.

(*e*) (1928) 55 I A, 399 *supra*, (1925) 49 M.L J, 479 *supra*, *Vadali* v. *Kotipalli* (1903) 26 Mad., 334; *Jainarain* v. *Hira* (1933) 12 Pat., 778; *Hari Narayan* v. *Vitab* (1907) 31 Bom., 560; *Durgabat* v *Gita* (1911) 33 All., 443.

(*f*) (1928) 55 I.A., 399, 403 *supra;* (1925) 49 M L.J, 479 *supra*, explaining *Kalivanasundaram* v. *Subba* (1902) 14 M L J, 139; *Nabin Chandra Chakravarti* v. *Shona Mala Ghose* (1930) 35 C.W.N., 279 In *Appalasuri* v. *Kannammal* (1925) 49 M.L.J., 479, it was held that "(1) the estate of co-widows or other coheiresses in Hindu law is a joint estate but it is unlike other joint estates. It is indivisible [*Kathaperumal* v. *Venkabai* (1880) 2 Mad., 194]. Strictly it can

Council pointed out that there may be cases where when the consent of the co-widow is applied for and unreasonably withheld, an alienation for necessary purpose may be binding (*g*). Where however two widows enter into partition granting to each full powers of alienation and one of them alienates her share to a stranger and then dies, the surviving widow cannot recover the property so alienated. She has full power to alienate the whole or any part of her interest in the estate for her life, and has in fact done so (*h*). So also where the two widows enter into partition or other arrangement so as to bind them until the death of all of them, and one dies before the other without alienating her share, it passes to the heirs of her stridhana property and not to the other co-widow or her reversioners (*i*). But the right of the reversioners will not be accelerated by such an arrangement. A widow can alienate her life interest as against her co-widows, just as she can against the reversioners and such an alienation can be enforced by partition against them, without prejudice to their right of survivorship (*j*).

Effect of unchastity.

§ 532. It is a well-settled rule of Hindu law that chastity is a condition precedent to the taking by the widow of her husband's estate (*k*), unless the unchastity was condoned by the husband (*l*). But a widow who has once inherited the

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never be divided so as to create separate estates such that each sharer is the owner of her share and at her death the reversioner's estate falls in. Such a division is impossible in law. (2) Such partition as is permissible is merely for the convenience of their enjoyment by the sharers, and may be of two kinds (i) so as to last during the lifetime of both the widows, and (ii) so as to bind them until the death of all of them"

(*g*) (1928) 55 I.A., 399, 406.

(*h*) *Ramakkal* v. *Ramaswami* (1899) 22 Mad., 522, *Kanni Ammal* v *Ammakannu* (1900) 23 Mad, 504; *Kailash Chandra* v *Kashi Chandra* (1893) 24 Cal., 339; *Ammani* v. *Periasami* (1923) 45 M.L.J, 1.

(*i*) *Ammani* v. *Periasami* (1923) 45 M.L.J., 1; *Chengappa* v. *Buradagunta* (1920) 43 Mad., 855 dissenting from the dictum to the contrary in *Rindamma* v. *Venkataramappa* (1886) 3 M.H.C R., 268; *Meenakshi Achi* v. *Subramania* A.I.R. 1930 Mad., 175.

(*j*) *Janoki Nath* v *Mothurunath* (1883) 9 Cal., 580 F.B disagreeing with *Kathaperumal* v. *Venkabai* (1878) 2 Mad, 194, *Christien* v. *Tekaithi Narbada* (1908) 13 C.W.N., 611.

(*k*) Mitakshara, II, 1, §§ 37-39 "a wedded wife being chaste"; Smriti Chandrika, XI, 1, §§ 12-21; V. Ratnakara, XXXIV, 4; Vivada Chintamani, 289-91; V. May., IV, 8, §§ 2, 6, 8, 9; Dayabhaga, XI, 1, §§ 47, 48, 56. See all the cases discussed, *Kery Kolitany* v *Moneeram* 13 B.L.R., 1; on appeal, 5 Cal., 776, 7 I A, 115, (1880) 19 W.R., 367. The mere fact that the wife had been cast off by her husband, where no want of chastity was proved, does not disqualify her from inheriting at his death.

(*l*) *Gangadhar* v. *Yellu* (1912) 36 Bom., 138; *Radhe Lal* v. *Bhawani Ram* (1918) 40 All., 178.

estate of a deceased husband is not liable to forfeit it by reason of subsequent unchastity (*m*).

Recent Act.

The rule of Hindu law that an unchaste widow cannot succeed to the estate of her husband, can no longer, it would seem, apply to successions governed by the Hindu Women's Rights to Property Act, 1937, for the language of the statute, "notwithstanding any rule of Hindu law or custom to the contrary, his widow . . . shall be entitled", is sufficiently comprehensive and effective to abrogate that rule. The widow of a predeceased son or of the predeceased son of a predeceased son would, except in Bengal, not be covered by the condition of chastity but there, as elsewhere, the new rights of succession conferred upon them would prevail without any such condition precedent.

Second marriage.

§ 533. The second marriage of a widow was formerly forbidden, except where it was sanctioned by local or caste custom In all cases, whether it was permitted by usage or otherwise, second marriage entailed the forfeiture or divesting of the widow's estate (*n*) Remarriage of widows is now legalised in all cases by the Hindu Widows' Remarriage Act (XV of 1856). But the Act provides that all rights and interests which a widow may have in her deceased husband's estate shall cease and determine on her remarriage as if she had then died.

By custom.

Even where widows are by custom of the caste entitled to remarry, the estate vested in a widow will terminate on her remarriage In *Murugayi* v. *Viramakali*, a case of a woman of the Maravei caste amongst whom widows could remarry according to the custom of the caste, it was held that as the principle upon which a widow takes is that she is the surviving half of her husband, it cannot apply where she remarries and that the law will not permit the widow who has remarried to retain the inheritance (*o*). The same rule was applied to the remarriage of a Lingait Gounda woman who could remarry according to the custom of her caste (*p*). In *Vitta Tayaramma* v. *Chatakondu Sivayya*, Wallis, C. J, explaining the decision in *Murugayi* v. *Viramakali*, held that

(*m*) *Kery Kolitany* v *Moneeram* 13 B.L.R, 1, *affd* (1880) 7 I.A., 115, 5 Cal, 776, *Parvati* v *Bhiku* (1867) 4 Bom H C. (A C.J.), 25, *Nehalo* v. *Kishen* (1880) 2 All., 150 F B., *Bhawani* v. *Mahtab ib*, 171, *Sellam* v. *Chinnammal* (1901) 24 Mad., 441. Punjab Customs, 61

(*n*) 1 Stra H L., 242, W & B, 110, *Kerri Kolitani* v. *Moneeram* 19 W R, 367 affd. in (1880) 7 I A., 115, 5 Cal., 776.

(*o*) (1877) 1 Mad, 226.

(*p*) *Koduthi* v *Madu* (1884) 7 Mad., 321.

independently of section 2 of the Act, a widow forfeits her estate on her remarriage (*q*).

Accordingly, it is settled that where a widow re-marries whether by custom of the caste or by the enabling provisions of the Act, she forfeits, on her remarriage, her interest in her husband's estate. In Allahabad and Oudh, she is so divested except where by the custom of the caste and apart from the Act, she is entitled to remarry (*r*).

Conversion.

A Hindu widow who abjures Hinduism and becomes, for instance, a Muhammadan before her remarriage forfeits the property of her husband by renouncing the status of a widow by remarriage (*s*). The words, 'any widow . . . upon her remarriage' in section 2 are wide enough to cover the case of any widow of a Hindu remarrying, "whether or not her marriage would otherwise be prohibited by any custom or interpretation of Hindu law, and whether the remarriage was to a Hindu or to a member of another religion" (*t*).

Future rights unaffected.

The Act only deprives her of the inheritance vested in her before her remarriage but does not deprive her of future rights of succession. It has been held that a Hindu widow, notwithstanding her remarriage, is entitled to succeed as heir to the estate of a son or daughter by her first marriage who dies after her second marriage (*u*). The Bombay High

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(*q*) (1918) 41 Mad., 1078 F.B. The same view is taken by the other courts. *Vithu* v. *Govind* (1898) 22 Bom., 321 (F.B.); *Suraj* v. *Attar* (1922) 1 Pat., 706; *Rasul* v. *Ram Suran* (1895) 22 Cal., 589; *Santala* v. *Badaswari* (1923) 50 Cal., 727.

(*r*) *Har Saran* v. *Nandi* (1889) 11 All., 330; *Ranjit* v. *Radha* (1898) 20 All, 476; *Khuddo* v. *Durga Prasad* (1906) 29 All., 122; *Gajadhar* v. *Kaunsilla* (1909) 31 All., 161; *Mula* v. *Partab* (1910) 32 All., 489; *Mangat* v. *Bharto* (1926) 49 All, 203, *Nagar* v. *Khase* A.I.R. 1925 All., 440; *Ba' Krishna* v. *Paij Singh* (1930) 52 All., 705; *Abdul Aziz* v. *Nirma* (1913) 35 All., 466; *Bhola Umar* v. *Kausilla* (1933) 55 All., 24; *Bhola Umar* v. *Kausilla* (1936) 58 All., 1034; *Narain* v. *Mohun Singh* A.I.R. 1937 All., 343; *Ram Lall* v. *Mt. Jwala* (1928) 3 Luck., 610, 1928 Oudh, 338; *Gajadhar* v. *Mt. Sukhdei* (1930) 5 Luck., 689, 1931 Oudh, 107.

(*s*) *Vitta Tayaramma* v. *Chatakondu Sivayya* (1918) 41 Mad., 1078 F.B.; *Murugayi* v. *Viramakali* (1877) 1 Mad., 226; *Matungini* v. *Ram Ruttan Roy* (1892) 19 Cal., 289 F.B.; *Suraj* v. *Attar* (1922) 1 Pat., 706; *Raghunath* v. *Laxmibai* (1935) 59 Bom., 417 dissenting from *Abdul Aziz* v. *Nirma* (1913) 35 All., 466.

(*t*) Per Wallis, C. J., in (1918) 41 Mad., 1078, 1091 F.B. *supra* and per Wilson, J., in (1892) 19 Cal., 289 F.B. *supra*.

(*u*) *Akora* v. *Boreani* (1869) 2 B L.R. (A.C.J.), 199; *Rupan* v. *Hukmi* Punjab Customs, 99; *Chamar* v. *Kashi* (1902) 26 Bom., 388; *Basappa* v. *Rayava* (1905) 29 Bom., 91; *Lakshmana* v. *Siva* (1905) 28 Mad., 425; *Bhiku* v. *Keshav* A.I.R. 1924 Bom., 360; *Kundan* v. *Secretary of State* (1926) 7 Lah., 543.

Court has held that a Hindu widow who has remarried is not entitled to succeed as a *gotraja* sapinda in the family of her first husband (*v*). The ground of decision was that she must be deemed to be dead with regard to her first husband and cannot be considered his *gotraja* sapinda. Obviously the widow on her remarriage loses not only her husband's *gotra* but also the sapinda relation which she acquired by becoming a wife. Both could be retained by her only while she retained her status as his *patni* (wedded wife) within the meaning of Yajnavalkya's text. It is impossible to see how she can continue to be the *patni* of her former husband when she has become the *patni* of her second husband (*w*). Therefore the estate which a *patni* takes as such, being a limited estate, can endure only so long as she is a *patni*. Accordingly when a widow's estate terminates on her remarriage, the interest of any alienee from her, where the alienation is not for necessity, determines on her remarriage and does not endure for her life (*x*).

The recent Hindu Women's Rights to Property Act, 1937, while it enables a Hindu woman, notwithstanding her unchastity to inherit, does not affect the duration of the limited estate which a Hindu widow takes (*x*[1]) and which is held by her only during her widowhood, the Act must also be read subject to the Hindu Widows' Remarriage Act. **Recent Act.**

§ 534. The daughter comes next to the widow, taking after her as well as in default of her (*y*), except where, by **Daughter.**

(*v*) *Pranjivan* v. *Bai Bhikhi* (1921) 45 Bom. 1247

(*w*) The translation of '*patni*' into widow is responsible for part of the confusion The widow after her remarriage may be a sapinda to sons or daughters born of her or their descendants, though she cannot be a sapinda to any other relation of her first husband's family. The sapinda relationship by marriage is only by legal construction [*Lulloobhoy* v *Cassibai* (1880) 7 I A, 212, 234, 5 Bom, 110, 121] and is destroyed when that relationship is destroyed It is only the sapinda relationship due to real consanguinity that can continue. See § 119

(*x*) *Vijiaraghava Pillai* v. *Ponnammal* (1932) 62 M L.J., 131, *Nitya Madhav Das* v. *Srinath Chandra* (1908) 8 C L J, 542, *Muthu Naicken* v *Srinivasa* (1911) 1 M.W.N., 82 As to whether she loses her right of guardianship, see *Khushali* v *Rani* (1881) 4 All., 195; *Ganga* v *Jhalo* (1911) 38 Cal, 862, *Mt Indi* v *Ghania* (1920) 1 Lah, 146; *Mt Ram Labhai* v. *Durgadas* (1934) 15 Lah., 28.

(*x*[1]) Sec. 3 (3) of the Act; see art. 125, Limitation Act, 'until her remarriage'.

(*y*) Mit., II, 2, Smriti Chandrika, XI, 2, V. May, IV, 8, § 10; Vivada Chintamani, 292, D. Bh., XI, 2, §§ 1, 30, Viramit., III, ii, Setlur's ed., 406-412.

some special local or family custom, she is excluded (*z*). Of course daughters inherit only on the death of the last surviving widow (*a*).

The view of Asahaya, Medhatithi and Vijnanesvara is that a maiden daughter is entitled along with the brothers to a share in the joint estate (*b*). Katyayana, Parasara and Devala state that an unmarried daughter succeeds in preference to a married daughter, Katyayana making a further distinction between an unendowed and endowed daughter (*c*). Brihaspati says that a daughter married to a man of the same caste as her own shall inherit her father's property, whether she may have been appointed or not (*d*). The Mitakshara provides: "If there be competition between a married and an unmarried daughter, the unmarried one takes the succession under the specific provision of the text of Katyayana. If the competition be between an unprovided and an enriched daughter, the unprovided one inherits; but, on failure of such, the enriched one succeeds; for the text of Gautama is equally applicable to the paternal, as to the maternal estate" (*e*).

Rule in the Mitakshara.

In *Wooma Deyi* v. *Gokoolanund*, the Privy Council held that failing a maiden daughter, the succession to a deceased

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(*z*) See as to such customs, Perry, O. C., 117; *Bhau Nanaji* v. *Sundrabai* (1874) 11 Bom. H.C., 249, *Russic* v. *Purush* S.D. of 1847, 205; *Hiranath* v. *Ram Narayan* (1872) 9 B.L.R., 274, 17 W.R., 316; *Chowdhry Chintamun* v. *Mt. Nowlukho* (1875) 2 I.A., 263, 24 W.R., 255; *Pranjivan* v. *Bai Reva* (1881) 5 Bom., 482, Punjab Customs, 16, 25, 37, 47; *Bajrangi* v. *Manokarnika* (1908) 35 I.A., 1, 30 All, 1; *Parbati* v. *Chandarpal* (1909) 36 I.A., 125, 31 All., 457; *Balgobind* v. *Badri Prasad* (1923) 50 I.A., 196, 45 All., 413, *Raj Bachan Singh* v. *Bhanwar* (1929) 4 Luck., 690. 1929 Oudh, 296; *Bhaghwat Misir* v. *Mt. Sheokali* A.I.R. 1937 All., 290.

(*a*) In Northern India the principle of agnation prevails in its strictest form. Not only are agnates preferred to cognates, but in many tribes of the Punjab cognates are absolutely excluded from succession, so that the landed property of the family may not pass out of the *gotra*. Even such near relations as daughters and their sons are debarred from inheritance (Punjab Customs, 72, Punjab Cust. Law, II, 80, III, 48). In Oudh also in several instances, the village *wajib-ul-arz* states that, whether the property be ancestral or self-acquired, daughters and daughter's children have no right of inheritance. A circular of the Chief Commissioner of Oudh, 42 of 1864, lays down the same rule as regards the great Chattri families of that province.

(*b*) Mit., I, vii. 14.

(*c*) Smritichandrika, XI, 2, 20; Mit., II, 2, 2; Vivadachintamani, 293; Jha, H.L.S., II, 485.

(*d*) Brih., XXV, 57.

(*e*) Mit., II, 2, 3-4; Gautama says: "A woman's separate property goes to her daughters, unmarried or unprovided" (cited in the Mit.) Gaut., XXVIII, 24; Dr. Buhler gives a different translation; see also Dig., II, 603.

father's estate devolves on an indigent married daughter and that her right of succession is not lost by reason of her becoming a childless widow (*f*). The view of the Smritichandrika (*g*), which was not followed as an authority in the Benares school, was subsequently rejected in Madras also in *Simmani Ammal* v. *Muthammal* (*h*), where it was held that sonless or barren daughters were not excluded from inheritance by their sisters who have male issue.

Preference among daughters.

It is therefore now settled that in the Mitakshara school, as between daughters, the inheritance goes first to the unmarried daughters, next to daughters who are married and indigent, and lastly to daughters who are married and possessed of means. A married daughter includes a widow, whether childless or not (*i*). The words 'unprovided for' and 'enriched' have been construed to mean 'indigent' and 'possessed of means' and it has been held that these words do not refer to the question whether a provision was made for the daughters or not (*j*).

In *Tara* v. *Krishna*, a daughter who in a maiden condition became a prostitute was held to be neither a *kanya* (unmarried) nor a *kulastri* (married) but not being disqualified, would succeed to her father's property only in default of both married and unmarried daughters. The ground of decision was that she became a *sādhāranastri* or common woman, that the texts naming the maiden only, could not be applied to her and that therefore she could only take on principles of reason and equity after those expressly named (*k*).

(*f*) (1878) 5 I.A., 40, 3 Cal., 587.

(*g*) Smritichandrika, XI, 2, 21.

(*h*) (1878) 3 Mad., 265.

(*i*) *Rajrani* v. *Gomati* (1928) 7 Pat., 820.

(*j*) *Manki Kunwar* v. *Kundan Kunwar* (1925) 47 All., 403, 2 Stra. H L., 242; *Benode* v. *Purdhan* 2 W.R., 176 (married daughter not excluded); *Wooma Deyi* v *Gokoolanund* (1878) 5 I A., 40, 3 Cal., 587 (married and indigent), *Audh Kumari* v *Chandra* (1880) 2 All, 561; *Simmani* v *Muthammal* (1880) 3 Mad, 265, *Danno* v. *Darbo* (1881) 4 All, 243 (where a daughter otherwise well off but received no provision from father was held not to be unprovided for); *Poli* v. *Nerotum* (1869) 6 Bom. H.C., 183 (indigent and unmarried); following *Bakubai* v *Manchhabai* 2 Bom. H.C., 5 (indigent); *Jamnabai* v. *Khimji* (1890) 14 Bom, 1; *Totawa* v. *Basawa* (1899) 23 Bom., 229; *Bayava* v. *Parvateva* A.I R. 1933 Bom., 126 (unmarried preferred to married); *Sheo Gobind* v. *Ram Adhin* 8 Luck, 182, A.I.R. 1933 Oudh, 31.

(*k*) (1907) 31 Bom., 495, following *Advyapa* v. *Rudrava* (1880) 4 Bom., 104; *Sivasangu* v. *Minal* (1889) 12 Mad., 277.

Succession of several daughters.

§ 535. Where daughters of the same class exist, all of them, except in Bombay, take jointly in the same manner as widows with survivorship (*l*). If they choose to divide the property for the greater convenience of enjoyment they can do so, but they cannot thereby create estates of severalty, which would be alienable or descendible in any different manner (*m*). One daughter can, however, alienate her own life interest, and effect can be given to such alienation by a partition (*n*).

Daughters can enter into a partition so as to put an end to their right of survivorship; but it will not let in the next reversioners till the death of the survivor (*o*). In brief, where daughters take jointly, their rights are governed by the same rules as are applicable to co-widows (*p*). If at the death of the last survivor, there exists another class of daughters who have been previously excluded, they will come in as next heirs, if admissible (*q*). Where property is impartible, the eldest daughter of all the sisters, or of the class which takes precedence is the heir (*r*). A daughter however takes only a limited and restricted interest in the estate of her father just like a widow, and on her death, it reverts to the next heirs of her father (*s*).

Bombay.

In the province of Bombay, in accordance with the text of Mayukha, it is settled that daughters take not a limited estate jointly, but absolute estates in severalty. Each takes a moiety of her father's estate as her stridhana and on her death it passes to her own heirs as her stridhana property

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(*l*) *Aumirtolall* v. *Rajoni Kant* (1875) 2 I.A., 113, 126; *Katama Nachiar* v. *Dorasingha* (1871) 6 M.H.C., 310; *Venkayamma* v. *Venkataramanayyamma* (1902) 26 I A., 156, 165, 25 Mad., 678, 687.

(*m*) *Aumirtoolall* v. *Rajonee Kant* (1875) 2 I.A., 113, 126; F. MacN., 55; *Sengamalathammal* v. *Valayuda* (1867) 3 Mad. H.C., 312, 317; *Kailash Chandra* v. *Kashi Chandra* (1897) 24 Cal., 339; *Gobind Krishna* v. *Abdul Qayyam* (1903) 25 All., 546, *Alamelu* v. *Balu* (1920) 43 Mad., 849.

(*n*) *Kanni* v. *Ammakannu* (1900) 23 Mad., 504.

(*o*) *Latchamma* v. *Subbarayudu* A.I.R. 1925 Mad., 343; *Sundarasiva* v. *Viyyamma* (1925) 48 Mad., 933 (where it was completed by a surrender); *Medai Dalavoy* v. *Medai Dalavoy* A.I.R. 1927 Mad., 115; *Piramanayaga* v. *Arumuga* A.I.R. 1929 Mad., 710; *Mt. Anmole Kuer* v. *Kamla Dut* A.I.R. 1926 Pat., 392.

(*p*) See *ante* § 531.

(*q*) *Dowlut Kooer* v. *Burma Deo* 22 W.R., 55, 14 B.L.R., 246 (note).

(*r*) *Katama Nachiar* v. *Dorasingha* (1871) 6 M.H.C., 310.

(*s*) *Chotay Lal* v. *Chunno Lall* (1879) 6 I.A., 15, 4 Cal., 744; *Muttu Vaduga* v. *Doraisingha* (1881) 8 I.A., 99, 3 Mad., 290.

and not by survivorship to her coheiress (*t*). So also other daughters born in the family, such as the sister, the father's sister, the brother's daughter, take absolutely (§ 614).

Daughter's sons.

§ 536. The daughter's son takes in default of the daughter. Though he is only a *bhinnagotra* sapinda like a sister's son, or an aunt's son, he is nearer in degree and from ancient times, both in law and in popular practice, has occupied a position, next to a son's son (*u*). A verse of Brihaspati emphasises the fact that just as a daughter succeeds in the presence of the father's agnates (*bandhus*), even so her son becomes the owner of his mother's and maternal grandfather's wealth (*v*).

Succeed after all daughters.

A daughter's son can never succeed to the estate of his grandfather so long as there is in existence any daughter who is entitled to take, either as heir or by survivorship to her other sisters (*w*). The reason is that he takes not as heir to any daughter who may have died, but as heir to his own grandfather, and, of course, cannot take at all so long as there is a nearer heir in existence. For the same reason, sons by different daughters all take *per capita*, not *per stirpes*; that is to say, if there are two daughters, one of whom has

Take *per capita*.

(*t*) V Mayukha, IV, 8, 10 *Bulakhidass* v. *Keshavlal* (1882) 6 Bom., 85, *Bhagirathibai* v. *Kahnujirav* (1887) 11 Bom, 285 F B; *Gulappa* v. *Tayawa* (1907) 31 Bom, 453, *Vithappa* v. *Savithri* (1910) 34 Bom, 510, *Kisan* v *Bapu* A I R. 1925 Bom, 424, *Jawahir Lal* v. *Jarau Lal* (1924) 46 All, 192 (Mayukha case).

(*u*) Manu, IX, 136, 139, Vas, XVII, 12, Mit, II, 2, 6, Smritichandrika, X, 5, 6, II, 2, 28, V. May., IV, 8, 13; Vivadachintamani, 294; See *Bishwanath Prasad* v. *Gajadhar* (1918) 3 P.L.J, 168, *Thakoor Jeebnath* v. *Court of Wards* (1875) 2 I A, 163, 23 W R., 409; see *ante* § 478. Dr. Sarvadhikari (2nd edn., 683) says that Apararka postpones the daughter's son as a bandhu to all *gotrajasapindas* This is by no means clear, for, Apararka's comment is (according to the translation in 21 M L J Journal, 315) "on failure of all these, the deceased's paternal grandmother after the daughter and the daughter's son" which would mean that the daughter's son comes next to the daughter who is placed by Apararka next to wife following Yajn. According to Dr. Jolly, Vishnu does not mention daughter's son as heir (T L L, p. 201). The Mitakshara (II, ii, 6), the Smritichandrika (XI, ii, 15), the Vyavahara Mayukha (IV, viii, 13), the Viramitrodaya (Setlur, p 412) and others cite a text of Vishnu expressly declaring daughter's son as heir. Dr Jolly's slightly different reading in XV, 47 comes to the same thing.

(*v*) Brih, XXV, 58; Jha, H.L.S., II, 493-4. In some parts of Northern India, he is excluded by special custom, Punjab Customs, 16, 17, *Raj Bachan* v. *Bhanwar Lalji* A.I.R. 1929 Oudh, 296, 4 Luck, 690.

(*w*) *Aumirtolall* v. *Rajonikant* (1875) 2 I.A., 113, 15 B.L.R., 10, 23 W.R, 214; *Bajnath* v. *Mahabir* (1878) 1 All., 608; *Sant Kumar* v. *Deo Saran* (1886) 8 All., 365.

three sons and the other has four sons, on the death of the first daughter, the whole property passes to the second, and on her death, it passes to the seven sons in equal shares (*x*). And on the same principle, where the estate is impartible, it passes at the death of the last daughter to the eldest of all the grandsons then living, and not to the eldest son of the last daughter who held the estate (*y*).

A daughter's son, on whom the inheritance has once actually fallen, takes it as full owner, and thereupon he becomes a new stock of descent, and on his death the succession passes to his heir, and not back again to the heir of his grandfather (*z*). But if he should die leaving a son before the last surviving daughter, that son could only succeed as a bandhu after all the *gotrajas* (*a*).

Several daughter's sons.

§ 537. The nature of the estate which is taken by daughter's sons under the Mitakshara law, where several have inherited together, has been the subject of much discussion. The Calcutta High Court in *Jasoda Koer* v. *Sheopershad* (*b*) and the Madras High Court in *Saminadha* v. *Thangathanni* (*c*) decided that two undivided brothers, succeeding to the maternal grandfather's estate, took, not as joint tenants with the benefit of survivorship, but as tenants-in-common. Overruling these decisions, it was held by the Privy Council in *Venkayamma* v. *Venkataramanayyamma* (*d*) that where

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(*x*) 1 W. MacN., 24; 1 Stra. H.L., 139; Dig., II, 546. Succession *per stirpes* is laid down in the case of a partition among a man's male descendants, and in regard to the distribution of *stridhana* by special texts. The remoter gotraja sapindas succeed in their own right and directly to the *propositus*, and take *per capita;* per Telang, J. *Nagesh* v. *Gururao* (1893) 17 Bom., 303, 305.

(*y*) *Katama Nachiar* v. *Dorasinga Tevar* (1871) 6 Mad. H.C., 310; *Muttu Vaduganadha* v. *Dorasinga Tevar* (1881) 8 I.A., 99, 3 Mad., 290. The doctrine stated in the Sarasvati Vilasa (§§ 632, 655, 709) that property as soon as it passes to a daughter becomes unobstructed heritage is expressly stated to be that of Lakshmidhara and not of Sarasvati Vilasa and is not law.

(*z*) *Muttuvaduganatha* v. *Periaswami* (1896) 23 I.A., 128, 19 Mad., 451, 457 affirming 16 Mad., 11; *Sibta* v. *Badri* (1881) 3 All., 134.

(*a*) *Dharap Nath* v. *Gobind Saran* (1886) 8 All., 614; the son of a daughter's son may take in the absence of other heirs as a bandhu, *Krishnayya* v. *Pichamma* (1888) 11 Mad., 287; *Sheobarat* v. *Bhagwati* (1895) 17 All., 523; *Krishnaswami* v. *Sreenivasa* (1922) 42 M.L.J., 124 (Daughter's son excludes daughter's son's son).

(*b*) (1890) 17 Cal., 33.

(*c*) (1896) 19 Mad., 70.

(*d*) (1902) 29 I.A., 156, 164, 165; 25 Mad., 678, 686, 687 reversing (1887) 20 Mad., 207.

under the Mitakshara law, the two sons of a Hindu's only daughter succeeded on their mother's death to her father's estate they did so jointly with the benefit of survivorship as to an ancestral estate. The decision of the Judicial Committee was distinguished by a Full Bench of the Madras High Court in a decision where they held that it did not apply to the descent of stridhana from a mother to her sons, or to the descent of the property of a maternal uncle to the sons of his sister, and that in each instance the sons took as tenants-in-common without survivorship, though they were at the time living as members of a joint family (*e*). Construing the Privy Council decision as holding that the property of the maternal grandfather was ancestral property in the hands of the daughter's son, the Madras High Court held that the latter's son was joint owner in the property with his father and was entitled to a partition of it (*f*). The Allahabad High Court dissented from that view (*g*). In a recent case, the Judicial Committee, approving of the Allahabad view, held in accordance with the plain meaning of the Mitakshara that the maternal grandfather's property is not technically ancestral property in the hands of the daughter's son who takes it by inheritance and that therefore his son is not entitled to interdict his father's alienation (*h*). Their Lordships, however, explained their previous decision in *Venkayamma's* case on the ground that in that case the brothers took the estate of their maternal grandfather at the same time and by the same title, and there was apparently no reason why they should not hold that estate in the same manner as they held their other joint property. The rule of survivorship which admittedly governed their other property was held to apply also to the estate which had come to them from their maternal grandfather (*i*).

(*e*) *Karuppai Nachiar* v *Sankara Narayana* (1904) 27 Mad., 300 F.B. The Bombay High Court has taken the same view, *Bai Parson* v *Bai Somli* (1912) 36 Bom, 424, see also *Harihar Prasad* v. *Bholi* (1907) 6 C.L J, 383.

(*f*) *Vythianatha* v *Yeggia* (1904) 27 Mad, 382, 383, (1904) 27 Mad., 300 *supra.*

(*g*) *Jamna* v *Partap* (1907) 29 All, 667.

(*h*) *Mohammad Husain Khan* v *Kishva Nandan Sahai* (1937) 64 I.A., 250, [1937] All. 655 approving (1907) 29 All., 667 *supra.*

(*i*) But in *Venkayamma's* case, there was another coparcener, Sami Rao, the father of Niladri and Appa Rao and the joint family property was held by all the three coparceners and not by the two daughter's sons alone and Sami Rao survived Niladri, see (1887) 20 Mad., 207, 208.

This explanation of the earlier decision is evidently confined to two undivided brothers taking their maternal grandfather's estate and does not affect the decisions of the Courts in India that where two undivided brothers take the property of their mother or uncle or other relations as obstructed heritage, they take only as tenants-in-common. The Privy Council have laid down in *Bahu Rani* v. *Rajendra Baksh* (*j*) that the principle of joint tenancy is unknown to Hindu law except in the case of the joint property of an undivided Hindu family governed by the Mitakshara law. As a result of their Lordships' explanation in *Md. Husain Khan* v. *Kishva Nandan* (*k*), it must be taken that no new species of coparcenary property in which the male issue have no interest, has been engrafted on the Mitakshara law as an exception, but that it was a presumption of fact in the earlier case that the property which they inherited from their maternal grandfather was held by them in the same way as they held their family property. The decision in *Venkayamma's* case cannot be regarded as laying down any rule of law. Of course the decision will not govern a case where the sons are by different daughters and therefore of different families.

Parents.

§ 538. PARENTS:—The line of the descent from the owner being now exhausted, the next to inherit are his parents. And here, for the first time, there is a variance between the different schools of law as to the order in which they take. The

Mitakshara.

Mitakshara gives the preference to the mother on the ground of greater propinquity, and is followed in Mithila by the

Benares and Mithila.

Vivada Chintamani; and this is stated by Mr. W. MacNaughten to be the law of Benares and Mithila (*l*). The Mayukha prefers the father to the mother, but it is not followed in

Mayukha.

Bombay, except where its authority is supreme as in Guzerat and other parts (*m*). According to the Mitakshara law

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(*j*) (1933) 60 I.A., 95, 8 Luck., 121.

(*k*) (1937) 64 I.A., 250, [1937] All., 655 *supra*. See § 281, note (*l*).

(*l*) Mitakshara, II, 3. See note by Colebrooke; Vivada Chintamani, 293, 294, 2 W. MacN., 55-n. See *ante* p. 39. The Sarasvati Vilasa also follows the rule of the Mitakshara in preference to that of the Smriti Chandrika, §§ 566-572. The Smriti Chandrika (XI, iii, 8-9) prefers the father, upon the authority of a text of Brihat Vishnu, and this view is adopted in Pondicherry in regard to all direct ascendants. The Madhaviya (§ 38) says "the two parents share the wealth"; and Varadaraja also (§ 36). The Viramitrodaya (III, 4, Setlur's ed., 413-418) differing from the Mitakshara makes the precedence of father or mother depend on personal merit.

(*m*) V. May., IV, 8, § 14; W & B, 110, 448; Mandlik, 360, 378; *Balkrishna* v. *Lakshman* (1890) 14 Bom., 605.

therefore, it is settled that the mother takes in precedence to the father. An adoptive mother, as she is included in the term 'mother', is preferred to the adoptive father (*n*).

Stepmother.

§ 539. In Bombay, a stepmother is an heir to her stepson, not indeed as his mother, but as a gotraja sapinda being the wife of a *gotraja* sapinda, namely, his father (*o*). As such, taking her place before the male in the next remoter line, she is placed before the father's father and even before the brother's widow, but after the widow of the lineal descendant of the stepson and the brother's *gotraja* descendants. Where a husband having several wives expressly adopts a son in conjunction with one of them, she is considered to be his mother, the others only being his stepmothers. Consequently if he dies without nearer heirs, that wife succeeds as his mother in preference to the others, though herself junior as wife (*p*).

Brothers.

§ 540. BROTHERS:—Next to parents come brothers. There are texts which show that at one time their position in the line of heirs was unsettled, the brother being by some preferred to the parents, while according to others, even the grandmother was preferred (*q*).

Whole before half-blood.

Among brothers, those of the whole blood succeed before those of the half-blood since the latter are, as the Mitakshara puts it, remote through the difference of the mothers (*r*). If there are no brothers of the whole blood, then those of the half-blood are entitled according to the Mitakshara law (*s*), except where the authority of the Mayukha is paramount as in Guzerat and in the island of Bombay (*t*).

(*n*) *Anandi* v *Harisuba* (1909) 33 Bom, 404, *Basappa* v *Gurlingawa* (1933) 57 Bom, 74 (mothers of a *dwayamushyana* adopted boy inherit together).

(*o*) *Kessarbai* v *Valab* (1880) 4 Bom, 188, 208, *Russoobai* v. *Zoolekhabai* (1895) 19 Bom., 707, *Rahmabai* v. *Tukaram* (1887) 11 Bom, 47, *Appaji* v *Mohanlal* (1930) 54 Bom, 564 F B

(*p*) *Annapurni Nachiar* v. *Forbes* (1895) 18 Mad., 277 affirmed in (1900) 26 I A, 246, 23 Mad, 7.

(*q*) Mit., II, iv, Smriti Chandrika, XI, vi, 4-21; V. Ratnakara, XXXIV, 10, Vivada Chintamani, 295, Viramit., III, 5, Madhaviya, § 71; Sarasvati Vilasa, paras. 574-579.

(*r*) Mit, II, iv, 5.

(*s*) A brother *(bhrata)* in Hindu law while it includes sons of the same father by different mothers does not include the sons of the same mother born to a different father, as there could be where remarriage is allowed. The latter are born in a different family altogether, and are outside the category of heirs, *Ekoba* v. *Kashiram* (1922) 46 Bom., 716.

(*t*) V. May., IV, viii, 16-17.

Mayukha rules.

The rule according to the Mayukha is: sons of full brothers who are dead succeed along with full brothers and in default of the latter, they are preferred to brothers of the half-blood who take as coheirs with the paternal grandfather but only after full brother, full brother's son, grandmother and full sister (*u*). The rule, however, does not go beyond brothers and brother's sons succeeding to the estate of a deceased brother. Where the succession opens to the estate of a distant sapinda, a nephew would not be entitled to succeed along with his uncle as reversionary heir (*v*). As the joint succession of the paternal grandfather and the half-brother is not recognised by the courts (§ 555), it would follow that the Mitakshara rule must be applied subject to the Mayukha preference of the nephew of the full blood with the result that the half-brother would succeed after the latter and before the paternal grandmother.

Nephews.

§ 541. In default of brothers of the whole or half-blood, the brother's sons succeed. Nephews of the full blood are preferred to those of the half-blood. The rule according to the Mayukha has already been stated (§ 540). According to the Mitakshara and the Dayabhaga schools, no nephew can succeed as long as there is any brother capable of taking, the rule being universal that except in the case of a man's own male issue, the nearer sapinda always excludes the more remote (*w*). Where several brothers have succeeded to the estate of their brother and one of them dies leaving sons, they will of course be entitled on partition to a share in their father's right.

(*u*) V. May., IV, viii, 20. Borrodaile translates it as follows: "The sons of a brother also if themselves fatherless at the time of the paternal uncle's death". Mr. Mandlik and Mr. Gharpure give a different translation "If the sons of brothers have their fathers alive at the time of the death of the paternal uncle". Mr. Gharpure explains that the rule of taking together is due to a different reading adopted by Mr. Borrodaile. See Gharpure's Mayukha, page 113, note 7. The reading adopted by Mr. Mandlik and Mr. Gharpure would seem to make it in line with the Mitakshara, II, iv, 9. In *Jagubai* v. *Kesarlal* (1925) 49 Bom., 282, the Court considers the difference in translation and treats the matter as governed by the rule of *stare decisis*. See *Vithalrao* v. *Ramrao* (1900) 24 Bom., 317, 338 overruled so far as it decided that there is no difference between full blood and half-blood under the Mitakshara in *Garuddas* v. *Laldas* (1933) 60 I.A., 189.

(*v*) *Haribhai* v. *Mathur* (1923) 47 Bom., 940, 943; *Jagubai* v. *Kesarlal* (1925) 49 Bom., 282, 287. See also *Chandika Baksh* v. *Muna Kunwar* (1902) 29 I.A., 70, 74, 24 All., 273, 280.

(*w*) Manu, IX. § 187; Mitakshara, II, 4, §§ 7, 8; Smriti Chandrika, XI, 4, §§ 22, 23, 26; Daya Bhaga, XI, 5, §§ 2, 3, XI, 6, § 1; D.K.S., I, 8, § 1; Vivada Chintamani, 295; 1 W. MacN., 26; *Pirthee* v. *Court of Wards* 23 W.R., 272. Mitakshara, II, 4, § 9; *Burham* v. *Punchoo* 2 W.R., 123; *Chandika Baksh* v. *Muna Kunwar* 29 I.A., 70, 24 All., 273.

Succession after brother's son.

§ 542. The rule of succession as far as the brother's son is clear and definite. Vijnanesvara and his successors properly enough style the succession upto the brother's son as the compact series of heirs *(baddhakrama)*. As to the heirs who succeed in their default, the relevant passages of the Mitakshara are: "On failure of the brothers also, their sons *(tatputrah)* (*x*) share the heritage in the order of the respective fathers (ii, 4, § 7)". "If there be not even brother's sons *(putrah)*, *gotrajas* share the estate. *Gotrajas* are the paternal grandmother and sapindas and samanodakas (ii, 5, § 1)". "On failure of the paternal grandmother, the gotraja sapindas, namely, the paternal grandfather and the rest inherit the estate (ii, 5, § 3)". "Here on failure of the father's descendants *(santana)*, the heirs are successively the paternal grandmother, the paternal grandfather, the uncles and their sons *(tatputrah)* (ii, 5, § 4)". "On failure of the paternal grandfather's line *(santana)*, the paternal great-grandmother, the great-grandfather, his sons *(putrah)* and their issue *(sunava)* inherit. In this manner, up to the seventh, must be understood the succession of samanagotra sapindas (ii, 5, § 5)" (*y*).

The words *putra*, *sunava*, and *santana* which are used in the above rules were variously understood and there was a conflict of opinion as to the order of succession after brother's sons. In *Surayya* v. *Lakshminarasamma* (*z*), it was held that the word 'sons' in Mit., II, iv, 7 and II, v, 1 did not include grandsons and a brother's grandson was therefore postponed to a paternal uncle's son. This view was approved by the same High Court in *Chinnaswami* v. *Kunju* (*a*). In *Kalian Rai* v. *Ram Chandar*, the term, 'brother's son' was held to include a brother's grandson and accordingly a brother's grandson was preferred to a paternal uncle's son (*b*). In *Buddha Singh* v. *Laltu Singh*, the Privy Council held in an

(*x*) According to the text of Yajnavalkya "brothers, and likewise, their sons" (*tatsutah*). Yajn., II, 135. See 37 All., 604, 614 P.C.

(*y*) "The word 'descendants' in Mr. Colebrooke's translation is in the original '*santana*' which means race, lineage, or posterity, and is still used among Hindus to mean male progeny without limitation. Mr. Justice Telang in *Rachava* v. *Kalingappa* (1892) 16 Bom., 716 construes it as meaning "continuation"; other learned Sanskritists interpret it to signify "an uninterrupted series" [of progeny or heirs]. Their Lordships have no doubt that Vijnanesvara has used it in the sense of lineal male descendants. *Sunavas*, translated by Mr. Colebrooke as 'issue', connotes the same idea." *Buddha Singh* v. *Laltu Singh* (1915) 42 I.A., 208, 37 All., 604, 616.

(*z*) (1889) 5 Mad., 293.

(*a*) (1912) 35 Mad., 152.

(*b*) (1902) 24 All., 128.

elaborate judgment that under the Mitakshara (II, v, 4-5), the great-grandson of a grandfather of a deceased person is entitled to inherit in preference to the grandson of the great-grandfather (*c*). The ground of decision was thus stated: "In the Mitakshara as expounded in the Benares school, the word *putra* and its synonym employed by Vijnanesvara in connection with brothers and uncles must be understood in a generic sense, as in the case of the deceased owner, and that the descendants in each ascending line, up to the fixed limit, at any rate to the third degree, should be exhausted before making the ascent to the line next in order of succession".

If the word 'son' means son, grandson and great-grandson, then it would seem that brother's son and uncle's son must include the great-grandson of the brother and of the uncle respectively. But the Privy Council apparently accept the explanation of Shyama Charan Sarkar that the term 'brother's son' does not include all the three degrees of descent from the brother but only from the father of both the deceased and his brother (*d*). Much more important is the opinion of Apararka who places the brother, his son and grandson as the near sapindas in the father's line and applies the same rule to the grandfather's and great-grandfather's lines making the succession ascend and on failure of them return to the remoter descendants in each line. In accordance with the ruling in *Buddha Singh's* case therefore, the brother's grandson comes next to the brother's son (*d*[1]).

Paternal grandmother.

§ 543. After the compact series of heirs ending with the brother's grandson, the paternal grandmother succeeds as the first amongst the *gotrajas* and after her, the paternal grandfather and his three male descendants, the paternal uncle, his son and grandson—but the last three are now postponed to the son's daughter, daughter's daughter, sister and sister's son by the Hindu Law Inheritance (Amendment) Act, 1929.

(*c*) (1915) 42 I.A., 208, 37 All., 604 *supra;* see *Kashibai* v. *Moreshwar* (1911) 35 Bom., 389, following (1892) 16 Bom., 716 *supra; Venkateswara Rao* v. *Adinarayana* (1935) 58 Mad, 323 (where it was held that a father's brother's grandson is preferred to brother's great-grandson); *Sher Singh* v. *Basdeo Singh* (1928) 50 All, 904; *Ram Sumeran* v. *Kodai Das* A.I.R. 1932 All., 117; according to the Mithila law, the brother's grandson comes in after brother's son. *Shambhoodutt* v. *Jhotee* S.D. of 1855, 382. See also Varadaraja, 36. Madhaviya, § 40; *Kureem* v. *Oodung* 6 W.R., 158; *Oorkhya Kooer* v. *Rajoo Nye* 14 W.R., 208.

(*d*) (1915) 42 I.A., 208, 223 *supra. Venkateswara Rao* v. *Adinarayana* (1935) 58 Mad., 323; *Soobramiah Chetty* v. *Nataraja* (1928) 53 Mad., 61.

(*d*[1]) Apararka translated in 21 M.L.J. (Jour.), 314; Sarvadhikari, 2nd ed., 506-507; Jolly, T.L.L., 211-213. On this view the order in Table A is shown.

The Act however has by evident oversight omitted to provide for the son's daughter's son, son's son's daughter, daughter's son's son, son's daughter's daughter and daughter's daughter's son though they are in the direct line and nearer bandhus than the sister and her son who are named in the Act (*e*).

Rights of half-sister and her son under the Act.

§ 544. The Act is expressed to alter the order of succession in the Mitakshara school in all the provinces. It provides that the son's daughter, the daughter's daughter, the sister and the sister's son shall, in that order, 'be entitled to rank in the order of succession next after a father's father and before a father's brother' (*e*[1]). A son adopted after the sister's death by her husband is expressly excluded by way of abundant caution. In *Ram Adhar* v. *Sudesra*, a Full Bench of the Allahabad High Court has held that the word 'sister' in the Act does not include a half-sister, either consanguine or uterine (*f*). This view has been followed in *Mt. Kabootra* v. *Ram Padarth* (*g*), and the Madras High Court has also taken the same view (*h*). But a Full Bench of the Nagpur High Court has held that the term 'sister' in the Act includes a half-sister and 'sister's son' includes a half-sister's son (*i*). In *Rameshwar* v. *Mt. Ganpati* (*j*), Tek Chand, J, referring to the Allahabad decision, expressed doubts as to its soundness The grounds of decision given by the Allahabad Full Bench are that the word 'sister' in the English language ordinarily means 'a sister of the full blood' and that if 'sister' included a half-sister, then the sister and the half-sister would take together, which would be contrary to the Mitakshara law. Neither assumption is correct. In interpreting a statute altering the rules of succession in Hindu law, it must be presumed that the Legislature used the expressions in the same sense in which they are used in Hindu law and in Hindu society. There does not appear to be any valid reason to exclude the half-sister and her son from the operation of the Act. Hindu law recognises no difference between full blood and half-blood except in a competition

(*e*) *Kalimuthu* v. *Ammamuthu* (1935) 58 Mad, 238, 251 See Appx. II

(*e*[1]) The Act does not affect the Dayabhaga law, Sec I (2)

(*f*) (1933) 55 All, 725 (F.B.); *Mt. Sahodra* v. *Ram Babu* A I R. 1937 All, 655.

(*g*) (1935) 11 Luck., 148, 1935 Oudh, 332.

(*h*) *Angamuthu* v. *Sinnapennammal* 1938 M.W N., 44, A I.R. 1938 Mad., 364

(*i*) *Amrut* v *Mt Thagan* A I.R. 1938 Nag., 134 F.B.; *Shankar* v. *Raghoba* A.I R. 1938 Nag., 97.

(*j*) (1937) 18 Lah., 525, 534.

inter se (*k*). As was held by the Judicial Committee in *Raghuraj Chundra* v. *Rani Subadra,* in interpreting an Act of the Indian Legislature dealing with Hindu law, the personal law of the parties is to be taken into account save where a contrary intention clearly appears (*l*). The suggested difficulty of the half-sister and the sister taking together under the Mitakshara law vanishes if the Act is read in the light of Hindu law, according to which a full-sister will exclude a half-sister and only in default of a full-sister, a half-sister will succeed. Evidently the English rule of construction has been misconceived, for according to it, a description by relationship will include half-blood in the absence of a contrary indication (*m*). In *Grieves* v. *Rawley*, Turner, V.C., expressed the opinion that the meaning which is attributed to the terms 'brother' and 'sister' in the dictionaries is not the meaning in which the term is legally used (*n*). Brothers and sisters of the half-blood before the Administration of Estates Act, 1925, were and after the Act are, capable of taking as heirs, the half-blood taking next to the full-blood (*o*). On the same grounds the expression 'sister's son' in the Act will include a half-sister's son, and on the view expressed by the Privy Council in *Jatindra* v. *Nagendra* that the sons of a step-sister share equally with the sons of a full sister (*o*[1]), there is even less reason for the suggested difficulty. The decision of the Nagpur High Court therefore is to be preferred to the decisions of the Allahabad and Madras High Courts.

§ 545. According to the scheme of the Mitakshara, after the male descendants of the father to the third degree are exhausted, the succession ascends. Each ascending line begins with a female and each has to be exhausted in accordance with the rule of propinquous sapinda relationship before the next in order can take; so that the paternal grandfather and his three male descendants take first in that line. On failure of the paternal grandfather's line, the succession again ascends to the paternal great-grandmother, paternal great-grandfather

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(*k*) *Jatindra Nath* v. *Nagendra Nath* (1932) 58 I.A., 372, 375, 59 Cal., 576 approving *Bhola Nath* v. *Rakhal Das* (1886) 11 Cal., 69.

(*l*) (1927) 55 I.A., 139, 145, 149, 32 C.W.N., 1009.

(*m*) *Grieves* v. *Rawley* (1852) 68 E.R., 840, 10 Hare 63 ('the description of nephews and nieces includes the child of a brother or sister of the half-blood').

(*n*) (1852) 68 E.R., 840, 855; 28 Hals., 1st edn., p. 739.

(*o*) 10 Hals., 2nd edn., 586, 614.

(*o*[1]) (1932) 58 I.A., 372, 375, 59 Cal., 576.

and their three male descendants (*p*). Mr. Harrington in *Rutcheputty Dutt Jha* v. *Rajunder Narain Rae* (*q*), considered that each line should be continued upto the seventh degree, for instance, the father's sixth descendant must be exhausted before the succession ascends to the grandmother and the grandfather and their descendants. In *Buddha Singh* v. *Laltu Singh*, the Privy Council, while not finally deciding the question, observed that Mr. Harrington's view appeared to contravene the rule of Manu (*r*). Kumaraswami Sastri, J., in *Soobramiah Chetty* v. *Nataraja Pillai* (*s*) and Varadachariar, J., in *Venkateswara Rao* v. *Adinarayana* (*t*) held that inheritance descends only to three male descendants of each ancestor and on failure of the third, it ascends. The same view has been taken by the Allahabad High Court (*u*). There can be no doubt whatever that so far as the deceased owner himself is concerned, after his great-grandson, in default of the specially named heirs like the daughter and the daughter's son, the succession ascends to the parents. It would be anomalous if while the fourth to the sixth descendants of the man himself do not exclude the father's line, the father's fourth to sixth descendants should exclude the grandfather's line. There can be no doubt that, as Telang J, thought, in the Mitakshara, II, v, 4-5, it is laid down that the propinquity of *gotrajas* is to be determined by lines of descent, the nearer line excluding the more remote (*v*). There is no inconsistency between this rule and the rule that each line should be continued in the first instance only to three degrees of descent, any more than there would be in the samanodaka descendant of a nearer line being excluded by a sapinda descendant of a remoter line. The distinction therefore appears to be between the nearer and the remote divisions of sapindas.

The other ground suggested by the Privy Council in *Buddha Singh* v. *Laltu Singh* for preferring the great-grandson of the grandfather to the grandson of the great-grandfather on the authority of the Viramitrodaya is that in

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(*p*) *Buddha Singh* v. *Laltu Singh* (1915) 42 I.A., 208, 224, 37 All, 604, Sarvadhikari, 2nd edn., 522-530, Jolly, T.L L., 211 213.

(*q*) (1839) 2 M I A., 132, 158.

(*r*) (1915) 42 I.A., 208, 221, 37 All., 604. See § 556.

(*s*) (1930) 53 Mad., 61.

(*t*) (1935) 58 Mad., 323, 331.

(*u*) *Ram Sumeran* v. *Kodai Das* A.I.R. 1932 All., 117.

(*v*) *Rachava* v. *Kalingapa* (1892) 16 Bom., 716, 719.

judging of the nearness of blood relationship or propinquity among the *gotrajas*, the test to be applied to discover the preferential heir is the capacity to offer oblations (*w*). But the Viramitrodaya, in determining the order amongst *gotrajas*, applies it nowhere and the conclusion in that very passage which was cited, after discussing the proximity of the grandson and the great-grandson, is that it is not the criterion as the right of heritage of the grandson and the great-grandson is by birth upon the authority of the texts (*x*). On the other hand, dealing with the succession of brothers and brother's sons, sapindas, samanodakas and bandhus, the Viramitrodaya stresses the view that the greatness of propinquity is alone the criterion of succession in the absence of special provision (*y*). The true view is stated in the most recent case of *Balasubramania* v. *Subbayya* that agnatic succession under the Mitakshara law "depends *solely* upon proximity of blood connection and the Bengal doctrine of religious efficacy has no application" (*z*). The greater propinquity of the first three descendants is admitted in the texts dealing with the term *'putra'*, and they are the sapindas *par excellence* (*a*). Whatever the reason is, the distinction has from ancient times existed between the first three degrees and the fourth to the sixth. Manu's rule which is repeatedly relied upon in the Mitakshara gives effect to it. Therefore after three degrees of descent in the line of the three ancestors are exhausted, the fourth to sixth descendants of the man himself and of his three paternal ancestors would, by reason of their propinquity, be entitled to inherit in that order. On this basis, the order of succession amongst *sagotra sapindas* is given in Table A.

Samanodakas. § 546. The order of succession amongst samanodakas who are shown in Table A and who come in as heirs only after all the sapindas are exhausted is governed by the same principles and rules as regulate the succession among sapindas.

Bandhus. § 547. Failing samanodakas, the bandhus or bhinnagotra sapindas of the deceased succeed (Table B).

(*w*) (1915) 42 I.A., 208, 227-228, 37 All., 604, 623.

(*x*) Viramit., II, i, 23-a (Setlur's ed., 342-343).

(*y*) Viramit., III, v, 1-2; III, vii, 5; Setlur's ed., 419, 420, 424.

(*z*) (1938) 65 I.A., 93, 102, 42 C.W.N., 449, 455.

(*a*) Manu, IX, 186-7; the division of sapindas and sakulyas in Manu and Baudhayana was based on this distinction.

The order of succession amongst bandhus under the Mitakshara law has been, till recently, somewhat obscure. Of the three classes of bandhus, *viz.*, *atmabandhus*, *pitrubandhus* and *matrubandhus*, it is now settled that they take in the order specified. A *pitrubandhu* does not succeed until the class of *atmabandhus* is exhausted; a *matrubandhu* does not until both the other classes are exhausted (*b*). This order of the classes cannot be varied by an appeal to individual propinquity or to the doctrine of religious efficacy. In *Muthusami* v. *Muthukumarasami*, it was held by the Madras High Court that a maternal uncle of the half-blood who is an *atmabandhu*, succeeds in preference to the father's paternal aunt's son who is a *pitrubandhu*. Four rules were laid down: (1) that those who are *bhinnagotra* sapindas, or related through females born in or belonging to the family of the *propositus* are bandhus; (2) that, as stated in the text of Vriddha Satatapa or Baudhayana, they are of three classes, *viz.*, *atmabandhus*, *pitrubandhus*, and *matrubandhus*, and succeed in the order in which they are named; (3) that the examples given therein are intended to show the mode in which nearness of affinity is to be ascertained; and (4) that as between bandhus of the same class, the spiritual benefit they confer upon the *propositus* is, as stated in the Viramitrodaya, a ground of preference (*c*). This decision was affirmed by the Judicial Committee (*d*). Both in *Vedachela* v. *Subramania* (*e*) and in *Balasubrahmanya* v. *Subbayya* (*f*), their Lordships approved of the propositions enunciated by Muthusami Ayyar, J, in *Muthusami* v. *Muthukumarasami* (*g*) as furnishing 'a safe guide'.

Amongst bandhus of each class, the rule of propinquity is of course the criterion for determining the preference. In the latest case (*f*), the Privy Council observed, "It is also clear that the Viramitrodaya, Ch. III, pt. vii (5), which is the

Rule of propinquity.

(*b*) *Muthusami* v. *Muthukumarasami* (1896) 23 I.A, 83, 19 Mad., 405 affg. (1893) 16 Mad., 23, *Krishna Ayyangar* v. *Venkatarama* (1906) 29 Mad, 115 (paternal aunt's daughter's son who is an *atmabandhu* preferred to father's paternal aunt's son who is a *pitrubandhu*); *Adit Narayan* v *Mahabir Prasad* (1921) 48 I.A., 86, 6 Pat. L.J, 110 (maternal aunt's grandson being an *atmabandhu* preferred to mother's paternal aunt's son, a *matrubandhu*), *Bai Vijli* v. *Bai Prabhalakshmi* (1907) 9 Bom L.R., 1129.

(*c*) (1893) 16 Mad., 23, 30 *supra*.

(*d*) (1896) 23 I A, 83, 19 Mad., 405.

(*e*) (1921) 48 I A, 349, 361, 44 Mad, 753, 767

(*f*) (1938) 65 I.A., 93, 42 C.W.N., 449, A.I.R. 1938 P C., 34, affirmg. A.I.R. 1935 Mad., 1015, 69 M.L.J., 632.

(*g*) (1893) 16 Mad, 23 *supra*.

principal authority for the well-recognised priority of *atma-bandhus* over the two other classes, clearly bases it on propinquity. Their Lordships think therefore that it would be impossible to say that under the Mitakshara, the principle of propinquity does not apply beyond agnatic succession".

Nearness of degree.

§ 548. The first rule of preference is therefore the nearness of degree (*h*), and that is easily ascertained as between the descendants of the same ancestor or of ancestors of an equal degree when the nearer in degree will exclude the more remote. But as between the descendants of a nearer ancestor and of a remoter ancestor, the degrees as computed from each common ancestor to the descendant are necessarily deceptive. In *Muthusami* v. *Muthukumarasami,* Muthusami Iyer, J., observed, "Though sons born in the family are all *gotrajas,* yet the Mitakshara regulates the succession when there is competition between them with reference to the nearness or remoteness of propinquity, as, for instance, between a brother and a paternal uncle's son. It is not clear why this analogy should be ignored in the case of daughters born in the family, and why the father's sister and the grandfather's sister should be treated as related to the propositus in the same degree of affinity. Nor is it reasonable to regard one's own sister's son and one's grandfather's sister's son as related in the same degree" (*i*).

Nearer line excludes more remote.

§ 549. The rule as to the nearness in degree therefore has to be supplemented and controlled by the further rule that the nearer line excludes the more remote. Accordingly, in *Balusami* v. *Narayana,* it was laid down that the first principle in the law of inheritance is that the nearer line excludes the more remote. The competition in that case was between the owner's sister's son's son and the maternal uncle's son and the former was preferred (*j*). In *Vedachela's* case (*k*), the Privy Council did not disapprove of the decision in *Balusami's* case that the sister's son's son was nearer in degree to the propositus than the maternal uncle's son. Their Lordships only disapproved of the second principle laid down in that case that amongst bandhus of the same class in all cases,

(*h*) (1938) 65 I.A., 93, 101 *supra* affirmg. 69 M.L.J., 632, 651; *Jatindranath* v. *Nagendranath* (1931) 58 I.A., 372, 59 Cal., 576; *Chengiah* v. *Subbaraya* (1930) 58 M.L.J., 562; *Kalimuthu* v. *Ammamuthu* (1935) 58 Mad., 238.

(*i*) (1893) 16 Mad., 23, 29-30.

(*j*) (1897) 20 Mad., 342; see also *Mohandas* v. *Krishnabai* (1881) 5 Bom., 597.

(*k*) (1922) 48 I.A., 349, 361, 44 Mad., 753.

those who are *ex parte paterna* take before those who are *ex parte materna*. In *Krishna Ayyangar* v. *Venkatarama* (*l*) which was approved by the Privy Council in *Adit Narayan's* case (*m*), it was held that it was a cardinal principle of Hindu law that the nearer line excludes the more remote. In that case, the competition was between the paternal aunt's daughter's son who is an *atmabandhu* and the grandfather's sister's son who is a *pitrubandhu*. No doubt the preference of an *atmabandhu* to a *pitrubandhu* was sufficient to determine the priority in that case.

This view was followed and reaffirmed in *Kalimuthu* v. *Ammamuthu* after a fresh examination of the authorities It was held in that case that as between the daughter's daughter's son and the sister's son, both being *atmabandhus*, the former as the cognate descendant of the man himself is to be preferred to the latter who is only a cognate descendant of his father. It was further held that the principle of spiritual benefit cannot override the rule that the nearer line excludes the more remote (*n*). The decision in *Uma Shankar* v *Nageshvari* (*o*), which was mainly based on the decision of the Patna High Court which was reversed by the Privy Council in *Adit Narayan* v. *Mahabir Prasad* (*p*), can by no means be regarded as correct. In that case, the maternal uncle was preferred to the sister's daughter's son of the propositus. Mullick, J., considered the sister's daughter's son to be a *pitrubandhu* (*q*), and Jwala Prasad, J., also doubted whether he is an *atmabandhu* (*r*) Both the learned judges considered that the descendant of an *atmabandhu* need not be an *atmabandhu*, even when he is within the five degree limit (*s*). The two judges, while dif-

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(*l*) (1906) 29 Mad., 115, *Maharajah of Kolhapur* v. *Sundaram* (1925) 48 Mad., 1, 77, 223 (daughter's son excludes sister's grandson).

(*m*) (1922) 48 I A., 86, 6 Pat L J., 140.

(*n*) (1935) 58 Mad , 238, see also *Dattatraya* v. *Gangabai* (1922) 46 Bom., 541 (son's daughter's son preferred to father's daughter's daughter). In *Chengiah* v. *Subbaraya* (1930) 58 M.L.J , 562, where the rival claimants were the mother's paternal aunt's grandson and the mother's paternal uncle's great-grandsons, both being *matrubandhus*, the former was preferred to the latter It was observed that the test of spiritual benefit can only apply as between bandhus of the same class when they are equal in degree.

(*o*) (1918) 3 Pat. L.J., 663 (F.B.).

(*p*) (1916) 1 Pat. L.J., 324, reversed in (1921) 48 I.A., 86, 6 Pat. L.J., 140.

(*q*) (1918) 3 Pat. L.J., 663, 685.

(*r*) *Ib.*, 725.

(*s*) *Ib.*, 726.

fering as to how the degrees were to be computed (*t*), erroneously considered that the maternal uncle was nearer in degree than the sister's daughter's son. To compare degrees of descent computed from the father of the propositus with, say, degrees computed from his great-grandfather is obviously a fallacious mode of approaching the problem. While the limits of agnate and cognate relationship are ascertained by computing degrees from the common ancestor so as to ascertain whether a man is a sapinda or a bandhu, the question of nearness of degree as between two bandhus cannot be solved by the reckoning of degrees from nearer and remoter ancestors and treating them all as of equal validity in ascertaining propinquity (*u*). The Mitakshara itself recognises the distinction between the descendants of the nearer line and those of a remoter line by recognising the former as *atmabandhus* and the latter as *pitrubandhus* or *matrubandhus* taking only after the descendants of the nearer line. But while the six degrees of agnatic descendants of a man himself or of any of his ancestors have been divided into two groups, no such division is possible in the case of cognate descendants who are only four in number in each line. The only logical and convenient rule therefore is that the nearer line excludes the more remote amongst bandhus.

The test of religious efficacy.

§ 550. It is now settled that when the test of proximity fails as between bandhus of equal degree and only when it fails, the principle of religious efficacy is an admissible test for the purpose of determining the preference. In *Vedachela* v. *Subrahmanya* (*v*), the maternal uncle was held to be nearer in degree than the paternal aunt's son's son and the reference to religious benefit was only an additional and a superfluous consideration. In *Jatindra Nath* v. *Nagendra Nath* (*w*) it was held (1) that as between the father's half-sister's sons and the mother's sister's son, the former are the preferable heirs; (2) that as between bandhus of the same class who are equal in degree, the test of religious

(*t*) *Ib.*, 682. Jwala Prasad. J.'s computation of degrees was wrong. See *ante* § 112, note (*m*).

(*u*) The decision in *Sham Dei* v. *Birbhadraprasad* (1921) 43 All., 463, where the paternal aunt's son's son was held to be nearer than the sister's daughter's son is even more open to criticism; for, while the sister's daughter's son is four degrees removed from the father of the propositus, the paternal aunt's son's son is four degrees removed from his grandfather; and neither of them offers pindas to the ancestors of the deceased. The headnote to the report is wrong.

(*v*) (1922) 48 I.A., 349, 44 Mad., 753.

(*w*) (1932) 58 I.A., 372, 59 Cal., 576 affirming (1927) 55 Cal., 1153.

efficacy is applicable (*x*); and (3) that the efficacy of funeral offerings is a safer test than the preference for bandhus *ex parte paterna* (*y*). Whether, in any case under the Mitakshara law, religious efficacy should be held to be a test or measure of propinquity has already been fully discussed with reference to the Smritis and all the later Sanskrit authorities (§§ 485-493).

Uthumalai case.

In the latest case before the Judicial Committee, the contesting claimants were the maternal uncle and the father's sister's son. The former was held to be the preferable heir (*z*). Explaining the decisions in *Vedachela's* case and *Jatindranath's* case (*a*), the Privy Council not only made it clear that the doctrine of religious efficacy has no application to cases of agnatic succession under the Mitakshara law, but confined the test only to cases where the degree of blood-relationship amongst bandhus furnished no certain guide and reiterated the view that the principle of propinquity in blood is the primary test in cases of bandhu succession as well.

§ 551. Where the bandhus are equal in degree, religious efficacy will not in all cases resolve the difficulty and the Mitakshara lays down no rule of preference as between members of the class who are in equal degree of propinquity to

(*x*) "It is, their Lordships think, a mistake to suppose that the doctrine of spiritual benefit does not enter into the scheme of inheritance propounded in the Mitakshara. No doubt propinquity in blood is the primary test, but the intimate connection between inheritance and funeral oblations is shown by various texts of Manu (see, for instance, Ch. IX, 136, 142), and the Viramitrodaya brings in the conferring of spiritual benefit as the measure of propinquity where the degree of blood relationship furnishes no certain guide": (1931) 58 I.A., 372, 379, 59 Cal, 576 *supra*, *Gaddam Ademma* v *Hanumareddi* [1938] Mad, 260, where father's half-sister's son was preferred to mother's brother's son on ground of the former's religious efficacy.

(*y*) "It may well be that the application of a rule of general preference, in the case of bandhus, of those claiming *ex parte paterna* . . . will, in the majority of cases, produce the same result as the test of religious efficacy of offerings, but their Lordships think that in adopting the latter they are on surer ground, and are following the precedent of previous rulings of this Board. There may be cases in which this rule will leave the question still undecided, and in which the other rule may have to be considered, but this is not so in the present case": (1932) 58 I.A., 372, 379, 59 Cal., 576 *supra*.

(*z*) *Balasubrahmanya* v. *Subbayya* (1938) 65 I.A., 93, 42 Cal. W.N., 449 P.C., affirmg. A.I.R. 1935 Mad., 1017, 69 M.L.J., 632; the decisions to the contrary in *Sakharam* v. *Balkrishna* (1925) 49 Bom., 739 and in *Ram Nath* v *Duni Chand* A.I.R. 1934 Lah., 622 (2) are not good law.

(*a*) (1921) 48 I.A., 349, 44 Mad., 753 *supra*, 58 I.A., 372.

Ex parte paterna.

the propositus, nor does it suggest that they are all to share equally (*b*). Where the tests of nearness of degree and of line fail, the general preference of Hindu law for relations *ex parte paterna* would appear to be a proper and adequate test of propinquity. But in *Jatindra Nath's* case, while the Judicial Committee regarded it as quite an intelligible test —one too supported by considerable volume of authority, they have placed the test of religious efficacy before it. Accordingly amongst bandhus of the same class, equal in degree, where the test of religious efficacy fails, bandhus *ex parte paterna* are to be preferred to those *ex parte materna* (*c*).

Another rule was laid down in *Tirumalachariar* v. *Andal Ammal*, that the claimant between whom and the stem there intervenes only one female link should be preferred to that claimant who is separated from the stem by two such links. It was accordingly held that a daughter's son's son will have preference over a daughter's daughter's son (*d*). This view is not followed in Bombay where amongst bandhus propinquity is the sole test and bandhus of equal propinquity share equally even though they are of different classes of relation (d^1).

Summary.

§ 552. The result of these and other authorities may be summarised. As between bandhus of the same class, the following five rules will apply:

(1) A nearer ancestor and his descendants exclude a remoter ancestor and his descendants (*e*). The descendants of the deceased owner himself are preferred to the descendants of his paternal and maternal ancestors.

(*b*) (1932) 58 I.A., 372, 59 Cal, 576 *supra* There does not appear to be any reason why when agnates or cognates are of equal degree of propinquity, they should not share equally. The son, grandson and great-grandson who are by a special text, of equal propinquity, share together. Nilakantha bases his joint successions on equal propinquity. So too, on the death of a *dwyayamushyayana*, his adoptive and natural mothers, being equally near, inherit equally (§ 225). See (*d*1) *infra* In Mithila, sons and unmarried daughters inherit a woman's *ayautaka* stridhana equally

(*c*) *Narasimma* v. *Mangammal* (1889) 13 Mad., 10; *Sundrammal* v. *Rangasami* (1895) 18 Mad., 193; *Balusami* v *Narayana* (1897) 20 Mad., 342; *Saguna* v. *Sadashiv* (1902) 26 Bom., 710, 715; *Ram Charan* v. *Rahim Baksh* (1916) 38 All., 416; *Kalimuthu* v. *Ammamuthu* (1935) 58 Mad., 238.

(*d*) (1907) 30 Mad., 406, 407; *Rami Reddi* v. *Gangi Reddi* (1925) 48 Mad., 722; *Chengiah* v. *Subbaraya* (1930) 58 M.L.J., 562, 1930 Mad., 555.

(*d*1) *Rajeppa* v. *Gangappa* (1923) 47 Bom , 48; *Vithal Tukaram* v. *Balu Bapu* (1936) 60 Bom., 671, 678.

(*e*) Where the ancestor is an agnate it is his cognate descendants alone that can inherit as bandhus.

(2) As between descendants of the same ancestor, or ancestors of an equal degree, the nearer in degree excludes the more remote.

(3) As between bandhus who are equal in degree and are also descendants of the same ancestor or of ancestors of equal degree, a bandhu who confers greater spiritual benefit on the deceased is to be preferred to one who confers less or none.

(4) Where the test of religious efficacy fails, bandhus *ex parte paterna* are preferred to bandhus *ex parte materna.*

(5) All other considerations being equal, he between whom and the common ancestor no female intervenes (e^1) will be preferred to one between whom and the common ancestor one female intervenes, and the latter again will be preferred to the bandhu between whom and the common ancestor two intervene.

On the basis of the foiegoing rules, Table B shows all the male bandhus. The Arabic numerals attached to them mark the order in which it is either decided or suggested that they should rank *inter se* in accordance with the principles of the Mitakshara law. (See also Appx. II).

Female bandhus.

§ 553. Except the son's daughter, daughter's daughter and the sister whose rights of succession are settled by the Hindu Law of Inheritance (Amendment) Act, 1929, all female bandhus are recognised as heirs at any rate in Madras and Bombay, if not in the other provinces where they appear to be excluded (f). Such female bandhus come in only after the male bandhus (f^1). The order of succession amongst them will be regulated by the same rules as govern succession amongst male bandhus. In Bombay, however, in *Saguna* v. *Sadashiv,* the father's half-sister was preferred to the mother's brother on the ground that a female bandhu on the father's side must be preferred to a male bandhu on the mother's side, though among bandhus on the same side, male bandhus take precedence over female bandhus (g). In *Kenchava* v. *Girimallappa,* a case from Bombay (h), the Privy Council de-

(e^1) The preference of the paternal aunt's son to the maternal uncle's son is no exception, for that comes under rules (3) and (4)

(f) *Tirath Ram* v. *Kahan Devi* (1920) 1 Lah., 588 where the question was not considered as closed.

(f^1) *Rajah Venkata* v. *Raja Surenani* (1908) 31 Mad, 321; *Kenchava* v. *Cirimallappa* (1924) 51 I.A., 368, 48 Bom, 569, affirmg. (1921) 45 Bom., 768; *Balkrishna* v. *Ram Krishna* (1921) 45 Bom., 353; *Narasimma* v. *Mangamma* (1889) 13 Mad., 10; *Chinnammal* v. *Venkatachala* (1891) 15 Mad., 421; *Lakshmanammal* v. *Thiruvengada* (1882) 5 Mad., 241; *Avudai* v. *Ramalinga* A.I.R. 1926 Mad., 1163.

(g) (1902) 26 Bom., 710.

(h) (1924) 51 I.A., 368, 48 Bom., 569.

cided that a father's sister's son succeeds in preference to the father's brother's daughter and that amongst bandhus of the same class and degree a male was to be preferred to a female. Evidently it would have made no difference if the female bandhu was nearer in degree as the decision in *Rajah Venkata* v. *Rajah Surenani* (*i*) was approved and was held not to conflict with *Saguna* v. *Sadashiv*, because there was no conflict between paternal and maternal bandhus. The question, however, which of the two conflicting principles, the paternal over the maternal line as in *Saguna* v. *Sadashiv* or the preference of the male over the female sex as in *Balkrishna* v. *Ramkrishna* (*j*) is to prevail was left open. But in *Saguna* v. *Sadashiv* both the claimants were *atmabandhus*. *Vedachela's* case (*k*) has finally overruled the view that amongst bandhus of the same class, those *ex parte paterna* should be preferred to those *ex parte materna*. There is nothing in *Kenchava* v. *Girimallappa* (*l*) to qualify that decision. It would seem therefore that the decision in *Balkrishna* v. *Ramkrishna* (*j*) that as between the mother's sister's son and the brother's daughter, the former has precedence, would seem to be right as both are *atmabandhus*. The preference of the male over the female sex would override the rule that the nearer line excludes the more remote.

Succeed after males.

The female bandhus in each class will succeed after all the male bandhus in that class are exhausted. But to postpone them to the male bandhus of all the three classes would involve the introduction of a fourth class of bandhus composed of females only for which there is no warrant whatever. The Mitakshara divides all bandhus into three classes only. A female bandhu must necessarily be either an *atmabandhu*, a *pitrubandhu* or a *matrubandhu*. And as amongst male bandhus, so amongst female bandhus class propinquity and individual propinquity will prevail; and the rules relating to the nearer degree, the nearer line and the preference of a bandhu *ex parte paterna* will also apply (§ 552). But in no case it would seem can religious efficacy be a measure of propinquity in a competition between female bandhus. The *dicta* in some of the Madras cases that female bandhus come in only after all the male bandhus are exhausted do not mean that the male bandhus of all the three classes should be exhausted, for no question arose of a com-

(*i*) (1908) 31 Mad., 321.
(*j*) (1921) 45 Bom., 353.
(*k*) (1922) 48 I.A., 349, 44 Mad., 753.
(*l*) (1924) 51 I.A., 368, 48 Bom., 569.

petition between a female *atmabandhu* and a male *pitru-bandhu* or *matrubandhu* (*m*).

§ 554. BOMBAY LAW:—According to the Mitakshara law as administered in Bombay, after the paternal grandmother, the sister comes in as an heir (*n*). And sisters of the half-blood succeed immediately after sisters of the full-blood where the Mitakshara governs (*o*). Where the Mayukha is supreme, the half-sister comes in, it is said, after the half-brother and before the paternal uncle (*p*). But as already pointed out (§ 540), it is not clear where the place of the half-brother is, as his joint succession with the grandfather is no longer in force (*q*) (§ 555). Sisters take equally *inter se* without any such preference for the unendowed over the endowed, as exists in the case of daughters (*r*).

The Hindu Law of Inheritance (Amendment) Act, 1929, must on the face of it be taken to alter the Mitakshara law in the Bombay Presidency as well. Son's daughter, daughter's daughter, sister and sister's son will rank on that view next after the paternal grandfather. But in *Shidramappa* v. *Neelawa*, notwithstanding the Act, it was held that the sister inherits, as before the Act, after the paternal grandmother and before the paternal grandfather (*s*). This view is open to the objection that the sister's place before the Act was not a right covered by the saving of any special family or local custom in s. 3 thereof, but was only due to the interpretation of the Mayukha and the Mitakshara by the

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(*m*) Muttuswami Ayyar, J., referred to female bandhus as 'irregular bandhus' in *Sundrammal* v. *Rangasami* (1895) 18 Mad., 193, 198-9. It was correctly stated by the same learned judge in *Balamma* v *Pullayya* (1895) 18 Mad., 168, 170. The exact view of the Madras High Court was fully explained in *Venkatasubramania* v *Thayarammal* (1898) 21 Mad., 263 which laid down that female sapindas belonging to a different *gotra* are strictly *bhinnagotra* sapindas or bandhus within the meaning of the Mitakshara.

(*n*) She comes in as a *gotraja* sapinda. See *ante* § 507.

(*o*) W & B. 440; *Vinayak* v *Lakshmibai* (1861) 1 Bom H.C., 117; affirmed 9 M.I.A., 516, 3 W.R. (P.C.), 41; *Sakharam* v. *Sitabai* (1879) 3 Bom., 353; *Dhondu* v *Gangabai*, *ib*, 369; *Kesserbai* v *Valab* (1880) 4 Bom., 188, 198, *ib*, 210, 214; *Jana* v. *Rakhma* (1919) 43 Bom., 461.

(*p*) (1880) 4 Bom., 188, 207 *supra*; *Trikam Purshottam* v *Natha Daji* (1912) 36 Bom., 120.

(*q*) Apparently the view in *Sakharam* v. *Sitabai* (1879) 3 Bom., 353 that 'brothers' include 'sisters', though erroneous where the Mitakshara prevails, is still to be followed under the Mayukha; *Bhagwan* v. *Warubai* (1908) 32 Bom., 300, 307—a doubtful position.

(*r*) *Bhagirthibai* v. *Baya* (1881) 5 Bom., 264; *Saguna* v. *Sadashiv* (1902) 26 Bom., 710.

(*s*) (1933) 57 Bom., 377, 379.

courts. And any special family or local custom of inheritance is one which must be in derogation of the law of the school governing the parties. Neither the Maharashtra nor the Mayukha school of law can itself be regarded as a special family or local custom. The statute merely modifies the Hindu law of the commentaries and the law as laid down in the decisions of the courts (*t*). Accordingly the Act cannot be read as affecting the Mitakshara law of those provinces only where the son's daughter, daughter's daughter, sister and sister's son were not before the Act recognised as heirs by decisions of courts.

Just as the Act confers rights where none were recognised before, it must be construed to alter the order in the Mitakshara school in all the provinces as well where it might be disadvantageous to the heirs mentioned as where it would be advantageous to them. There is no difficulty whatever in bringing them after the paternal grandfather according to the Mitakshara law in Bombay or even where the Mayukha is supreme. After the paternal grandfather, the son's daughter, daughter's daughter, sister and sister's son will come in as a compact series in the absence of any special family or local custom.

Joint inheritance under the Mayukha obsolete.

§ 555. The peculiar Mayukha view that (1) the paternal grandfather and the half-brother, and (2) the paternal great-grandfather, the father's brother and the sons of the half-brothers take as coheirs (*u*), has neither been observed in practice nor has it been recognised by the courts (*v*).

§ 556. Between the paternal grandmother and the paternal grandfather, in addition to the sister, the fourth to the sixth descendants of the deceased owner, the widows of all his six lineal descendants and the third to the sixth des-

(*t*) A custom must be one which modifies the law and must have force independently of it; and decisions of courts do not constitute a custom, *Venkatasurya* v. *Court of Wards* (1899) 26 I.A, 83, 22 Mad., 383, 396.

(*u*) V. May., IV, viii, 20.

(*v*) *Lullabhai* v. *Mankuvarbai* (1878) 2 Bom., 388, 420; *Sakharam* v. *Sitabai* (1879) 3 Bom., 353, 363; *Kesserbai* v. *Valab* (1880) 4 Bom., 188, 208; *Rachava* v. *Kalingappa* (1892) 16 Bom., 716, 720. "It is to be observed that the rule for equal distribution of the property amongst remote relations of the propositus (Vyav. Mayukha, Ch. IV, § viii, pl. 20), standing at an equal distance from him, appears to have been wholly disregarded in practice. No instance of its application is to be found amongst the cases collected by Messrs. West and Buhler, nor has any claim by coheirs, as far as our experience goes, ever been based upon it. Nilakantha's speculative suggestion in placitum 20 has not then, by its accordance with, or adoption into the customary law, become a binding rule", per West, J., in (1878) 2 Bom., 388, 447 *supra*.

cendants of the brother, the step-mother and also the widows of the brother and his five descendants have, on the older view, been placed as heirs by Messrs. West and Buhler(*w*). In *Rachava* v. *Kalingappa,* Telang, J., considered that the inheritance is to go first in the line of the paternal grandfather, then in default of anyone in that line, of the paternal great-grandfather, then of the paternal great-great-grandfather and so forth (*x*). Apparently the gotraja limit was assumed in that case to be six degrees of descent commencing with the paternal grandfather. In *Kashibai* v. *Moreshwar*(*y*) the limits were expressly so stated on the authority of West and Buhler (*z*) and of *Bhyah Ram Singh* v. *Bhyah Ugur Singh* (*a*). In the case before the Privy Council, there was no question of preference as there was no competing claim to the succession. The claimants in that case were in equal degree removed from the deceased, being his great-great-great-grandsons. They were certainly heirs in the absence of nearer sapindas, and the question whether the succession to the estate of a man stops and turns back at the third male in descent was not considered in that case. Mr. Harrington's view would be consistent with the Mitakshara only if the sixth descendant of a deceased owner could inherit before his brother and his five descendants. But there is no place in the compact series of heirs for the three descendants of the great-grandson. In the second place, Manu's rule of propinquity on which Vijnaneswara insists, is preceded by the rule of three degrees as marking off the near sapindas In the third place, the indications in the Mayukha are, if anything, opposed to the view that each line should be continued to the sixth descendant, for Nilakantha takes the propinquity of the paternal grandfather and the half-brother to be equal and he makes a more remarkable statement that the paternal great-grandfather, the father's brother and the sons of the half-brother are of equal propinquity (*b*). There may be no difficulty with reference to the compact series of heirs in reading 'brother's son' as including his fifth descendant. But as was rightly observed in *Kalian Rai* v. *Ram Chandar,* "Messrs. West and Buhler seem rather to beg the question, where they say that the paternal grandmother must inherit in preference to the brother's grandsons. If the words 'sons' and 'brother's

(*w*) 4th edn., pp. 107, 115-117.
(*x*) (1892) 16 Bom., 716, 719.
(*y*) (1911) 35 Bom., 389, 392.
(*z*) 3rd edn., 114-123.
(*a*) (1872) 13 M.I.A., 373, 394.
(*b*) V. May., IV, viii, 20.

sons' in the verses last referred to are read as including grandsons, the latter will exclude the paternal grandmother" (*c*). The further observations in that case however appear to be due to a misconception. The court observed that "according to Mr. Harrington's view, a great-great-grandson of the deceased would take immediately after the great-grandson, and even if that view is not correct, the remote descendants of the proprietor might well be regarded as less nearly akin than the grandnephews" (*d*). Mr. Harrington's view is clearly wrong; for, it is settled that in default of the great-grandson, it is not *his* son but the widow of the owner that inherits. The Viramitrodaya is explicit: "Hence it is established that it is only in default of male issue down to the great-grandson that the wife takes the estate of the husband who was separated and not reunited" (*e*). On this view, the compact series (*baddhakrama*) on which Vijnanesvara insisted, beginning with the widow and ending with the brother's descendant, leaves no room for the great-grandson's three descendants. The other observation that remote descendants of the proprietor might be less nearly akin than the grandnephews, does not answer the objection to a scheme which prefers the fifth descendant of the brother to the fifth descendant of the deceased himself. It is therefore clear that the interpretation of the Mitakshara scheme of succession by Dr. Sarvadhikari and Dr. Jolly which is based upon the opinion of Apararka and which has been approved by the Judicial Committee in *Buddha Singh's* case (*f*) is correct. (§§ 542, 545).

§ 557. Notwithstanding the decision of the Privy Council, a Full Bench of the Bombay High Court adheres to its earlier view that a brother's son does not include a brother's grandson in the compact series of heirs and that his place in Bombay is as a *gotraja* sapinda after the paternal grandmother and the sister (*g*). But if the brother's son includes brother's grandson, he will be included in the compact series of heirs. The words in the Mitakshara in II, v, 2 are '*bhratrusutah*' (brother's sons) and '*tatsutanantaram*' (after the brother's son) which have to be understood in a generic sense in accordance with *Buddha Singh's*

(*c*) (1902) 24 All., 128, 134 approved in *Buddha Singh* v. *Laltu Singh* (1915) 42 I.A., 208, 37 All., 604.

(*d*) *Ib.*, 135.

(*e*) Viramit., III, i, 11; Setlur's ed., p. 394.

(*f*) (1915) 42 I.A., 208, 37 All., 604.

(*g*) *Appaji* v. *Mohanlal* (1932) 54 Bom., 564, 604, 611 F.B.

case (g^1). And II, v, 4, which provides for heirs 'on failure of the father's descendants *(pitrusantana)*' makes it conclusive that the descendants of the brother and not simply his son must come in before the grandmother and the grandfather. The Mayukha in adopting the terminology of Vijnanesvara must be held to take the same view as regards the compact series of heirs (h). As under the Mayukha, the sister comes immediately after the paternal grandmother and immediately before the paternal grandfather, there is no place for the brother's grandson between the sister and the paternal grandfather as suggested by the Bombay High Court. It would seem therefore that the place of the brother's grandson is immediately after the brother's son.

On the view taken by the Full Bench, after the paternal grandmother, (and if *Shidramappa* v *Neelawa* is right, the sister) the fourth to the sixth descendants of the owner, the son's widow and the widows of lineal male descendants will come in before the brother's grandson; after him, the fourth to the sixth descendants in the father's line and the widows of gotraja sapindas in that line viz., the stepmother and the widows of the brother and of his five descendants; then the paternal grandfather and the new statutory heirs, viz., son's daughter, daughter's daughter (and on the view stated in § 554, the sister) and the sister's son will come in. Thereafter come the paternal uncle and his five descendants according to Messrs. West and Buhler and the widows of gotraja sapindas in the line of the paternal grandfather commencing with the father's stepmother. Then the great-grandmother, the great-grandfather, their descendants with the widows of *gotraja* sapindas in each line after the male descendants in that line, and so on, up to the last sapindas and samanodakas. On the view here suggested, the order will be the same as mentioned in § 545 with the addition of the stepmother, father's stepmother, etc., and the widows of gotraja sapindas of three descendants in each line as succession ascends or descends.

The order of succession among bandhus has been already detailed (i).

§ 558. The subject of reunion has been already discussed (j). While the effect of reunion is generally to restore Reunion.

(g^1) Mr. Colebrooke's translation of it as 'nephew', instead of literally as the 'brother's son' is misleading.

(h) V. May, IV, viii, 18. There is nothing so decisive in this as to prevent the term '*bhratruputra*' being read in a generic sense by construing the Mitakshara and the Mayukha together.

(i) See *ante* § 547-552.

(j) See *ante* §§ 467-470.

the joint family status (*k*) with its incident of survivorship, an exception to the strict rule of survivorship is recognised by allowing a divided full brother to take along with the undivided half-brother, the share of the reunited coparcener, in the absence of his male issue (*l*).

In default of reunited brothers of the half-blood, or of any brothers of the whole blood, the succession passes in order to the father, or paternal uncle, if reunited; to the half-brother not reunited, to the father not reunited; in default of any of them, then successively to the mother, the widow and the sister (*m*). If none of these exist, then to the nearest sapindas or samanodakas as in the case of ordinary separate property. Of this line of succession, the author of the Viramitrodaya says very truly: "In this order there is no principle; hence this order rests entirely upon the authority of the texts of law." (*n*).

Ultimate heirs.

§ 559. In default of bandhus of the deceased, the preceptor, or on failure of him, the pupil, or the fellow-student succeeds to his estate (*o*). If there be no fellow-student, a learned and venerable priest (*srotriya*) should take the property of a Brahmana, or in default of such a one, any Brahmana (*p*). In case of traders who die in a foreign country, leaving no heirs of their own family,

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(*k*) *Narasimhacharlu* v. *Venkata* (1910) 33 Mad., 165; *Nana* v. *Prabhu* (1923) 75 I.C., 508, A.I.R. 1924 Pat., 647; *Babu* v. *Gokuldoss* (1928) 55 M.L.J., 132, 145-146.

(*l*) *Narasimhacharlu* v. *Venkata* (1910) 33 Mad., 165 and *Babu* v. *Gokuldoss* (1928) 55 M.L.J, 132, 146 explaining *Ramasami* v. *Venkatesam* (1893) 16 Mad., 440; *Kristraya* v. *Venkataramaiah* (1903) 19 M.L.J., 723.

(*m*) Smritichandrika, XII, 23-39; Viramit., IV, 9-11; Setlur's ed., 435. See Jha H.L.S., II, p. 407.

(*n*) The Viramitrodaya says: "The order of the heirs, which is laid down in the text, 'The wife and the daughters also, etc.,'—and which is founded upon a principle and is relative to separate property, —is opposed by the order laid down by texts of law with reference to the present case." (IV, 9, Setlur's ed., p. 435). On failure of the wife, the sister gets the share of a sonless reunited person, (Viramit., IV, 10, Setlur's ed., 435). According to the Mayukha, in default of the wife, the sister, the daughter or the daughter and the sister, and in default of both, the nearest sapinda succeeds. V. May., IV, ix, 25; Mandlik, page 90.

(*o*) Mit., II, vii, 1-2; Smritichandrika, XI, 6, 1-4; V. May., IV, 8, 24; Viramit., III, 7, 6-7.

(*p*) Mit., II, vii, 3-4; Apas., II, 6, 14, 23; Gaut., XXVIII, 41; Smritichandrika, XI, 6, 5-6; V. May., IV, 8, 25, 26 citing Katyayana and Narada; Viramit., III, 7, 8-9; Sarasvati Vilasa, paras. 519-613; V. Ratnakara, XXXIV, 17, 19, 20-23; V. Chintamani makes a distinction and does not refer to the preceptor, pupil, or a fellow student. According to it, the wealth goes to the king excepting however the property of a Brahmin. (V. Chintamani, 298-299).

the fellow-trader is authorised (*q*). Finally, in default of all these, the king takes by escheat, except the property of a Brahmin, which, it is said, can never fall to the Crown (*r*). King.

In *Sambasivam Pillai* v. *Secretary of State for India*, the Madras High Court held that the text of Yajnavalkya (II, 136) and the Mitakshara (II, vii) relating to the succession of the preceptor, disciple and fellow-student apply to all classes and are neither obsolete nor unreasonable but on the contrary, the rules were consonant with current Hindu ideas. It was held that the disciple of a Sudra ascetic, who dies without leaving any blood-relation, succeeded to his estate intercepting its escheat to the Crown (*s*). In determining who is a preceptor, pupil, or a fellow student in the above text, the Court will only consider the imparting of purely religious instruction and training which of course are not confined to Brahmins (*t*). It will be observed that the text of Yajnavalkya (II, 137) and the Mitakshara (II, viii) which lay down a special rule of succession to a hermit or ascetic were not applied to the case as it has been held that they do not govern the case of a Sudra ascetic (*u*).

§ 560. The claims of *srotriyas* or any Brahmin to the estate of a Brahmin are of course too indefinite to be enforceable. The direction that the King can never take the estate of a Brahmin has also been overthrown in the only case in which the exemption was set up (*v*). There the Crown claimed by escheat as against the alienee of a Brahman widow, whose husband had left no heirs. It was held that the claim must prevail, notwithstanding the rule relied on; either on the ground, that the rule itself assumed that the Escheat.

(*q*) See a passage in the Mitakshara, not translated by Mr. Colebrooke cited in *Gridhari* v. *Bengal Govt.* (1868) 12 M.I.A., 448, 457, 465.

(*r*) Mit., II, vii, 5-6. "But the king, and not a priest, may take the estate of a Kshatriya or other person of an inferior caste, on failure of heirs down to the fellow-student. So Manu ordains: But the wealth of the other classes, on failure of all heirs, the king may take." (Manu, IX, 189).

(*s*) (1921) 44 Mad., 704. The court referred to the two texts as Yajn., II, 137-138, following the footnotes in Stokes H.L.B. They are II, 136 137 in Mandlik's Yajnavalkya Smriti as well as in the Sanskrit editions of Setlur and Moghe.

(*t*) *Giyana Sambandha* v. *Kandasami* (1887) 10 Mad., 375. Of course, very strict proof of spiritual relationship will be required, (1921) 44 Mad., 704 *supra*, see as to spiritual instruction, *Ramchandra Martand* v. *Vinayak* (1915) 42 I.A, 290, 42 Cal., 384, 421.

(*u*) *Dharmapuram Pandarasannadhi* v. *Virapandiam* (1899) 22 Mad, 302.

(*v*) *Collector of Masulipatam* v. *Cavaly Venkata* (1860) 8 M.I.A., 500.

King must take the estate for a time, in order to pass it on to a Brahman; or on the ground, that where the last owner died without heirs, there ceased to be any personal law governing the case of Brahmans, which could settle the further devolution of the property. In the former case, the title of the Crown to hold was complete, subject only to the question whether the Crown held absolutely, or in trust. In the latter case, in the absence of any personal law, the general prerogative of the Crown as to heirless property must prevail.

Subject to valid trusts or charges.

When it has taken, its title prevails against all unauthorised alienations by the last owner, but subject to any valid trusts or charges affecting the estate for the maintenance of persons entitled thereto (*w*) and debts incurred or mortgages made by the widow for legal necessity (*x*). When the Crown claims by escheat, it must make out affirmatively that there are no heirs (*y*).

Escheat is only to Crown.

The principle of escheat does not apply in favour of proprietors of estates who have carved out a subordinate, but absolute and alienable interest, from their own estate. On failure of heirs of the subordinate holder, the estate will pass to the Crown, and will not revert to the proprietor (*z*).

Property of ascetic.

§ 561. Special rules are also propounded for succession to the property of a hermit, of an ascetic, and of a professed student (*a*). Yajnavalkya states a special rule of succession in regard to the wealth of ascetics and the like. "The heirs who take the wealth of a *Vanaprastha* (a hermit), of a *Yati* (an ascetic) and a *Brahmachārin* (a student), are in their order, the preceptor, the virtuous pupil, and one who is a supposed brother and belonging to the same order" (*b*).

(*w*) *Mt. Golab Kunwar* v. *The Collector of Benares* (1847) 4 M.I.A., 246; *Collector of Masulipatam* v. *Cavaly Venkata* (1860) 8 M.I.A., 529, 555.

(*x*) *Cavaly Venkata* v. *Collector of Masulipatam* (1867) 11 M.I.A., 619.

(*y*) *Gridhari* v. *Govt. of Bengal* (1868) 12 M.I.A., 448; *Ganpat Rama* v. *Secy. of State* (1921) 45 Bom., 1106; *Narayan Pundlik* v. *Laxman Daji* (1927) 51 Bom., 784, 794; *Satis Chandra Sircar* v. *Haridas Mitra* A.I.R. 1934 Cal., 399, 38 C.W.N., 98.

(*z*) *Sonet* v. *Mirza* (1875) 3 I.A., 92, 1 Cal., 391.

(*a*) Yajnavalkya, II, 137; Mitakshara, II, 8; Daya Bhaga, XI, 6, §§ 35, 36; 2 Stra. H.L., 248; W & B, 468, Dig., II, 577, Smriti Chandrika, XI, 7; Viramit., III, viii, 1-2, Setlur's II, 425-6; V. May., III, viii, 28; Vivadaratnakara, XXXIV, 33; Vivadachintamani, 299-300; V. Darp, 312; see *Khuggender* v. *Sharupgir* (1879) 4 Cal., 543; *Giyana Sambandha* v. *Kandasami* (1887) 10 Mad., 375, 384; *Collector of Dacca* v. *Jugat Chunder* (1901) 28 Cal., 608; *Ramdas Gopaldas* v. *Baldevdasji Kaushalyadasji* (1915) 39 Bom., 168; *Ganeshgeer* v. *Parvatibai* (1933) 142 I.C., 70.

(*b*) Yajn., II, 137; Mandlik, 222.

The Mitakshara explains thus: A spiritual brother belonging to the same hermitage *(dharmabhratrekatırthı)* takes the goods of the hermit *(vanaprastha)*. A virtuous pupil *(sacchishya)* takes the property of a *yatı* (an ascetic). The preceptor *(acharya)* is heir to the *brahmachari* (professed student) (*c*). But on failure of these, any one belonging to the same order or hermitage takes the property; even though sons and other natural heirs exist (*d*).

The property that is referred to is explained in the Mitakshara and in the Viramitrodaya as consisting of clothes, books, and other requisite articles (*e*). Practically, however, such cases seldom arise. When a hermit or ascetic holds any appreciable extent of property, he generally holds it as the head of some mutt or as the manager of some religious or charitable endowment, and succession to such property is regulated by the special custom of the foundation. No one can come under the heads of hermit, ascetic, or professed student for the purpose of introducing a new rule of succession, unless he has absolutely retired from all earthly interests, and, in fact, become dead to the world. In such a case all property then vested in him passes to his legal heirs, who succeed to it at once. If his retirement is of a less complete character, the mere fact that he has assumed a religious title, and has even entered a monastery, will not divest him of his property, or prevent his secular heirs from succeeding to any secular property which may have remained in his possession (*f*). The Smriti texts applicable to the order of *yati* or *sanyasi* do not apply to Sudra ascetics. The devolution of their property is therefore governed by the ordinary laws of inheritance, in the absence of any special usage (*g*).

(*c*) Mit., II, viii, 3-5.

(*d*) Mit, II, viii, 6; see *Parma Nand* v. *Nihal Chand* 65 I A, 252, A.I.R. 1938 P.C., 195. (Nor can he succeed to the property held by his natural relatives).

(*e*) Mit., II, viii, 8, Viramit., III, viii, 2, (Setlur, II, 426), Sarasvati Vilasa, para. 626.

(*f*) 2 W. MacN., 101; *Mudoobun* v. *Huri* S.D. of 1852, 1089; *Amena* v. *Radahabinode* S.D. of 1856, 596; *Khoodeeram* v. *Rookhinee* 15 W.R., 172; *Jagannath* v. *Bidyanand* 1 B.L.R. (A.C.J.), 114, 10 W.R., 197, *Dukharam* v. *Luchmun* (1879) 4 Cal., 954.

(*g*) *Dharmapuram Pandara Sannadi* v. *Virapandiam* (1899) 22 Mad, 302; *Harish Chandra Roy* v. *Atir Mahmud* (1913) 40 Cal., 545; *Somasundaram Chettiar* v. *Vaithilinga Mudaliar* (1917) 40 Mad., 846; *Narasinhadas* v. *Khanderao* A.I.R 1922 Bom, 295; *Sobhaddi Lal* v. *Gobind Singh* (1924) 46 All., 616 As to the rites necessary to become an orthodox sanyasi, see *Kondal Row* v. *Iswara Sanyasi* (1913) 33 M.L.J., 63; *Baldeo Prasad* v. *Arya Prati Nidhi Sabha* (1930) 52 All., 789; *Krishnaji* v. *Hanmaraddi* (1934) 58 Bom., 536.

Succession to the property of parties married under Act III of 1872.

§ 562. Succession to the property of any person professing the Hindu, Buddhist, Sikh or Jaina religion, who marries under the Special Marriage Act (III of 1872), and to the property of the issue of such marriage, is governed by the provisions in sections 32 to 48 of the Indian Succession Act (XXXIX of 1925) (*h*). Curiously enough, succession to the property of a Hindu who marries under the Act on a declaration that he does not profess the Hindu religion is governed by Hindu law (*i*).

Illegitimate offspring.

§ 563. The rules of inheritance relating to sapindas, samanodakas and bandhus are based upon marriage and a legitimate descent. The illegitimate son of a Sudra is the only exception and his rights are also restricted. The question how far the rules of inheritance can be applied in the case of illegitimate descendants has been the subject of decisions. In *Mayna Bai* v. *Uttaram*, two illegitimate sons of a woman were held to have heritable blood as between them. Where two illegitimate brothers take jointly, the estate passes by survivorship in the ordinary way (*j*). On the death of one, his legitimate male issue will be in coparcenary with the male issue of the other. An illegitimate son of a Sudra does not inherit collaterally to a legitimate son by the same father (*k*). Nor can the son of a legitimate son of a Sudra inherit to his illegitimate son (*l*). The reason is there can be no sapinda relationship between the legitimate and the illegitimate collaterals. The legitimate sons of two sons of a Hindu dancing woman or of a prostitute have heritable blood between them and are entitled to succeed to each other either on grounds of equity and good conscience or on the analogy of Hindu law (*m*). The sapinda relationship as defined by the Mitakshara has been held to apply even where the descent can be traced through the mother only, and not through the father (*n*). In *Viswanatha Mudali* v. *Doraiswami Mudali*,

(*h*) The Special Marriage Act, § 24.

(*i*) *In the goods of Jnanendranath Ray* (1922) 49 Cal., 1069; *Vidyagavri* v. *Narandas* A.I.R. 1928 Bom., 74, *Thukru Bai* v. *Attavar* (1935) 58 Mad., 1004.

(*j*) (1861) 8 M.I.A, 400, (1864) 2 M H.C R., 196. See *ante* §§ 527-529.

(*k*) *Shome Shankar* v. *Rajesar* (1899) 21 All., 99.

(*l*) *Viswanatha Mudali* v. *Doraiswami* (1925) 48 Mad., 944, 953; *Zipru* v. *Bomtya* (1922) 46 Bom., 424, *Dharma* v. *Sakharam* (1919) 44 Bom., 185.

(*m*) (1925) 48 Mad., 944 *supra*.

(*n*) *Dattatraya Tatya* v. *Matha Bala* (1934) 58 Bom., 119; *Narayan Pundlik* v. *Laxman Daji* (1927) 51 Bom., 784, 793; (1925) 48 Mad., 944, 954, 960 *supra*.

the grandsons of one of two illegitimate brothers were held entitled as reversioners to the estate of the great-grandson of the other illegitimate brother (*o*) But in *Ratna Mudaliar* v. *Krishna Mudaliar*, the son of one of two illegitimate brothers was held not entitled to claim, as the next presumptive reversioner, the estate of the other illegitimate brother's great-grandson whose paternal aunt's son was alive (*p*). The ground of decision was that he could not be regarded as a *sagotra* sapinda of the last male owner so as to be preferred to an *atmabandhu*. But, when once it is admitted that two illegitimate brothers have heritable blood as between them and are entitled to inherit as brothers, their legitimate descendants will be governed by the ordinary rules of succession either on the grounds of analogy or on principles of justice and equity. The two illegitimate brothers cannot be said to be cognates of one another. They are therefore to be regarded as if they are agnate sapindas for the purpose of Hindu law as between themselves, their legitimate male descendants being, of course, their sagotra sapindas.

It has been held that prostitution does not sever the tie of kinship by blood and a legitimate son of a Sudra woman succeeds to her property in preference to an illegitimate daughter born in prostitution (*q*) Where an illegitimate son dies leaving no issue, widow or mother, his putative father succeeds as his heir (*r*). *A fortiori*, the mother is entitled to inherit the estate of her illegitimate son (*s*). It has been held that an illegitimate daughter succeeds to her mother's property but not to her father's property (*t*) in the absence of nearer heirs (*u*) and that where a woman left an illegitimate son and an illegitimate daughter, it has been held that on the death of the illegitimate son, without leaving nearer heirs, his illegitimate sister was entitled to inherit (*v*). But the illegitimate daughters of a legitimate daughter of a woman were held not entitled to succeed to their grandmother's estate in preference to her sister's grandson (*w*).

(*o*) (1928) 48 Mad., 944 *supra*.

(*p*) (1937) 1 M.L.J., 390.

(*q*) *Meenakshi* v *Muniandi* (1915) 38 Mad, 1144

(*r*) *Subramanya* v. *Rathnavelu* (1918) 41 Mad., 44 (F.B.).

(*s*) *Mayna Bovee* v. *Uttaram* (1864) 2 M.H.C, 196, *Jagarnath Gir* v. *Sher Bahadur Singh* (1935) 57 All., 85.

(*t*) *Bhikya* v. *Babu* (1908) 32 Bom, 562, *Balraj Singh* v. *Jai Karan Singh* A I R. 1931 All, 407

(*u*) *Dundappa* v *Bhimava* (1921) 45 Bom, 557, *Arunagiri* v. *Ranganaiki* (1898) 21 Mad, 40.

(*v*) *Dattatraya* v *Mathabala* (1931) 58 Bom, 119 following *Narayan* v. *Laxman* (1927) 51 Bom., 784.

(*w*) *Meenakshi* v. *Ramaswami Josier* (1937) 1 M.L.J., 28.

Succession to an outcaste or a degraded person.

§ 564. Hindu law itself does not prescribe any special rule of succession to the property of an outcaste or a degraded person. In the absence of any special usage, the devolution of property of outcastes or degraded persons, who were originally within the pale of Hinduism and who have not become converts to any other established religion are governed by the rules of Hindu law either by their own force or on principles of justice, equity and good conscience (§ 52) (*x*).

(*x*) *Subbaraya* v. *Ramasami* (1900) 23 Mad., 171, 177; *Nalinaksha* v. *Rajani* (1931) 58 Cal., 1392, *Sarna Moyee* v. *Secretary of State* (1897) 25 Cal., 254, *Sundari Dossee* v. *Nemye Charan* (1907) 6 Cal. L.J., 372; *Narain Das* v. *Tirlok Tiwari* (1907) 29 All., 4; *Ishwari Prasad* v. *Rai Hari* (1927) 6 Pat., 506, 540; *Neelawa* v. *Gurshiddappa* A.I.R. 1937 Bom, 169.

CHAPTER XIII.

SUCCESSION UNDER DAYABHAGA LAW.

§ 565. The order of succession according to the Dayabhaga school is marked by two outstanding features. Religious efficacy, in other words, the capacity to confer spiritual benefit on the deceased owner, is the determining principle regulating the order of succession (*a*). According to that school, the term 'sapinda' refers to those who are connected by funeral oblations and not those connected by particles of one body. The other great feature of the Dayabhaga system is that it lays down only one mode of succession. There is no right by birth nor survivorship though a joint family and coparcenary property are recognised. The rules of inheritance are therefore the same whether the family is divided or undivided, and whether the property is joint or separate.

Two prominent features.

Only one mode of succession.

Whether the great jurist who built his system on the foundation of spiritual benefit was only justifying on a logical ground, usages which were already in existence, or to a large extent remoulded them, it is not easy to determine. But this much is clear that in his hands the principle of spiritual benefit was utilised to free the father from the legal fetters of the joint family system and to frame an order of succession in accordance with more equitable principles (*b*) While Vijnanesvara rests his order of succession on Yajnavalkya (II, 135-6), Jimutavahana rests his scheme primarily on Manu's texts (*b*[1]). Probably the divergence between their views was, in part, due to this different approach.

Principle of spiritual benefit.

§ 566. While Jimutavahana undoubtedly made the doctrine of religious efficacy very generally the determining factor in the law of succession, the proposition that, in the

Not the sole ground.

(*a*) Dayabhaga, XI, i, 32-36. See *ante* §§ 486-488, 490.

(*b*) Dr. Jolly says "The elements of the Dayabhaga doctrine are, no doubt, very old, and may have been derived by Jimutavahana in this case as in other cases from Apararka's or some other old commentary of the Yajnavalkya or Manu Smritis". T.L.L., 173, 174. But Apararka in the twelfth century was too near Jimutavahana's date to have inspired him See *ante* §§ 32, 261, 262.

(*b*[1]) Manu., IX, 106, 187, D. Bh., XI, i, 32, 33, 40. Incidentally the fact that Jimutavahana deduces his fundamental rule of spiritual benefit from the reason mentioned by Manu (IX, 106) for the succession of son, shows the weakness of the position of some modern writers as to the Mimamsa rule that the mention of a reason does not modify the rule to any extent.

Dayabhaga School, that doctrine is universally and without exception the sole test cannot be said to be altogether free from doubt. The observation of Mitter, J., in *Guru Gobind* v. *Anand Lal* (*c*) that the principle of spiritual benefit is the sole ground of preference in the Dayabhaga system appears to go too far. In *Tulsee Dass* v. *Luckymoney* (*d*), *Akshay Chandra* v. *Hari Das* (*e*), and *Nalinaksha* v. *Rajani* (*f*), it was observed that that doctrine is not always the guiding principle of inheritance under the Bengal School of law and that it cannot be consistently applied in all cases. Taking the order of succession as given in the Daya Krama Sangraha, the preference of the reunited brother's son to the separated brother's son, and the position of the paternal grandmother and great-grandmother are not rested on the conferring of spiritual benefit (*g*). The preference of the paternal uncle's son's son to the paternal aunt's son is admitted by the Daya Krama Sangraha as due to relationship in the degree of sapinda though the latter confers greater spiritual benefit than the former (*h*). The succession of samanodakas and *samanapravaras* (members of the same gotra) does not appear to rest on the doctrine of spiritual benefit (*i*). As to the former, it is inappreciable; as to the latter, it is nil. These or other instances where the doctrine of spiritual benefit either fails or is not the sole test are given in the judgment of Mitra, J., in *Akshay Chandra* v. *Haridas* (*j*). Citing the text of Brihaspati (*k*), Raghunandana in his Dayatattva, says that a successor to the inheritance is to be determined with reference to two considerations, namely, his relation as regards the

(*c*) (1870) 5 Beng. L.R., 15, 34. F.B., *Amrita* v. *Lakhinarayan* (1869) 2 B.L.R. F.B, 28, *Gobind* v. *Mohesh* 15 B L.R., 35, *Digumber* v. *Motilall* (1883) 9 Cal, 563, F.B, *Kedar Nath* v *Hari Da* (1915) 43 Cal., 1.

(*d*) (1900) 4 C.W.N., 743.

(*e*) (1908) 35 Cal, 721, 726.

(*f*) (1931) 58 Cal, 1392; but see *Dinanath* v. *Chandi* (1889) 16 C L.J., 14, *Sambhuchandra* v. *Kartik Chandra* (1927) 54 Cal., 171; *Radharaman* v *Gopal* (1920) 31 C L.J., 81, 24 C W N, 316; *Nepal Das* v. *Probhas* (1927) 30 C.W.N., 357; (1915) 43 Cal., 1 *supra.*

(*g*) D.K.S., I, viii, 3, I, x, 4.

(*h*) D.K.S., I, x, 8. See also as to brother's grandson D.K.S., V. ix, 1. The degree of sapinda and the presenting of funeral oblations are both mentioned.

(*i*) See D.K.S., I, x, 26, 31. See § 488 and note (*v*) to it.

(*j*) (1908) 35 Cal., 721 *supra.*

(*k*) Brih., XXV, 62.

offering of oblations and his proximity of birth (k^1); and his view on the question which is quite positive, is entitled to much weight. Though the preponderance of authority is decidedly in favour of the stricter view, it cannot be taken as established that the three authorities of the Bengal School intended that cases not expressly determined by them on the basis of spiritual benefit should be determined solely on that ground without giving due weight to the principle of propinquity which was also, to some extent, recognised by them.

Parvana-sraddha, its basis.

§ 567. The *parvanasraddha* or triancestral rite which is the foundation of the doctrine of spiritual benefit, "consists in the presentation of a certain number of oblations, namely, one to each of the first three ancestors in the paternal and maternal lines respectively, or, in other words, to the father, the grandfather and the great-grandfather in the one line, and the maternal grandfather, the maternal great-grandfather, and the maternal great-great-grandfather in the other" (*l*). This would give one explanation of the texts which state that sapindaship does not extend on the side of the father beyond the seventh degree, and on the mother's side beyond the fifth (*m*). In the Dayabhaga school, the term *sapinda* is applied to the offeror and his three immediate ancestors, as he and they are connected by the same cake, or *pinda* (*n*). *Sakulya* is he who offers the fragments of the pinda or cake to the three paternal ancestors next above those who receive the entire pinda (*o*). A deceased owner

Sapinda.

Sakulya.

(k^1) Raghunandana, XI, 63, Setlur, II, 512. But D.K.S., I, x, 25 holds differently

(*l*) Per Mr Justice Mitter, *Guru* v *Anand* (1870) 5 B L R, 15, 40, 13 W R (F B), 49, Daya Bhaga, XI, 6, §§ 13, 19, Manu, IX, § 132; Dig, II, 609, 624, (verse 497). It will be observed that the paternal ancestors are counted inclusive of the father, the maternal exclusive of the mother, Sarvadhikari, 2nd ed, 58-78. See too Dattaka Mimamsa, IV, § 72, note by Sutherland. The adopted son cannot perform a *parvana* or double rite but only the *ekoddishta*, a rite dedicated to a single ancestor, *ibid* where a line is broken by adoption, the triancestral rite and the religious efficacy founded upon it cannot even in the Bengal School be a universal proposition

(*m*) Brihat Manu, cited Dattaka Mimamsa, VI, § 9, Gautama, *ib*, § 11, Yajnavalkya, I, § 53 See *ante* § 110.

(*n*) D. Bh, XI, 1, 38-40, following Manu., IX, 187 and Baudh., I, v, 11, 9-10. Raghunandana, after explaining Baudhayana's text, says that "this relationship of Sapinda (extending no further than the fourth degree) as well as that of Sakulyas is propounded relatively to inheritance But relatively to mourning, marriage, and the like, those too that partake of the remnants of oblations are denominated Sapindas," XI, 8, Setlur, II, 505, see *ante* § 475

(*o*) Manu, III, §§ 122-125, 215, 216; V, § 60, IX, §§ 186, 187; Baudhayana, I, 5, § 1, Daya Bhaga, XI, 1, §§ 37-42, Viramit, p. 154, § 11, Setlur, II, 391, Colebrooke, Essays (edn. 1858), 90, 101-117.

is therefore related in a primary and special degree to persons in the three grades of descent next below and above himself: in a secondary, and less special, degree to persons in the three grades below and above the former three. This result flows from the mutuality of sapindaship. He who receives offerings is the sapinda of those who present them to him, and he who presents offerings is the sapinda of the person who receives them. Therefore, every man stands as the centre of seven persons, six of whom are his sapindas, though not all the sapindas of each other. Further, the deceased does not merely benefit by oblations which are offered to himself. He also participates in the benefit of oblations which though not offered to him are presented to persons to whom he was himself while alive bound to offer. As Mr. Justice Mitter said: "If two Hindus are bound during the respective terms of their natural life to offer funeral oblations to a common ancestor. or ancestors, either of them would be entitled after his death to participate in the oblations offered by the survivor to that ancestor or ancestors; and hence it is that the person who offers those oblations, the person to whom they are offered, and the person who participates in them are recognized as sapindas of each other" (*p*).

Theory of relationship.

Relationship to females.

§ 568. So also, a man is the *sapinda* of his mother, because she confers benefits on him by the birth of other sons who may offer oblations in which he will participate (*q*). Apparently on the analogy of the mother's right of succession, the grandmother and the great-grandmother are recognised as heirs (*q*[1]). And so the wife is the sapinda of her husband; because, in the absence of male issue, she performs acts spiritually beneficial to her husband from the date of her widowhood (*r*). So too, a daughter is a sapinda as she offers funeral oblations by means of her son (*s*). Now, the widows of a predeceased son and of a predeceased son of a predeceased son have also become heirs (Ch. XIV).

But no other females are recognised as heirs, not even a son's daughter, or a daughter's daughter or a sister. The

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(*p*) *Guru* v. *Anand* (1870) 5 B.L.R., 15, 39, 13 W.R. (F.B.), 49, citing Daya Bhaga, XI, 1, § 38. See too the Nirnaya Sindhu, cited *Amrita* v. *Lakhinarayan* (1869) 2 B.L.R. (F.B.), 28, 34, 10 W.R. (F.B.), 76, 81, and per Mitter, J., in 2 B.L.R. (F.B.), 28, 32; Dig., II, 520.

(*q*) Manu, IX, 45; D. Bh., XI, iv, 2; XI, vi, 3-4; Dig., II, 550, 566, 567; Colebrooke's Essays, 116.

(*q*[1]) D. Bh., XI, iv, 4; D.K.S., I, x, 4, 10.

(*r*) D. Bh., XI, i, 43; *cf.* Vivada Chintamani, 290.

(*s*) D. Bh., XI, ii, 1, 2, 15.

Hindu Law of Inheritance (Amendment) Act (II of 1929) does not apply to Hindus governed by the Dayabhaga law (*t*).

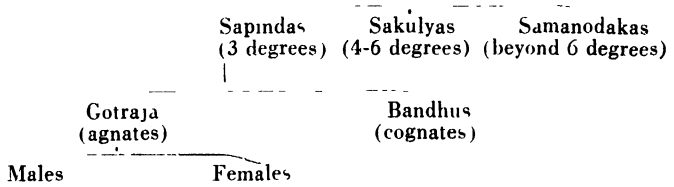
§ 569. The sapindas just described are all *agnates*, that is, persons connected with each other by an unbroken line of male descent. Other sapindas are *cognates*, or connected by the female line. Jimutavahana gives the following definition of a bandhu or cognate: "Therefore a kinsman, whether sprung from the family of the deceased, though of different male descent, as his own daughter's son, or his father's daughter's son, or sprung from a different family, as his maternal uncle or the like, being allied by a common funeral cake, on account of their presenting offerings to three ancestors in the paternal and the maternal family of the deceased owner, is a sapinda" (*u*) Now, the mode in which cognates come to be connected with the agnates by funeral oblations is by means of the *parvanasraddha* already explained. The sapinda who offers a cake as *bandhu* is the fifth in descent from the most distant maternal ancestors to whom he offers it Now, on the principle of participation already stated, any bandhu who offers a cake to his maternal ancestors will be the sapinda, not only of those ancestors, but of all other persons whose duty it was to offer cakes to the same ancestors. But the maternal ancestors of A may be the paternal or maternal ancestors of B, and in this manner A will be the *bandhu*, or *bhinnagotra sapinda* of B, both being under an obligation to offer to the same persons (*v*)

Agnates.

Cognates. Bandhus.

Hence the table of descent will stand as follows:—

Tables of descent.



This will become quite clear by reference to the accompanying diagram. The OWNER, who is called in the Daya-

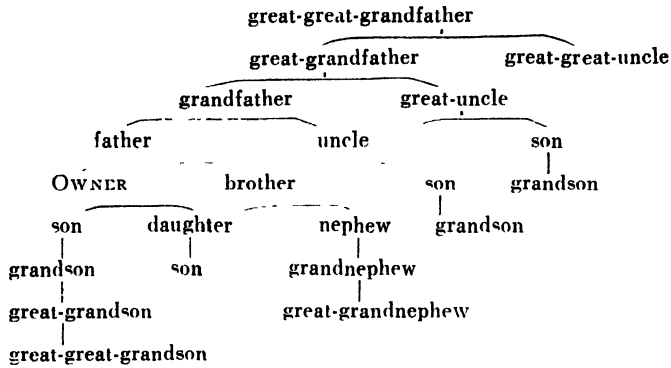
Gotraja sapindas.

(*t*) Sec. 1 (2).

(*u*) D. Bh, XI, vi, 19, translated by Mitter, J., in *Uma Sunker* v. *Kali Komul Mozumdar* (1881) 6 Cal., 256, 263.

(*v*) D. Bh., XI, vi, 19, 12, where Jimutavahana, referring to the term 'bandhu' used by Yajnavalkya, controls it by the text of Manu and understands it to mean maternal uncle and the like. Apararka, commenting on Yajn., I, 108, says that *bandhavas* are the relations of the mother's side. See Jolly, L & C, 186.

bhaga the middlemost of seven, is the *sapinda* of his own son, grandson, and great-grandson, because they offer



Sapindas and sakulyas.

the cake to him, and they are his *sapindas*, as he receives it from them. But his great-great-grandson is only his *sakulya*. So also he is the *sapinda* of his own father, grandfather, and great-grandfather, because he offers the cake to them, and they are his *sapindas*, because they receive it from him. But he and his great-great-grandfather are only *sakulyas* to each other (v^1). Next as regards collaterals. The owner receives no cake from his own brother, but he participates in the benefit of the cakes which the brother offers to his own three direct ancestors, who are also the three ancestors to whom the owner is bound to make offerings. So the nephew offers cake to his own three ancestors, two of whom are the father and grandfather of the owner; and grandnephew to his three ancestors, one of whom is the father of the owner. All of these, therefore, are the *sapindas* of the owner, though they vary in religious efficacy in the ratio of three, two, and one. But the highest ancestor to whom the great-grandnephew offers cakes is the brother of the owner. He is therefore not a *sapinda;* but he is a *sakulya*, because he presents divided offerings to the owner's three immediate ancestors. Similarly the owner's uncle and great-uncle present cakes to two and one respectively of the ancestors to whom the owner is bound to present them. They are therefore his *sapindas*. But the great-great-uncle is not a sapinda, since he is himself the son of a *sakulya*, and presents cakes to persons all of whom stand in the relation of *sakulya* to the owner.

§ 569-A. Samanodakas are the sagotras beyond the degree of *sakulyas* (v^2), for they must be taken to be comprised in the term '*sakulyas*' used in the texts of Manu and Baudhayana.

(v^1) D.K.S., I, x, 22-25; Raghunandana, XI, 72.
(v^2) D. Bh., XI, vi, 23; D.K.S., I, x, 26.

Kulluka explains the term 'sakulyas' in Manu's text as equivalent to samanodakas, that is, the remoter agnates. The reasoning of the decision of the Privy Council in *Atmaram* v. *Baji Rao* (*w*), limiting the samanodaka relation to the fourteenth degree though it was in a Mitakshara case, will apply in the Dayabhaga school also. And there is an additional reason for this limitation; for according to Jimutavahana, in default of samanodakas, persons bearing the same family name (*gotra*) are heirs (*w*[1])

§ 570. We now come to the *bandhus*, whose relationship is more complicated. There are two classes of bandhus referred to by the Bengal writers, and who alone can be brought within the doctrine of religious efficacy (*x*), those *ex parte paternâ* and *ex parte maternâ* The sapindaship of the first class arises from the fact that they offer cakes to their maternal ancestors, who are also the paternal ancestors of the owner For instance, the sister's son, in addition to the oblations which he presents to his own father, etc., presents oblations to the three ancestors of his own mother, who are also the three ancestors of the owner. The aunt's son presents them to two, and the grandaunt's son to one of the owner's three ancestors. These persons, therefore, all come within the definition of *bandhus*, as being persons of a different family, connected by funeral oblations, though with different degrees of religious merit But the great-grandaunt's son is not a *bandhu*, because the ancestors to whom he presents cakes are the *sakulyas* only of the owner. Following out the same principle, it will be seen that the grandsons by the female line of the uncle and the granduncle, of the brother and the nephew, are all *bandhus* But the son of the grandnephew's daughter is not a *bandhu*. Similarly, in the descending line, the sons of the owner's daughter, granddaughter, and great-granddaughter are *bandhus*, as they all present cakes to himself. But the offerings made by the son of his great-grandson's daughter do not reach as far as the owner, and therefore he is not a *bandhu*. It will be observed that the pedigree in Table C always stops with the son of the female relation. The reason of this will be seen on referring to the smaller pedigree in that Table. The grandson of the owner's daughter will present cakes to his own paternal ancestors, that is, to the owner's grandson, and to X and Y, and also to his own maternal ancestors, that is, to B, C, and D. But none of these are persons to whom the owner

Bandhus.

Bandhus *ex parte paternâ*.

(*w*) (1936) 62 I A, 139, A I R, 1935 P C, 57

(*w*[1]) D. Bh., XI, vi, 25, *Radharaman* v. *Gopal* (1920) 31 C L J., 81.

(*x*) Daya Bhaga, XI, 6, §§ 8-20, D.K.S., I. 10, §§ 1-20.

is bound to make oblations, and five of them are complete strangers to him. And so, of course, it is in every other similar case (x^1).

Bandhus *ex parte maternâ.*

§ 571. The *bandhus ex parte maternâ* differ from those just described in being connected with the owner through his maternal ancestors instead of his paternal ancestors. The explanations already given will render it unnecessary to go through the table in detail. The owner is bound to offer cakes to his own maternal grandfather, great-grandfather, and great-great-grandfather, and therefore the other persons who make similar offerings to them, or to any of them, are his *bandhus*. But the sapindas in the maternal line are postponed to the sapindas in the paternal line, for while they offer oblations to the maternal ancestors which the deceased was bound to offer, he does not participate in them. But the sapindas on the paternal side benefit him doubly by enabling him to participate in the oblations offered by them and to discharge a duty that was incumbent on him of offering oblations to certain ancestors (x^2). All the males shown on the right of Table C are *bandhus ex parte paterna*.

Enumeration not exhaustive.

§ 572. The letters D. B., D. K. and M., attached to the steps in the above pedigree, point out which of the persons there described are specifically enumerated by the Dayabhaga, Daya Krama Sangraha and Mitakshara. It will be observed that very few are set out by Vijnanesvara; that many unnoticed by him are named by the Dayabhaga, and still more which are omitted by the Dayabhaga are supplied by the Daya Krama Sangraha; but that many are wholly passed over who yet come within the definition of *bandhu*, and are even more nearly related than those who are expressly mentioned. The daughter's son is really only a *bandhu*, though he is always placed in a distinct category on special grounds (§§ 478, 488). But the sons of the son's daughter and grandson's daughter offer oblations direct to the owner himself, which no other *bandhu* does except the daughter's son. Obviously, therefore, they should rank before *bandhus* who offer only to the owner's ancestors. But they are all postponed to the agnatic sapinda descendants of the great-grandfather on the ground that the expression 'daughter's son' occurring in the Dayabhaga means only the daughter's son and not the son's daughter's son or brother's daughter's son (x^3). The son of the nephew's daughter's son is not mentioned, though

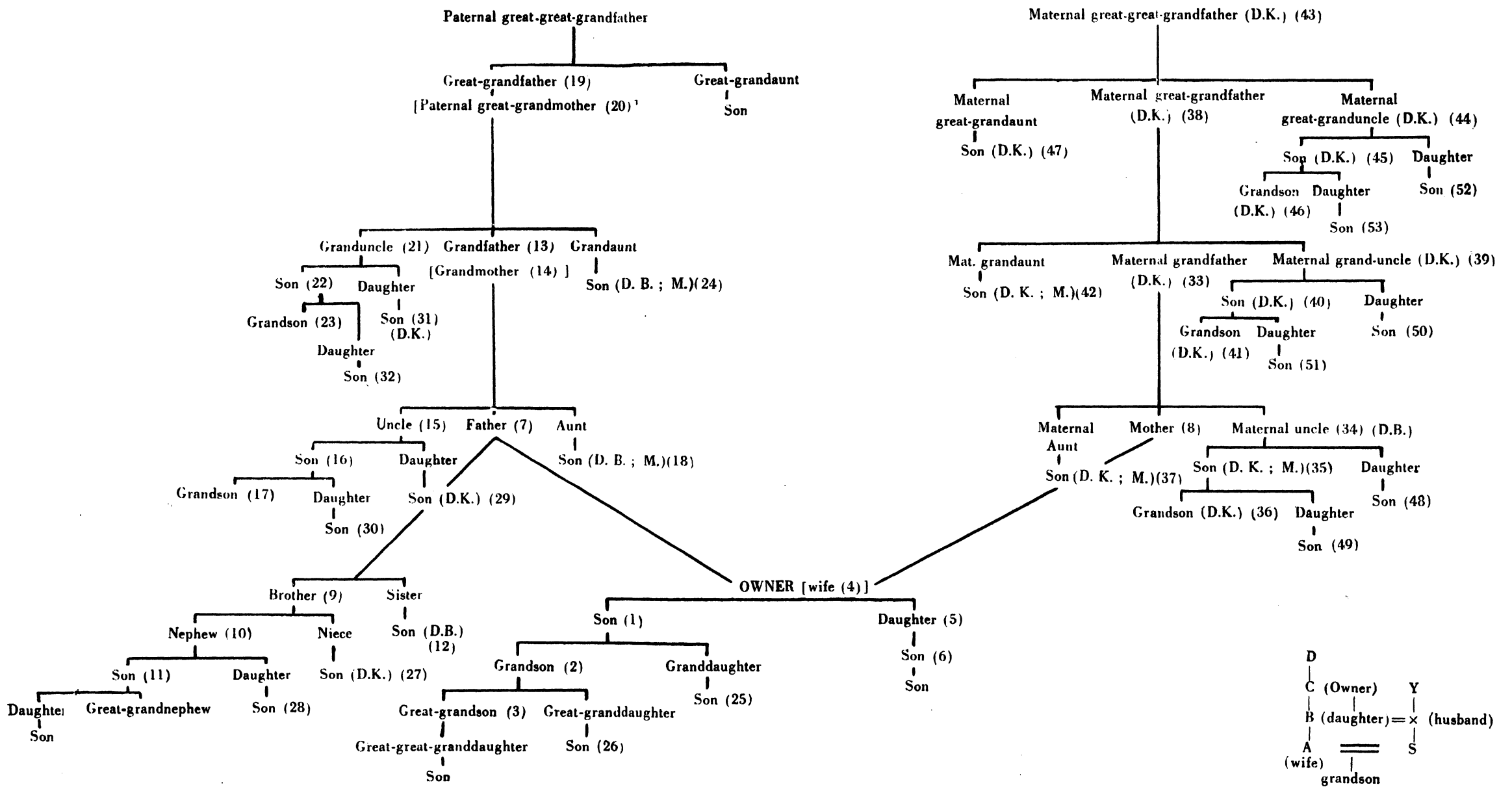
(x^1) *Radharaman* v. *Gopal* (1920) 31 C.L.J., 81.

(x^2) *Braja Lal* v. *Jiban Krishna* (1899) 26 Cal., 285, 291.

(x^3) *Hari Das* v. *Bama Churn* (1888) 15 Cal., 780, 793-5.

TABLE C
DAYABHAGA

SAPINDAS INCLUDING BANDHUS EX PARTE PATERNA. AND EX PARTE MATERNA.



Sister's daughter and sister's daughter's son are not heirs under the Dayabhaga law, *Krishna Pada Dutt* v. *Secretary of State for India* (1908)35 Cal. 631: For No. 18 *see Radharaman* v. *Gopal* (1920) 31 C.L.J. 81; No. 17 succeeds before 27, *Huri Das* v. *Bama Churn* (1883) 15 Cal. 780. No. 22 succeeds before No. 29 *Gopal Chunder* v. *Haridas Chini* (1885) 11 Cal. 343. No. 24, *Gossaien* v. *Mt. Kishenmunnee*, 6 S.D. 77 (90). No. 27, *Gobind Prashad* v. *Mohesh Chunder* (1875) 15 Beng. L.R. 35; *Digumber Roy* v. *Moti Lal Bundopadhya* (1883) 9 Cal. 563; *Huri Das* v. *Bama Churn* (1888) 15 Cal. 780. No. 28, *Pran Nath Surma* v. *Surrut Chundra* (1882) 8 Cal. 460; No. 29, *Guru Gobind* v. *Anand Lal* (1870) 5 Beng. L. R. 15 F.B. No. 31 preferred to No. 34, *Kedar Nath* v. *Hari Dass* (1916) 43 Cal. 1; *Kailash Chundra* v. *Karna Nath* (1913) 18 C.W.N. 477. No. 35, *Rany Srimuty Dibeah* v. *Rany Koond Luta* (1848) 4 M.I.A. 292. He takes after the father's brother's daughter's son (No. 29): *Braja Lal* v. *Jiban Krishna* (1899) 26 Cal. 285. No. 37, *Deyanath* v. *Muthoor* 6 S.D. 27 (30).

he stands in exactly the same relation to the son of the niece, who is mentioned, as the grandnephew does to the nephew (*y*).

§ 573. The grounds upon which one heir is preferred to another are as follows:

Principles of precedence.

1. Each class of heirs takes before, and excludes the whole of, the succeeding class. "The *sapindas* are allowed to come in before the *sakulyas*, because undivided oblations are considered to be of higher spiritual value than divided ones; and the *sakulyas* are in their turn preferred to the *samanodakas*, because divided oblations are considered to be more valuable than libations of water" (*z*).

2. The offering of a cake to any individual constitutes a superior claim to the acceptance of a cake from him, or the participation in cakes offered by him. On this ground the male issue, widow, and daughter's son rank above the ascendants, or the brothers who offer exactly the same number of cakes as the deceased (*a*).

3. Those who offer oblations to both paternal and maternal ancestors are superior to those who offer only to the paternal. Hence the preference of the whole to the half-blood (*b*).

4. "Those who are competent to offer funeral cakes to the paternal ancestors of the deceased proprietor, are invariably preferred to those who are competent to offer such cakes to his maternal ancestors only; and the reason assigned for the distinction is, that the first kind of cakes are of superior religious efficacy in comparison to the second." And this rule extends so far as to give a preference to one who offers a smaller number of the superior oblations over one who offers a large number of the inferior sort (*c*).

(*y*) *Prannath* v. *Surrut* (1882) 8 Cal., 460; the right of the brother's son's daughter's son has been expressly affirmed, *Kashee Mohun* v. *Raj Gobind* 24 W.R., 229; *Guru Gobind* v. *Anand Lall* (1870) 5 B.L.R., 15 F.B., overruling *Gobindo* v. *Woomesh* Suth Sp. No. 176 (son of paternal uncle's daughter).

(*z*) Per Mitter, J., *Guru* v. *Anand* (1870) 5 B.L.R., 15, 38, approved *Gobind* v. *Mohesh* (1875) 15 B.L.R., 35, 47, 23 W.R., 117; *Digumber* v. *Moti Lal* (1883) 9 Cal., 563; *Kedar Nath Banerjee* v. *Hari Das Ghose* (1916) 43 Cal., 1.

(*a*) Dig., II, 565, 568; Daya Bhaga, XI, 1, §§ 32-40; XI, 2, §§ 1, 2; XI, 5, § 3.

(*b*) Dig., II, 544; Daya Bhaga, XI, 5, § 12.

(*c*) Per Mitter, J., (1870) 5 B.L.R., 15, 39 (F.B.), *supra*, note (*z*); *Gobind* v. *Mohesh* (1874) 15 B.L.R., 35, 23 W.R., 117; *Braja Lal* v. *Jiban Krishna* (1899) 26 Cal., 285, affd. in (1903) 30 I.A., 81, 30 Cal., 550.

5. "Similarly, those who offer larger numbers of cakes of a particular description are invariably preferred to those who offer a less number of cakes of the same description"(*c*); and those that are offered to nearer ancestors are always preferred to those offered to more distant ones even when the number of cakes offered to the nearer ancestors are less than those offered to the remoter ancestors (*d*).

6. "The same remarks are equally applicable to the *sakulyas* and *samanodakas*" (*c*).

Cognates not postponed to agnates.

The result of these rules in Bengal is, that not only do all the *bandhus* come in before any of the *sakulyas* or *samanodakas*, but that the *bandhus* themselves are sifted in and out among the agnates, heirs in the female line frequently taking before very near sapindas in the direct male line, on the principle of superior religious efficacy (*e*).

As the Dayabhaga states the rule, "In like manner the appropriation of the wealth of the deceased to his benefit, in the mode which has been stated, should in every case be deduced according to the specified order" (*f*). Mitter, J., thought that this was a positive injunction to determine every case relating to the law of inheritance according to the doctrine of spiritual benefit (*g*). But paragraphs 28 to 33 in the sixth section, coming even after the ultimate heirs like the King, appear to be placed out of their order and to be somewhat redundant; probably they were supplementary reasons for the order of succession already laid down (*h*).

§ 573-A The rules that succession is never in abeyance, that the full-blood is preferred to the half-blood in a competition *inter se*, with its limitation that it must be amongst sapindas of the same degree of descent from the common ancestor as well as the rule that a female does not take

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(*d*) *Prannath* v *Surrut* (1882) 8 Cal, 460 replacing the earlier view that the preference was only where the number of cakes was equal. A person who offers one oblation to the father of the deceased owner is preferred to another who offers two oblations to the grandfather and great grandfather. Hence the grandnephew ranks before the paternal uncle, and the nephew's daughter's son before the uncle's daughter's son. D. Bh, XI, vi, §§ 5, 6.

(*e*) D. Bh, XI, 6, D.K.S, I, 10, Dig., II, 564 569.

(*f*) D. Bh, XI, vi, 30, D K.S., I, x, 25.

(*g*) (1870) 5 B L R, 15, 45, F B. *supra*, *Kedar Nath* v. *Hari Das* (1915) 43 Cal., 1

(*h*) D. Bh., XI, vi, 28-33. The rights of the father's daughter's son had been dealt with already in XI, 6, 8, of the maternal uncle, XI, vi, 12-13, and of the male issue, XI, i, 32-43.

absolutely or become a fresh stock of descent are the same under the Dayabhaga as under the Mitakshara law. (§§ 484, 493).

The disabilities and defects operating to exclude from inheritance are discussed in chapter XV. While the Hindu Inheritance (Removal of Disabilities) Act, 1928 has largely repealed the Mitakshara law, it leaves the Dayabhaga law untouched.

§ 574. The order of succession according to the Dayabhaga law is as follows:—

Male issue.

First, the son, the grandson whose father is dead, and the great-grandson whose father and grandfather are both dead, succeed as heirs. While a man's son, grandson and great-grandson all confer equal benefits on their ancestor and have an equal right of inheritance, according to the Dayabhaga, the son excludes his own son and grandson as they cannot, while he is alive, present offerings. So too the grandson excludes the great-grandson. Accordingly, a grandson whose father is dead and a great-grandson whose father and grandfather are dead participate equally in the inheritance with the son (*i*). It will be observed that under the Mitakshara, the son, grandson and great-grandson will take together as a single heir; for, the grandson and the great-grandson have a right by birth in the ancestral property which comes to the son (*j*)

The recent Hindu Women's Rights to Property Act, 1937, which confers rights on Hindu women affects the Dayabhaga law also with the result that the widow takes even in the presence of male issue for the same share as a son. So also the widows of a predeceased son and of a predeceased son of a predeceased son are entitled to inherit, both along with the male issue and the widow and in their default, for the prescribed shares.

Illegitimate son.

The illegitimate son a Sudra has the same rights of succession under the Dayabhaga law as under the Mitakshara law (*k*).

Widow.

§ 575. WIDOW:—Except where the succession is governed by the Hindu Women's Rights to Property Act, 1937, the widow will only take in default of male issue as before.

(*i*) D. Bh., III, 1, 18-19, XI, 1, 32-34; D.K.S., I, 1, 3.

(*j*) For the Mitakshara view, see Viramit., II, 1, 23-a, Setlur's ed., 341-343; *Marudayi* v. *Doraisami* (1907) 30 Mad., 348. See note (*k*[1]) to § 526.

(*k*) D. Bh., IX, 25-31; D.K.S., VI, 32-35; *Rajani Nath* v. *Nitai Chundra* (1921) 48 Cal., 643 F.B.; see *ante* §§ 527-529.

Jimutavahana discusses elaborately the rights of a widow and after reconciling various texts establishes her right (*l*). He says: "On failure of heirs down to the son's grandson, the wife, being inferior in pretensions to sons and the rest, because she performs acts spiritually beneficial to her husband from the date of her widowhood, and not, like them, from the moment of their birth, succeeds to the estate in their default" (*m*). Unlike the Mitakshara, Jimutavahana is definite about the estate of the widow: "Let her enjoy her husband's estate during her life; and not, as with her stridhana, make a gift, mortgage or sale of it at her pleasure" (*n*). And he states as an exception the class of case where she might make a gift, mortgage or alienation (*o*). It was settled in Bengal, that a widow succeeds to her husband's share when he is undivided, just as she would to the entire property of one who held as separated (*p*). But this did not apply in case of the widow of a son who died before his father, undivided, and leaving no separate property (*q*); because in Bengal the son is not a co-sharer with his father, and therefore has no interest which can pass to his widow (*r*).

Chastity condition precedent.

Chastity in the one school as in the other is a condition precedent to the widow's right of succession (*s*). The rule is even stricter, because under the Dayabhaga law, the condonation by her husband of her unchastity would not remove the disqualification (*t*). But this condition will not apply to successions governed by the Hindu Women's Rights to Property Act, 1937, whether in the case of the widow, daughter-in-law or grand-daughter-in-law (*u*). Where however the estate has vested in her, she will not be divested of it by her subsequent unchastity, as was settled in the leading case of *Moniram Kolita* v. *Keri Kolitani*, itself a Dayabhaga case (*v*).

(*l*) D. Bh., XI, 1, Setlur's edn., 68 81.

(*m*) D. Bh., XI, 1, 43, Setlur's ed., 76.

(*n*) *Ib.*, 57, Setlur's ed, 80

(*o*) D Bh, XI, 1, 61-62.

(*p*) D. Bh, XI, 1, §§ 25, 26, 27, D K S., II, 2, § 41, F. MacN, 5. See cases 1 M Dig, 316, *Durga Nath* v. *Chintamoni* (1903) 31 Cal., 214.

(*q*) F. MacN., 1

(*r*) But it is now otherwise under the Hindu Women's Rights to Property Act, 1937.

(*s*) *Moniram Kolita* v. *Keri Kolitani* (1880) 7 I.A., 115, 5 Cal., 776, *Khettermoni* v. *Kadambini* (1912) 16 C.W.N., 964.

(*t*) *Rani Dassya* v. *Golapi Dassya* (1930) 34 C.W.N., 648.

(*u*) Post §§ 593, 600.

(*v*) (1880) 7 I.A., 115, 5 Cal., 776.

Where a man leaves more than one widow, they take jointly with rights of survivorship and their rights are the same as under the Mitakshara law (*w*). Several widows.

§ 576. In default of the widow, the daughter succeeds as an heir. Her right was put upon the ground that she produced sons who could present oblations (*x*). Jimutavahana therefore laid down that no daughter could inherit unless she had, or was capable of having, male issue, and the logical result was the exclusion of daughters who were sonless widows, or barren, or who appeared to have an incapacity for bringing any but daughters into the world (*y*). According to the Dayabhaga law, a daughter is under the same obligation of chastity as a widow. Therefore as the law is now settled, her incontinence will deprive her from taking the estate, but will not divest the estate vested in her (*z*). Daughter. Chastity.

According to the doctrine of the Bengal school the unmarried daughter is first entitled to the succession; if there be no maiden daughter, then the daughter who has, and the daughter who is likely to have, male issue are together entitled to the succession, and on failure of either of them, the other takes the heritage. In no circumstance can the daughters who are either barren, or widows destitute of male issue, or the mothers of daughters only, inherit the property (*a*). These distinctions under the Dayabhaga are Precedence among daughters.

(*w*) *Ante* § 531.

(*x*) See per Mitter, J., *Gunga* v. *Shumboonath* 22 W.R., 393; Jagannatha, Dig., II, 522-540.

(*y*) D. Bh., XI, ii, 1-3; D.K.S., I, iii, 5, *Benode* v. *Purdhan* 2 W.R.C.R., 176, 177; *Radha* v. *Raja Ram* 6 W.R., 147; *Binodini* v. *Susthee* (1921) 48 Cal., 300; *Pramila* v. *Chandra Shekar* (1921) 43 All., 450. This principle is also adopted by the author of the Smritichandrika, who necessarily excludes barren daughters: XI, ii, 10, 21; but his view is not accepted in South India, *Simmani* v. *Muttammal* (1879) 3 Mad., 265.

(*z*) *Ramananda* v. *Rathishore* (1895) 22 Cal., 347; *Sundari* v. *Pitambari* (1905) 32 Cal., 871; *Bhaba Kanta* v. *Kerpai Chutia* A.I.R. 1935 Cal., 144, 38 C.W.N., 1095. The Dayabhaga (XI, 2, 8) and the Dayakrama Sangraha (I, iii, 4) both quote in support of the daughter's right of succession a text ascribed to Brihaspati which states that she must be virtuous. Raghunandana takes the word 'wife' occurring in a passage relating to the rules of succession as applying to females generally and expressly states their obligation to be chaste. See *Ramnath* v. *Durga* (1878) 4 Cal., 550, 554.

(*a*) See also 2 W. MacN., 39, 44, 46, 49, 58; V. Darp., 166, 172; Anon, 2 M. Dig., 17; *Binode* v. *Purdhan* 2 W.R., 176. But since a widowed daughter may now re-marry (§ 533) and have male issue, it has been held that even in Bengal widowhood is not *per se* an absolute ground of exclusion, *Bimola* v.

They take jointly.

based upon religious efficacy (*b*). Where there are several daughters, they take jointly with rights of survivorship and their rights are exactly the same as in the Mitakshara school (*c*).

On the death of a daughter, who had succeeded before her marriage to her father's estate to the exclusion of her married sister, the estate so inherited by her devolves upon her married sister who has or is likely to have male issue and not upon her own son (*d*). Where two daughters succeeded jointly to their father's estate and on the death of one of them, the survivor is a childless widow, she will take the whole estate by survivorship; for that which would have been an original disqualification to her taking will not operate after she has once taken (*e*).

Daughter's son,

§ 577. DAUGHTER'S SON succeeds in default of the daughter (*f*). Jimutavahana rests his right on the ground of religious efficacy: "As the daughter is heiress of her father's wealth in right of the funeral oblation which is to be presented by the daughter's son, so is the daughter's son owner of the maternal grandfather's estate in right of offering that oblation, notwithstanding the existence of kindred, such as the father and others" (*g*). The daughter's son's son however though he is within the degree of sapinda relation as defined by the Dayabhaga is excluded, since he is unable to confer any spiritual benefit on the deceased (*h*). Apparently he is not an heir even when there is no one alive who can confer spiritual benefit.

but not *his* son.

Dangoo 19 W.R., 189. A widowed daughter who, at the time the succession opens, has a son who is dumb, but not shown to be incurably so, may inherit It was not decided whether she would have been excluded, if it could be shown that the defect was congenital and incurable, *Charu Chunder* v *Nobo Sundari* (1891) 18 Cal, 327. See also *Binodini Hazvani* v *Susthee Hazvani* (1921) 48 Cal, 300, *Mokund Lal* v. *Monmohini* (1914) 19 C W N, 472; *Srimati Pramila Devi* v. *Chandra Shekhar Chatterji* (1921) 43 All., 450.

(*b*) D. Bh, XI, ii, 1-11, 15, D K S., I, iii, 2-15.

(*c*) *Ante* § 535.

(*d*) *Tirumoni* v *Niborun* (1882) 9 Cal, 154, F B., D Bh., XI, ii, 30; but see 1 W. MacN., 24; D.K.S., I, iii, 3, *per curiam, Dowlut Kooer* v. *Burma Deo* (1874) 14 B.L.R., 246 (note), 22 W.R, 54, affd. 22 W.R., 496.

(*e*) *Aumirtolall* v. *Rajanee Kant* (1875) 2 I A, 113, 23 W.R., 214.

(*f*) D. Bh., XI, ii, 17-29, D K S, I, iv.

(*g*) D. Bh, XI, ii, 17.

(*h*) D. Bh., XI, ii, 2, *Nepaldas* v. *Probhas Chandra* (1925) 30 C.W.N., 357, *Sambhu* v. *Kartick* (1927) 54 Cal., 171.

Father. Mother.

§ 578. PARENTS:—In Bengal it is quite settled that the father takes before the mother, both on the express authority of Vishnu, and upon principles of religious efficacy (*i*). But an unchaste mother is excluded from succeeding to her son (*j*). She does not however lose her right as heiress to her son by reason of her second marriage prior to her son's death. According to Bengal law a step-mother does not succeed to her step-son. This would necessarily be so upon the principles of Jimutavahana, as she does not participate in the oblations offered by such step-son (*k*).

Step-mother.

Brother.

§ 579. In default of the mother, the brothers succeed (*l*). Jimutavahana states that the brother is inferior to the mother but superior in point of religious efficacy to the nephew. And among brothers, the full-blood is preferred to the half-blood on the ground that the former offer oblations to the ancestors of the deceased both on the male and the female side, while the latter offers oblations in the male line only (*m*). Brothers of the half-blood do not take the undivided estate along with brothers of the whole blood, unless the former are undivided and the latter divided (*n*). Where no preference exists on the ground of blood, an undivided brother always takes to the exclusion of a divided brother, whether the former has re-united with the deceased or has never severed his union (*o*).

Brother's son and grandson.

§ 580. A brother's son inherits in default of brothers. There is the same order of precedence between sons of brothers of whole and half-blood and between divided and undivided nephews as prevails between brothers (*p*).

(*i*) Vishnu, XVII, 6, 7, D. Bh., XI, iii; D.K.S., I, iii; 2 W. MacN., 54, *Hemluta* v. *Coluck Chunder* 7 S D., 108 (127).

(*j*) *Ramnath* v. *Durga* (1879) 4 Cal., 550; *Rajabala* v. *Shyama Charan* (1911) 22 C.W.N., 566; *Trailokya Nath* v. *Radha Sundari* (1919) 30 C.L.J., 235.

(*k*) D. Bh., III, ii, § 30, XI, vi, § 3; D.K.S., VI, § 23; VII, § 3; 2 W MacN., 62; *Tahaldai* v. *Gaya Pershad* (1912) 37 Cal., 214; *Sunder Mani Dei* v. *Gokulananda Chowdhury* (1913) 17 C.L.J., 405, 18 C.W.N., 160.

(*l*) D. Bh., XI, v, 1-3; D.K.S., I, vii.

(*m*) *Susheela Sundari* v. *Bishnu Pada* (1933) 60 Cal., 636, 639; see *Neel Kisto* v. *Beer Chunder* (1869) 12 M.I.A., 523, 539, 541.

(*n*) *Rajkishore* v. *Gobind Chunder* (1875) 1 Cal., 27; affirmed *Sheo Soondary* v. *Pirthee* (1877) 4 I.A., 147, 153.

(*o*) *Jadubchunder* v. *Benodbeharry* (1864) 1 Hyde, 214; *Kesabram* v. *Nandkishor* (1869) 3 B.L.R. (A.C.J.), 7, 11 W.R., 308.

(*p*) D. Bh., XI, v, 2-3; XI, vi, 1-2; D.K.S., I, viii, 1; *Akshay Chundra* v. *Hari Das* (1908) 35 Cal., 721, 724.

A brother's grandson comes in next after the nephew; he is entitled to succeed as a sapinda, since he offers an oblation to the father of the deceased owner (*q*). On the same principle the brother's great-grandson is excluded as a sapinda though he comes in later as a sakulya. The same distinction as to whole and half-blood prevails as in the case of brothers (*r*).

Bandhus *ex parte paterna.*

§ 581. The radical difference between the system of the Dayabhaga and of the Mitakshara is that the former allows the *bandhus*, that is the *bhinnagotra sapindas*, to come in along with, instead of after, the *gotraja sapindas*, the principle of religious efficacy being the sole test applied in deciding between rival claimants. Upon examining the application of this principle, it will be seen in the first place, that all the *bandhus ex parte paternâ* come in before any of those *ex parte maternâ*. The reason is that the former present oblations to paternal ancestors, which are of higher efficacy than those presented by the latter to maternal ancestors (*s*). As regards the position *inter se* of the *bandhus ex parte paternâ*, it will be seen by a reference to Table C (§ 570), that every one of them is a daughter's son in the branch where he occurs. Only three of these are mentioned in the Dayabhaga—*viz.*, the sons of the daughters of the father, the grandfather, and the great-grandfather, respectively; and these are ranked immediately after the male issue of those ancestors, that is, they come in before the males of the branch next above them, just as the daughter's son of the owner comes in before his father, brothers, nephews, and grandnephews (*t*). Accordingly on failure of the brother's grandson, the succession goes to the sister's son as he presents three funeral oblations to the paternal ancestors of the

Sister's son.

(*q*) D K.S , I, IX, 1.

(*r*) D. Bh., XI, VI, 6, 7; D.K.S., I, IX; *Digumber Roy* v. *Moti Lal* (1883) 9 Cal., 563 (F.B.).

(*s*) D. Bh , XI, vi, §§ 12, 20; D.K.S., I, x, § 14; Dig., II, 544, *ante* § 573, rule 4. So the great-grandfather's son's daughter's son is preferred to the maternal uncle, *Kedar Nath Banerjee* v. *Haridas Ghose* (1916) 43 Cal , 1, following *Kailash Chandra* v. *Karuna Nath* (1913) 18 C.W.N., 477.

(*t*) D. Bh., XI, VI, §§ 8-12, Dig., II, 547; V. Darp., 224. Accordingly the sister's son has been held to take before paternal uncles (2 W. MacN., 84), *Sambochunder* v. *Gunga* 6 S.D., 234 (291), and their issue (1 W. MacN., 28), *Rajchunder* v. *Goculchund* 1 S.D., 43 (56), 2 W. MacN., 85, 87; *Kuruna* v. *Jai Chandra* 5 S.D., 46 (50); *Kishen* v. *Tarini*, *ib*, 55 (66); *Lakhi* v. *Bhairab*, *ib*, 315 (369); W & B, 474; *Duneshwar* v. *Deoshunker* Morris, Pt. II, 63; *Brojo* v. *Sreenath Bose* 9 W.R., 463. *A fortiori* before the issue of the great-grandfather (2 W. MacNn., 89, 90). But he takes after the son of a half-brother (2 W. MacN., 68, 82).

deceased who are his own maternal ancestors (*u*). A half-sister's son is entitled to inherit equally with the full sister's son (*v*).

The Daya-krama-sangraha introduces a new series of bandhus, *viz.*, those who occupy the position of sons of the nieces of the father, grandfather, and great-grandfather. It follows the Daya Bhaga in making the daughter's son succeed the male issue of each branch, and places the niece's sons immediately after the daughter's son (*w*).

Though they are recognised as heirs, as regards their order, on the interpretation of the Dayabhaga, it has been held, differing from the Daya-krama-sangraha, that after the father's daughter's son (sister's son), the succession of the paternal grandfather, great-grandfather, their sons, grandsons and great-grandsons as also their daughters' sons would be in the same order as in the case of the father, his son, grandson and great-grandson. And on this view the brother's daughter's son would find no place just after the sister's son (*x*).

Paternal grandfather and grandmother.

§ 582. Accordingly after the sister's son, the succession ascends to the paternal grandfather and the paternal grandmother and goes to their descendants in the degree of sapinda, namely, the paternal uncle, paternal uncle's son and the

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(*u*) D. Bh., XI, vi, 8; D.K.S., I, x, 1; *Guru Govind* v. *Anand Lal* (1870) 5 B.L.R., 15 F.B., but neither a sister's daughter nor her son is an heir: *Kalee Pershad* v. *Bhoirabee* 2 W.R.C.R., 180; *Krishna Pada* v *Secretary of State* (1908) 35 Cal., 631.

(*v*) *Bhola Nath* v. *Rakhal Dass* (1884) 11 Cal., 69 approved in *Jatindranath* v. *Nagendra Nath* (1932) 58 I.A., 372, 375, 59 Cal., 576 (Mitakshara case), *Shashi Bhushan* v. *Rajendra* (1913) 40 Cal, 82, 86.

(*w*) D.K.S., I, x, 1, 2, 8, 9, 12, 13. It does not mention the sons of the grandniece in each branch, but their title is exactly of a similar nature, and has been affirmed to exist; *Kashee Mohun* v. *Raj Gobind* 24 W.R., 229; *Prannath* v. *Surrut* (1882) 8 Cal., 460.

(*x*) *Huri Das* v. *Bama Churn* (1888) 15 Cal., 780, 796; *Gobind Proshad* v. *Mohesh Chunder* (1875) 15 B.L.R., 35, 23 W.R.C.R., 117; In *re Oodoy Churn Mitter* (1878) 4 Cal., 411; *Pran Nath* v. *Surrut Chundra* (1882) 8 Cal., 460, 463-464; *Digumber Roy* v. *Moti Lal* (1883) 9 Cal., 563 F.B., overruling *Kashee Mohun* v. *Raj Gobind* (1876) 24 W.R., 229 (brother's daughter's son was preferred to the great-great-great-grandfather's great-great-great-grandson); *Kedar Nath* v. *Amrita Lal* (1912) 17 C.W.N., 492 (father's brother's daughter's son preferred to great-great-grandfather's great-grandson). The passages referring to brother's daughter's son and uncle's daughter's son in the Daya-krama-sangraha are regarded as an interpolation in *Gobindo* v. *Woomesh* W.R. Sp. F.B. 176 and *Huri Das* v. *Bama Churn* (1888) 15 Cal., 780. They are said to be not interpolations, but marginal annotations, not part of the book and of no authority. Bhattacharya, H.L., 2nd ed., p. 503.

and their descendants.

paternal uncle's grandson (*y*). The succession next goes to the first cognate descendant of the paternal grandfather, namely, the paternal aunt's son (*z*).

Paternal great-grandfather, great-grandmother, their agnate and cognate descendants.

The succession ascends again to the paternal great-grandfather, the paternal great-grandmother and goes to their three agnate descendants and to their first cognate descendant, namely, father's paternal uncle, and his son (*a*) and grandson, and to the father's paternal aunt's son (*b*).

Other cognates *ex parte paterna.*

§ 583. Then come in accordance with the opinion of Jagannatha and with the scheme of succession suggested in *Hari Das* v. *Bama Churn* (*c*), and with the decision in *Braja Lal* v. *Jiban* (*d*) the eight cognate descendants of the owner, his father, grandfather and great-grandfather, namely, son's daughter's son, son's son's daughter's son, brother's daughter's son (*e*), brother's son's daughter's son (*f*), paternal uncle's daughter's son (*g*), paternal uncle's son's daughter's son, paternal grand-uncle's daughter's son and paternal grand-uncle's son's daughter's son. All these succeed before cognates *ex parte materna* (*d*).

Bandhus *ex parte materna.*

§ 584. On failure of any lineal descendant of the paternal great-grandfather down to the daughter's son who might present oblations in which the deceased would partici-

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(*y*) D. Bh., XI, vi, 9, D K S, I, x, 5-7, *Gobind Proshad* v. *Mohesh Chunder* (1874) 15 B L R, 35, 23 W R C R, 117, In *re Oodoy Churn* (1878) 4 Cal, 411; *Gopal Chunder* v. *Haridas* (1885) 11 Cal., 343, *Huri Das* v. *Bama Churn* (1888) 15 Cal, 780, 791

(*z*) D. Bh, XI, vi, 9, D.K S, I, x, 8.

(*a*) *Gopal Chunder* v *Haridas* (1886) 11 Cal, 343 (father's paternal uncle's son preferred to paternal uncle's daughter's son).

(*b*) D. Bh, XI, vi, 9.

(*c*) (1888) 15 Cal, 780, 793-796, see also *Prannath Surma* v *Surrut Chundra* (1882) 8 Cal, 460, 463-4.

(*d*) (1899) 26 Cal, 285, 291 affd in (1903) 30 I A, 81, 30 Cal., 550 (where the father's brother's daughter's son was preferred to mother's brother's son) In *Kailash Chundra* v *Karuna Nath* (1913) 18 C W N, 477 followed in *Kedar Nath* v. *Haridas* (1915) 43 Cal, 1, the paternal grand uncle's son's daughter's son was preferred to maternal uncle In 26 Cal, 285, 291, it was observed "The view we take that the father's brother's daughter's son comes in the order of succession before the maternal line is in accordance with the opinion of Jagannatha (Colebrooke's Digest, Book V, Ch viii. Sec, 1, V 434 commentary, Madras edn., Vol. II, p 567)".

(*e*) *Digumber* v. *Moti Lal* (1883) 9 Cal., 563; (1888) 15 Cal., 780 *supra.*

(*f*) (1882) 8 Cal., 460 *supra*

(*g*) *Gurubind* v *Anand Lal* (1870) 5 B.L.R., 15 F.B.; *Gopal Chunder* v. *Haridas Churn* (1885) 11 Cal, 343, *Braja Lal* v. *Jiban* (1898) 26 Cal., 285; *Kedar Nath* v. *Amrita Lal* (1912) 17 C.W.N., 492.

pate, the succession goes to bandhus *ex parte materna* who offer oblations to the maternal ancestors of the deceased which he was bound to offer such as the maternal uncle and the rest in the order of oblations (*h*). Accordingly, the maternal grandfather and his three sapinda descendants and his first cognate descendant, namely, the maternal uncle (*i*), maternal uncle's son (*j*), maternal uncle's son's son (*k*) and the maternal aunt's son are his next heirs (*l*).

The next heirs are the maternal great-grandfather, the mother's paternal uncle, his son and grandson and the mother's paternal aunt's son (*m*).

After these come the maternal great-great-grandfather and his son, grandson and great-grandson and his daughter's son (*n*). It would seem that neither the daughter's son's son, nor the sister's son's son, nor the paternal aunt's son's son nor the daughter's son's sons of any paternal or maternal ancestor are recognised as heirs in the Dayabhaga School on the ground that though they are within the degree of sapinda, they do not confer any spiritual benefit on the deceased (*o*). This is based on the assumption as to which there is difference of opinion (*p*) that spiritual benefit is not only a guiding principle as to the order of succession, but is the sole test of the right of succession itself, so that in its absence a person is excluded altogether, though on grounds of propinquity, his claim would be admissible.

Other cognates.

§ 585. Jagannatha does not mention as heirs taking before the sakulyas, the son's daughter's son and the grand-

(*h*) (1898) 26 Cal., 285, 291 *supra*. Jimutavahana hardly notices the bandhus *ex parte maternâ*, merely alluding to them as "the maternal uncle and the rest," who come in "on failure of any lineal descendant of the paternal great-grandfather, down to the daughter's son" (D. Bh., XI, vi, 12-14). Sri Krishna, however, sets out their order very fully, adopting the same principle as he had done in regard to the other sapindas. He gives the property first to the mother's father, and his issue, that is, the maternal uncle, his son, and grandson, then to the daughter's son of the mother's father, then to the line of the mother's grandfather, and great-grandfather, in similar manner, D.K.S., I, x, 14-21.

(*i*) D.K.S., I, x, 15; *Pudma Coomari* v. *Court of Wards* (1882) 8 I.A., 229, 8 Cal., 302.

(*j*) *Braja Lal* v. *Jiban Krishna* (1898) 26 Cal., 285; *Srimuty Dibeah* v. *Koond Luta* (1847) 4 M.I.A., 292.

(*k*) D.K.S., I, x, 16.

(*l*) Dig., II, 567, *Deyanath* v. *Muthoor* 6 S.D., 27 (30).

(*m*) D.K.S., I. x, 17.

(*n*) D.K.S., I, x, 19-20.

(*o*) *Nepaldas* v. *Probhas Chundra* (1925) 30 C.W.N., 357; *Sambhu Chandra* v *Kartik Chundra* (1927) 54 Cal., 171.

(*p*) See *ante* § 566.

son's daughter's son of each of the three maternal ancestors, while he mentions as heirs the son's daughter's sons and the grandson's daughter's sons of the deceased himself and his three paternal ancestors as taking before the maternal grandfather (*q*). If on the analogy of the eight bandhus *ex parte paterna* mentioned by Jagannatha, these bandhus *ex parte materna* are admitted as heirs on the ground that they offer oblations to one or more maternal ancestors of the deceased, their place would seem to be immediately before the sakulyas as the former are in the degree of sapinda and as their undivided oblations are of higher spiritual value than the divided ones offered by a sakulya (*r*).

Sakulyas and samanodakas.

§ 586. On failure of all agnate and cognate sapindas, the sakulyas and samanodakas who are all agnates inherit the property left by the deceased. The order of succession amongst them will be governed by the same rules as apply to sapindas (*s*). On failure of these, the heirs are the spiritual preceptor, the pupil and the fellow-student (*s*[1]); in their default, the Crown (*s*[2]).

Succession to a reunited coparcener.

§ 587. Reunion *(samsrishta)* implies a state of union and jointness, a partition, and a subsequent union or jointness between coparceners through affection. Under the Dayabhaga law as under the Mitakshara law, it can only take place between father and son, brothers, paternal uncle and nephew (*t*). Spiritual efficacy does not control succession in such a case "The reason for inheritance by a reunited coparcener is not spiritual benefit, but a quasi-contractual relation and affection for each other" (*u*). On the death of a reunited coparcener, a reunited son will exclude a separated son, a reunited brother would be preferred to a separated brother, and a reunited

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(*q*) Dig, II, 567

(*r*) G. C. Sarkar Sastri's view appears to be different· H L, 614 (7th ed).

(*s*) D. Bh, XI, vi, 15-23, D.K S., I, x, 14-25. These take first in the descending line and then in the ascending. D Bh., XI, vi, 22; *Gurugobind* v. *Anand Lal* (1870) 5 B L R., 15, 39, F.B.

(*s*[1]) D. Bh., XI, vi, 24; D.K.S., I, x, 27-28.

(*s*[2]) D. Bh., XI, vi, 27; D K.S., I, x, 30-32. Persons of the same rishi gotra, whether inhabitants of the same village or not and Brahmins are mentioned as heirs entitled to take before the Crown (D. Bh, XI, vi, 25-26). Of course, they can have now no legal rights. Their rights must have long ago ceased to be in force.

(*t*) D. Bh., XII, 3-4; *Abhai Churn* v. *Mangal Jana* (1892) 19 Cal., 634; *Ram Narain* v. *Pan Kuer* (1934) 62 I.A., 16; see *ante* §§ 467-470.

(*u*) *Akshay* v. *Hari* (1908) 35 Cal., 721, 726.

nephew to a separated nephew or uncle. In *Abhai Churn* v. *Mangal Jana*, it was held that where the descendants of a reunited coparcener continue to be the members of the reunited family, the special rules of inheritance applicable to the succession of reunited coparceners will apply also to the succession amongst their descendants (*v*).

(*v*) (1892) 19 Cal., 634; (1908) 35 Cal., 721 *supra*.

CHAPTER XIV.

THE HINDU WOMEN'S RIGHTS TO PROPERTY ACT.

§ 588. Brief references to some of the alterations in Hindu law effected by the Hindu Women's Rights to Property Act, XVIII of 1937, have been made in several places in this book. The exact meaning and scope of the Act have not yet been the subject of decisions. The Act will probably in its interpretation and application give rise to unexpected difficulties. An examination of the main provisions of the Act and their effect is necessary to complete the discussion of the law of succession and of coparcenary.

The Act came into force on the 14th April 1937 and has no retrospective operation As the Act was considered to be defective, it was amended by the Hindu Women's Rights to Property (Amendment) Act, 1938, which was declared to have retrospective effect as from the 14th April 1937. Even after the amendment, the Act remains defective and obscure (*a*).

§ 589. The Act is as follows:—

"Whereas it is expedient to amend the Hindu law to give better rights to women in respect of property;

It is hereby enacted as follows:—

Sec. 1. (1) This Act may be called The Hindu Women's Rights to Property Act, 1937.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas but excluding Burma.

Sec. 2. Notwithstanding any rule of Hindu law or custom to the contrary, the provisions of section 3 shall apply where a Hindu dies intestate.

Sec. 3. (1) When a Hindu governed by the Dayabhaga School of Hindu law dies intestate leaving any property, and when a Hindu governed by any other school of Hindu law or by customary law dies intestate leaving separate property, his widow, or if there is more than one widow all his widows together, shall, subject to the provisions of sub-section (3),

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(*a*) For the validity of the Act, see *ante* § 50.

be entitled in respect of property in respect of which he dies intestate to the same share as a son:

Provided that the widow of a predeceased son shall inherit in like manner as a son if there is no son surviving of such predeceased son, and shall inherit in like manner as a son's son if there is surviving a son or son's son of such predeceased son;

Provided further that the same provision shall apply *mutatis mutandis* to the widow of a predeceased son of a predeceased son.

(2) When a Hindu governed by any school of Hindu law other than the Dayabhaga school or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of sub-section (3), have in the property the same interest as he himself had.

(3) Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu Woman's estate, provided however that she shall have the same right of claiming partition as a male owner.

(4) The provisions of this section shall not apply to an estate which by a customary or other rule of succession or by the terms of the grant applicable thereto descends to a single heir or to any property to which the Indian Succession Act, 1925, applies.

Sec. 4. Nothing in this Act shall apply to the property of any Hindu dying intestate before the commencement of this Act.

Sec. 5. For the purposes of this Act, a person shall be deemed to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect."

Changes effected by the Act.

§ 590. The Act replaces the rule of Hindu law recognised in all the provinces except in Madras where it has become obsolete, that a widow was entitled to a share when her sons or her step-sons actually divided the estate between themselves (*b*). Now in all the provinces including Madras, the Act vests in her on her husband's death the right to the same share as a son along with her sons or step-sons, independ-

(*b*) *Pratapmull Agarwalla* v. *Dhanabati Bibi* (1936) 63 I.A., 33, 63 Cal., 691.

ent of any partition which may or may not be entered into by them. In Madras of course the change effected by the Act is much greater. What is more, it repeals in all the provinces the older rule according to which a widow succeeds only on failure of male issue. For instance, even where her husband leaves an only son and there can be no question of partition, she succeeds along with him for the share of a son. Evidently following the view of Visvarupa (§429), the Act makes a widowed daughter-in-law and a widowed granddaughter-in-law entitled to share along with, or in default of, the male issue and the widow. It brings the Mitakshara and the Dayabhaga systems closer together by conferring upon the widow of a member of an undivided family the right to inherit his coparcenary interest. And in every case she will be entitled to enforce a partition.

While the object of the Act is to confer new rights of succession upon the widows mentioned in it, it not only alters the order of succession, but involves far-reaching consequences in many departments of Hindu law, particularly in the law relating to a Mitakshara coparcenary. Where the provisions of the Act are clear, effect of course must be given to them. But the legislature may well be presumed to have left Hindu law unaltered in other respects. The Act must therefore be so construed as not to create a greater departure from Hindu law than it necessarily implies (b^1). The definition introduced by the amending Act of intestacy in section 5 does not remove the difficulty created by the words 'dies intestate' in section 2 as to the scope and operation of sub-sec. (2) to section 3. The intention of the legislature evidently is that sub-section (2) to section 3 should apply in every case and that is why the inappropriate words 'dies intestate' which stood in that sub-section were repealed. Those words should also have been omitted from sec. 2. As the Act stands, on a strict construction, sub-sec. (2) to sec. 3 can apply only when under section 2 a Hindu dies intestate, especially as those words are not required in connection with section 3 (1), being already there. If therefore he has made a complete and valid disposition of all his separate and self-acquired property, he cannot be said to have died intestate. But as intestacy cannot by any legal possibility be a condition of operation of sub-sec. (2) to sec. 3, the words 'dies intestate' in sec. 2 must be treated as surplusage having no sensible meaning, to avoid an absurd result (b^2).

(b^1) *Secretary of State for India* v. *Bank of India Ltd.* (1938) 65 I.A., 286, 298; Maxwell, 7th ed., 71.

(b^2) Maxwell, 7th ed., p. 204.

The Act of course does not affect successions to impartible estates and other properties which, by custom or grant, descend to a single heir. As to them, the older law remains unaffected. The Act applies to all Hindus, whether governed by the Mitakshara or the Dayabhaga or any other school of Hindu law or by customary law as in the Punjab (*c*).

In the law of succession.

§ 591. According to sec. 3 (1) of the Act even where a man dies leaving male issue, his widow inherits along with the male issue his separate property, if he is governed by the Mitakshara law, or all his property if he is governed by the Dayabhaga law. The widow will succeed to the share of a son where there are one or more sons, whether they are her sons or her step-sons, as well as where there is only a widowed daughter-in-law or grand-daughter-in-law. So too she will succeed under the Act when she alone is in existence. If a man has several widows, all of them together will be entitled only to the share of a son (*d*). The words "the same share as a son" in sec. 3, sub-sec. (1) are not happy. They cannot possibly mean that there should be another person than the widow in existence to share with her. They can only mean as in the proviso that she will inherit 'in like manner as a son', so that the section would apply both to cases where there is a plurality of heirs and to cases where the widow alone is the heir and there is neither male issue nor widowed daughter-in-law nor grand-daughter-in-law. Similarly the two provisos must be construed as substantive provisions with the result that the widowed daughter-in-law or grand-daughter-in-law will take the estate of a man even when there is neither widow nor male issue. Where the predeceased son has left a son or grandson, the share of the widowed daughter-in-law will be that of a grandson. Similarly where the predeceased son, leaves him surviving only a widow of his predeceased son, the latter will evidently be entitled to his share. Where a

(*c*) Marummakkathayam succession is now governed by a provincial statute and cannot be said to be regulated purely by customary law. Aliyasantana law is certainly customary law. But the widow of an Aliyasantana male could succeed under the Act to his property only if his son would under the Aliyasantana law be entitled to a share. As the son is not so entitled the Act has no application to Aliyasantana Hindus.

(*d*) It alters the older rule; see *Damoodur* v. *Senabutty* (1882) 8 Cal., 537; *Damodardas* v. *Uttamram* (1893) 17 Bom., 271; *Kristo* v. *Ashutosh* (1886) 13 Cal., 39.

predeceased son leaves him surviving a son as well as the widow of a predeceased son, the latter will be entitled to the share of a grandson But where the predeceased son of a predeceased son has left both a son and a widow surviving, the latter will be entitled to the share of a great-grandson.

Limited interest.

The estate taken by the widow, the widowed daughter-in-law, or the widowed grand-daughter-in-law, will only be "the limited interest known as a Hindu woman's estate" by virtue of sec. 3 (3). This takes effect notwithstanding any rule of Hindu law or custom to the contrary. Accordingly a Jain or other widow who takes by custom her husband's property absolutely or a widow in Mithila who takes her husband's movables absolutely will under the Act take only a widow's estate.

Reversionary succession.

§ 591-A. While the Act thus defines the interest taken by each of the three female heirs mentioned in it, it does not say how their interests are to devolve on their death. The course of succession would depend upon the question whether the female heir took the estate in default of male issue or in their presence On the death of the widow of the last male holder, her estate would revert to his male issue, if any (*e*). On the analogy of the reverter of a share allotted to a mother on partition, the sons, grandsons, and great-grandsons will succeed as heirs of her husband. Even though in a sense it may be reversionary succession, the son will not exclude a grandson, nor the grandson, the great-grandson. The property which is taken after her death by the son, grandson or great-grandson will certainly be ancestral in his hands (*f*). Likewise on the death of the predeceased son's widow, where, in default of her husband's male issue, she has taken the share of a son, her interest will pass to the male issue of the father-in-law as his nearest heirs and as the persons entitled to the estate from which her share was taken. Where the widow of a predeceased son takes the share of a grandson only, the Act necessarily implies a reverter of her interest to her son or grandson or to her husband's son or grandson. They will be the nearest heirs to her father-in-law in respect of that share, though not strictly by right of representation, on the ground that the Act itself treats the widowed daughter-in-law as taking in like manner as a son's son, necessarily implying that the subse-

(*e*) See *Debi Mangal Prasad* v. *Mahadeo Prasad* (1911) 39 I.A., 121, 34 All., 234

(*f*) Compare *Nanabhai* v *Acharatbai* (1888) 12 Bom., 122; *Beni Prasad* v. *Puranchand* (1896) 23 Cal., 262, *Ram Prasad* v. *Radha Prasad* (1885) 7 All., 402.

quent devolution of property cannot be upon the basis of collateral succession. Similarly the interest taken by the widow of a predeceased son of a predeceased son will revert on her death to her husband's branch, as she is allotted a share out of the property of that branch. These appear to be the reasonable and probable implications of the Act, though the language is defective and susceptible of the result that on the death of the daughter-in-law or grand-daughter-in-law, her interest would pass to the whole of the male issue and the surviving female heirs. But the intention of the Act in this respect appears only to be to convert the inchoate right of a widow which existed before it to share along with the male issue, into a perfect and enforceable right. In the absence of male issue of the last male holder and of the daughter-in-law and grand-daughter-in-law, on the death of his widow her interest will pass to the usual reversionary heirs beginning with the daughter and the daughter's son. Whether on the death of any of the female heirs, the other female heir or heirs will be reversionary heirs entitled to come in before the daughter or the daughter's son is not free from doubt. On the wording of sec. 3 (3) it would seem that the next heir of the husband would take the interest of the female heir on her death. Therefore the other female heir or heirs would come in before the daughter or the daughter's son—a consequence not perhaps intended by the legislature (*g*). On the death of the widowed daughter-in-law or grand-daughter-in-law in default of the male issue of the last male holder, her interest will revert to his widow, not only as his nearest heir but as the person who would be the heir under Hindu law apart from the statute in cases not provided for. And in default of the widow, it will pass to the daughter, daughter's son and the rest.

Illegitimate son's share affected.

The right of an illegitimate son of a Sudra to a share in competition with the widow or a daughter-in-law is necessarily affected by the Act, as the widow or the daughter-in-law takes the share of a son and he takes a half share only.

Alteration in the law of coparcenary.

§ 592. By far the most important alteration in the fundamental principles of Hindu law is that introduced by sub-sec. (2) to sec. 3. In a Mitakshara undivided family, the widow of a deceased coparcener will have in the joint family property "the same interest as he himself had". This devolution of his interest on her abrogates the rule of survivorship and makes the undivided interest of a coparcener pass to his

(*g*) This would mean that they take not only once, but again. And if either is to take again, how is she to inherit like a son or take a son's share again?

widow, even when he leaves male issue. For, the language of the section is comprehensive, and applies both to cases where her husband and his sons alone form a coparcenary and to cases where a coparcener in a joint family dies leaving either his widow and male issue or his widow only. As under sub-sec. (3), the interest devolving on her is a Hindu woman's estate, she cannot even in the case of a Mitakshara family, be treated as a coparcener in the strictest sense along with her sons and the other coparceners though she is undoubtedly a member of the joint family. When a widow succeeds to her deceased husband's interest in a joint family, she takes it only by inheritance and not by survivorship (*h*); for, she had no right by birth and she was not a co-owner prior to his death. There are no words in the Act by which she can be deemed to be a coparcener and the interest which devolves upon her is declared to be a Hindu woman's estate. That means that on her death it will go to her husband's heirs which cannot mean all his coparceners. In other words, on her death whether before or after partition, her interest will go to her husband's male issue who will take it as ancestral property. Whether they will take it as tenants in common or as coparcenary property is a different question. In the absence of her husband's male issue, her interest will pass to the daughter, daughter's son, or other heirs of her husband.

No disruption of entire coparcenary.

The Act however does not effect a statutory severance or disruption of the entire family (*i*). To interpret the Act as effecting such a severance would cut across the recognised principles of Hindu law and would not make for a rational and orderly succession (*j*). As the wives of coparceners are undoubtedly members of a joint Hindu family (*k*), there is nothing incongruous in the widow of a coparcener being viewed as occupying a position more or less analogous to the position of a coparcener in a Dayabhaga family. As the other members of the family will remain undivided and as she cannot be regarded as the widow of a divided member, the joint family system and management will continue as before, probably an advantage.

(*h*) *Katama Nachiar* v. *Rajah of Sivaganga* (1863) 9 M.I.A., 539, 543, 611; *Bajnath* v. *Tej Bali* (1921) 48 I.A., 195, 211, 43 All., 228, 243 (P.C.).

(*i*) Compare *Venkatarayudu* v. *Sivaramakrishnayya* (1935) 58 Mad., 126, 135, 140.

(*j*) See *Raghuraj Chandra* v. *Subhadra Kunwar* (1928) 55 I.A., 139, 149.

(*k*) *Vedathanni* v. *The Comr. of Income-tax, Madras* (1933) 56 Mad., 1; *Kalyanji* v. *Comr. of Income-tax, Bengal* (1937) 64 I.A., 28, [1937] 1 Cal., 653.

Except to the extent of the widow taking her husband's interest, the Act leaves the rights of the other members of the family untouched. The result is that while the deceased coparcener's interest vests in his widow, his male issue will continue in the strictest sense to be coparceners along with the other male members of the family with mutual rights of survivorship. So also under sub-section (1), in a Mitakshara family, the sons, grandsons and great-grandsons of her husband will be coparceners *inter se* while the widow will hold her interest in quasi-severalty but along with them. To hold that the widow of a coparcener who takes his interest on his death is strictly a tenant-in-common with the coparcenary body is not to give full effect to the words in s. 3 (2), according to which she is to have "in the property the same interest as he himself had," apart from the grave complications which it will involve. On that view, she will be entitled to an account and for a definite share of the income, while the others will not be; more than that, it will lead to anomalies and hardships in connection with the allotment of shares; and even before partition there would be separate management and representation and separate incurring of debt. But evidently the intention of the Act is only to interrupt survivorship and to protect the right of a widow so that she may have the same interest as if she continued the legal *persona* of her husband till partition.

Though if she were assumed to be a coparcener in the Mitakshara sense, the working of the Act would be easier, the circumstance that she will hold her interest under the Act in quasi-severalty does not materially alter the position of the joint family in other respects. As in a Dayabhaga family, the *karta* or managing member will have all the usual powers of management till partition. Her interest will be liable for joint family debts properly incurred and can be bound by an alienation made by the karta for family necessity or benefit. She may however be able to alienate for value her share for such purposes as a widow can, even in those Mitakshara jurisdictions where the alienation of a coparcener's interest is not recognised. There is however one question which presents a greater difficulty: Is the interest which she takes on her husband's death under sec. 3 (2) to be the share to which he was entitled at his death or is it the share to which she would be entitled if she, standing in the shoes of her husband, were treated as the holder of an undivided coparcener's interest at the time of partition? Having regard to her position as a member of a joint family, and to the object of the Act and to the words "the same interest as he

When interest ascertained.

himself had", she cannot be deemed to be in a better position than her husband if he had lived. The analogy of an alienee for value whose special equity is worked out by assigning to him the share of his alienor as ascertained on the date of the alienation (*l*), will not be applicable. The language of the Act is by no means free from ambiguity. The inconveniences and hardships resulting from an opposite view may therefore be taken into consideration in the interpretation of such an ill-drawn Act. To take only one illustration, suppose A has a son B. B predeceases A leaving his widow C. She will get a half share in the family estate if it is to be ascertained on the date of her husband's death. A begets two more sons D and E after the death of B. On the assumption that she gets one-half, A, D and E will only get one-third of one half, i.e., one-sixth each. The anomaly of a widow holding a woman's estate in the undivided property of her husband must necessarily be dealt with as a special case; the interest she takes may well be a fluctuating interest till there is a partition (*m*).

Unchaste widow.

§ 593. As the Act confers upon the widow a right of succession notwithstanding any rule of Hindu law, an unchaste widow will not be disqualified from inheritance. Similarly the rights of succession of the widowed daughter-in-law and grand-daughter-in-law will not be subject to the condition of chastity even in the Dayabhaga School. For the same reason the widow will be entitled to succeed, notwithstanding any ground of disqualification under Hindu law in either school (*n*) (§ 600). But the Act does not touch the duration of the widow's estate as determined by the Hindu Widows' Remarriage Act, 1856, and the widow will only be entitled to her estate until her remarriage (*o*).

Remarried widow.

Maintenance rights extinguished.

The rights to maintenance of the widows mentioned in the Act are not expressly abolished; but it is obvious, that where they take under the Act, any rights of theirs are, by necessary implication, extinguished; for Hindu law allows them main-

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(*l*) *Chinnu Pillai* v. *Kalimuthu* (1912) 35 Mad., 47 F.B ; *Aiyyagari* v *Aiyyagari* (1902) 25 Mad, 690 F.B ; *Kasi Visvesvara Rao* v. *Varahanarasimham* A.I.R. 1937 Mad., 631; *Contra, Muthukumara* v. *Sivanarayana* (1933) 56 Mad, 534.

(*m*) *Rangasami* v *Krishnayyan* (1891) 14 Mad., 408 F.B ; (1933) 56 Mad., 534 *supra*.

(*n*) Whether congenital lunacy and idiocy remain disqualifications under Hindu law only, or have assumed such a statutory character under Act XII of 1928 as to be unaffected by the new Act may be a question.

(*o*) The language of section 2 of the Remarriage Act will cover the interest devolving on the death of a coparcener upon his widow.

tenance only "because of their exclusion from inheritance and from a share on partition" (*p*). But the right of a wife to a share on a partition between her husband and his sons, in jurisdictions where it is recognised, is not affected and it would seem that when her husband dies, she may again be entitled to his share along with the male issue under the Act.

Adoption.

The Act cannot be held to affect the power of adoption which the widow, the widowed daughter-in-law and widowed grand-daughter-in-law may have under the Hindu law (*q*). But the effect of an adoption can no longer be the same. The rights of an adopted son can only be the same as those of an *aurasa* son if he were in existence at the time the succession opened. Accordingly, where a widow makes an adoption, she will not be divested of the entire interest vested in her. She will be entitled to the share of a son; the adopted son will divest her only of a moiety of the estate to which he would, apart from the Act, be entitled. Where however a widow succeeds as mother to her son's estate, she will as usual be divested of her entire interest (*r*).

(*p*) *Vellaiyappa Chetty* v. *Natarajan* (1931) 58 I.A., 402 at 414, 55 Mad., 1. "The share is taken in lieu of maintenance": *Srimati Hemangini* v. *Kedar Nath* (1889) 16 I.A., 115, 124, 16 Cal., 758.

(*q*) In *Piare Lal* v. *Hem Chand* A.I.R. 1938 Lah., 539, it was held that when a Hindu died leaving his own widow and the widow of a predeceased son, the power of the latter to make an adoption came to an end when the property vested in her mother-in-law. This is a misconception and is opposed to the recent decisions of the Privy Council in *Amarendra* v. *Sanatan* (1933) 60 I.A., 242, 12 Pat., 642 and *Vijaysingji* v. *Shivsangji* (1935) 62 I.A., 161, 59 Bom., 360.

(*r*) See *ante* §§ 196-201.

CHAPTER XV.

EXCLUSION FROM INHERITANCE.

Exclusion of disqualified heirs.

§ 594. The Smriti law declares that persons labouring under certain disabilities are excluded from partition as well as from inheritance. Originally the disqualification was confined only to those who were incapable of transacting business or managing their properties. Gautama refers only to an idiot and an impotent man (*a*); and Baudhayana gives the reason for the disqualification: "Granting food, clothes and shelter, they shall support *those who are incapable of transacting legal business,* viz., the blind, the idiot, those immersed in vice, the incurably diseased and so forth, those who neglect their duties and occupations; but not the outcast nor his offspring" (*b*).

Not solely on religious considerations.

It has often been stated that the exclusion from partition and inheritance was based upon the incapacity to perform sacrifices and religious ceremonies. The answer to it was given by Sadasiva Ayyar, J., in *Surayya* v. *Subbamma*: "Sudras were never entitled to perform Vedic ceremonies nor Chandalas and other depressed classes. The law of inheritance and exclusion from inheritance apply not only to the three castes or Dvijas (entitled to perform Vedic ceremonies) but to all Hindus It therefore seems impossible to base the exclusion on incapacity to perform Vedic ceremonies" (*c*). According to Dr. Jolly, those who were *incapable of work or trade* on account of physical, spiritual or moral defects were excluded from inheritance (*d*). Baudhayana's bracketing together the minors and the disqualified heirs (*e*) and the illustrations of disqualified heirs in the earlier Dharmasutras (*f*), bear out the view that physical and mental incapacity according to the standards of those days as well as incapacity to beget offspring formed the real foundation of the rules of disqualification. The exclusion of the outcaste

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(*a*) Gautama, XXVIII, 40, 43.

(*b*) Baudh., II, 2, 3, 37-40; Jolly, T.L L., 271, L & C, 181-182.

(*c*) (1920) 43 Mad., 4, 14, Yajnavalkya in II, 136 makes the rule of succession applicable to all, whether or not belonging to the four classes.

(*d*) Jolly, L & C, 182.

(*e*) Baudh., II, 2, 3, 36 (minors); 37-40 (disqualified heirs).

(*f*) Apas., II, 6, 14, 1, 15 (madman, outcaste and eunuch); Vas., XVII, 54 (eunuch and madman).

and the person 'addicted to evil deeds' was based on social grounds. The theory that exclusion from succession was based mainly on religious motives appears therefore to be an exaggeration. It would be truer to say that the bar on disqualified persons was imposed not exclusively nor even primarily on religious grounds but in part on such grounds and chiefly on physical and mental incapacity. This conclusion derives great support from such a materialistic treatise as the Arthasastra of Kautilya which gives substantially the same categories of disqualification (*g*).

Disabilities removed by statute.

§ 595. The Hindu Inheritance (Removal of Disabilities) Act, 1928, has laid down that no person, other than a person who *is and has been from birth* a lunatic or an idiot shall be excluded from inheritance and partition by reason only of his disease, deformity, or physical or mental defect. The Act however does not apply to any person governed by the Dayabhaga school of Hindu law. It is not retrospective nor does it remove the disqualification of any person in respect of any religious office or service or of the management of any religious or charitable trust. (§ 48).

Enumeration of disqualified heirs.

§ 596. Manu states the following grounds of disqualification: "Impotent persons and outcastes, persons born blind or deaf, the insane, idiots and the dumb as well as those deficient in any organ (of action or sensation) receive no share" (*h*). Yajnavalkya says: "An impotent person, an outcaste and his issue, one lame, a madman, an idiot, a blindman and a person afflicted with an incurable disease are persons not entitled to a share and are to be maintained" (*i*). Commenting on that verse, Vijnanesvara says: "These persons, the impotent man and the rest are excluded from partition. They do not share the estate but must be supported by an allowance of food and raimant only" (*j*).

Right to maintenance only.

Jimutavahana cites the texts of Manu and Yajnavalkya and does not appear to differ from the Mitakshara (*j*).

(*g*) Arthas., III, 5, 29-33, Jolly's edn., Shama Sastri, 199.

(*h*) Manu, IX, 201.

(*i*) Yajn., II, 140; Manu, IX, 201-203; Apas., II, 6, 14, 1, 15; Vas., XVII, 52-54; Vishnu, XV, 32-36; Narada, XIII, 21-22; Dig., II, 422, 439; Jha, H.L.S., II, 84-108.

(*j*) Mit., II, X, 5, 6, 10; Smritichandrika, V; Madhaviya, para. 49; Sarasvati Vilasa, paras. 146-159; V. May., IV, xi; Viramit., VIII (Setlur, II, 461); Vivadaratnakara, V; Vivadachintamani, 242-246; Dayabhaga, V; D.K.S., III; Raghunandana, IV (Setlur, II, 483-484).

What defects must be congenital.

§ 597. Where it is sought to exclude an heir on the ground that he is blind, deaf or dumb, it is necessary to show that these defects are incurable and congenital(*k*). As to mental infirmity, it has been held that the degree of incapacity which amounts to idiocy is not utter mental darkness. It is sufficient if the person is, and has been from his birth, of such an unsound and imbecile mind as to be incapable of instruction or of discriminating between right and wrong. He must, in short, be one whom it would be impossible to describe as a reasoning being. Mere want of sound, or even ordinary, intelligence is not sufficient (*l*). Insanity to exclude a person from inheritance need not be congenital (*m*). The rule of Hindu law excluding idiots and madmen from inheritance must be enforced only upon the strictest proof that the requirements of the law have been satisfied.

Mental infirmity.

Leprosy.

§ 598. Leprosy, of course, need not be congenital. Some cases of leprosy are of a mild and curable form, while others are of a virulent and aggravated type, and incurable. It is only the latter form of the malady which causes inability to inherit (*n*). Leprosy which does not preclude a man from

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(*k*) *Mohesh Chunder* v. *Chunder Mohun* (1875) 14 B.L.R, 273 (blindness); *Murarji* v. *Parvatibai* (1876) 1 Bom, 177 (blindness); *Gunjeshwar Kunwar* v. *Durga Prashad Singh* (1917) 44 I.A, 229, 45 Cal, 17 (blindness), *Pareshmani* v. *Dinanath* 1 B.L.R. (A.C.J), 117 (deaf and dumb); *Hira Singh* v. *Ganga Sahai* (1884) 6 All, 322 (deaf and dumb); *Vallabhram* v. *Bai Hariganga* (1867) 4 Bom. H.C. (A.C.J.), 135 (dumb); *Umabai* v. *Bhavu* (1876) 1 Bom, 557 (blindness); *Charu Chunder* v. *Nobo Sunderi* (1891) 18 Cal., 327 (dumbness); *Pudiava* v. *Pavanasa* (1922) 45 Mad, 949 F.B. (blindness), *Bharmappa* v. *Ujjaingowda* (1922) 46 Bom., 455 (dumbness), *Savitri Bai* v *Bhabat* (1927) 51 Bom, 50 (dumbness); *Bhai Pratapgavri* v. *Mulshankar* A.I.R. 1924 Bom., 353 (dumbness).

(*l*) *Tirumamagal* v. *Ramaswami* (1863) 1 Mad. H.C., 214; *Surti* v. *Narain Das* (1890) 12 All, 530.

(*m*) *Baboo Bodhanarain* v. *Omrao* (1870) 13 M.I.A., 519; *Koer Goolab* v. *Rao Kurun* (1871) 14 M.I.A., 176, *Dwarkanath* v. *Mahendranath* (1870) 9 B.L.R, 198, 18 W.R, 305; *Braja Bhukan* v. *Buchan* (1870) 9 B.L.R, 204, *Deo Kishen* v *Budh Prakash* (1883) 5 All., 509 F.B.; *Wooma Pershad* v. *Girish Chunder* (1884) 10 Cal., 639; *Ram Singh* v. *Mst. Bhani* (1916) 38 All., 117, *Muthusami Gurukkal* v. *Meenammal* (1920) 43 Mad, 464, *Bapuji* v. *Dattu* (1923) 47 Bom., 707. In *Ran Bijai* v *Jagatpal Singh* (1891) 17 I.A, 173, 18 Cal, 111, an alleged insanity, founded chiefly on incapacity for speech due to paralysis, was held by the Privy Council not to be a ground of exclusion.

(*n*) Dig, II, 429, 1 Stra H.L, 156; *Ramabai* v. *Harnabai* (1924) 51 I.A., 177, 48 Bom., 363; *Janardhan* v. *Gopal Pandurang* (1868) 5 Bom. H.C., 145; *Ananta* v. *Ramabai* (1876) 1 Bom., 554; *Rangayya* v. *Thanikachalla* (1896) 19 Mad., 74, *Mohunt Bhagoban* v. *Roghunundun* (1895) 22 I.A., 94, 22 Cal, 843; *Runchhod Naran* v. *Ajoobai* (1907) 9 B.L.R. 114, where it was held that the less aggravated form of leprosy is no ground of exclusion. So also *Kayarohana Pathan* v. *Subbaraya Thevan*

performing social and religious ceremonies in company with others would not preclude him from inheritance (*o*). Other agonizing and incurable diseases are also spoken of as causing the same effect, as an example of which atrophy is given (*p*). To disinherit a man merely because he is suffering from cancer, tuberculosis or diabetes would be to go too far; such a rule cannot be regarded either as a workable or as an enforceable one. In this connection. the distinction between imperative rules of law and moral or religious precepts cannot be overlooked (*q*).

Lameness and loss of limb.

§ 599. Lameness and the deprivation of the use of any limb or organ (*nirindriya*) must be not only congenital, but absolute or complete (*r*). Not, perhaps, necessarily the absolute want of a limb, but, at all events, a complete incapacity to make any use of it.

Unchastity.

§ 600. Unchastity as a ground of exclusion applies only to the widow under the Mitakshara law and not to the other female heirs. But under the Dayabhaga law, it applies to all the five female heirs, namely, widow, daughter, mother, father's mother and father's father's mother (*s*). Unchastity however is no ground of exclusion in respect of succession to stridhana property (*t*). But unchastity, so far as the widow, the daughter-in-law and the grand-daughter-in-law are concerned, whether under the Mitakshara or the Dayabhaga law, in cases where the succession is governed by the Hindu Women's Rights to Property Act, 1937, will be no longer a ground of disqualification, as it entitles them to inherit, notwithstanding any rule of Hindu law or custom (*u*). For the same reason, they would not

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(1915) 38 Mad., 250, *Man Singh* v. *Gaini* (1918) 40 All., 77; *Karali* v. *Asutosh* (1923) 50 Cal., 604: "Leprosy to be a ground of exclusion from inheritance must be of the sanious or ulcerous and not of the anaesthetic type". *Raju* v. *Ramasami* (1914) 16 M.L.T., 254.

(*o*) (1915) 38 Mad, 250, *supra.*

(*p*) Dig., II, 425, 434. See *Issur Chunder* v. *Ranee Dossee* 2 W.R., 125. The D.K.S. explains the text of Narada, which refers to a long and painful disease, as meaning a disease from the period of birth, D.K.S., III, § 11.

(*q*) See *ante* § 19.

(*r*) Mit., II, x, 1-4; Vivadachintamani, 242-243; W & B, 343; *Murarji* v. *Parvatibai* (1876) 1 Bom., 177, 185; *Venkatasubba Rao* v. *Purushottam* (1903) 26 Mad., 133, following *Futtick Chunder* v. *Juggut Mohinee Debee* 22 W.R., 348.

(*s*) *Ante* §§ 575, 576, 578.

(*t*) *Angammal* v. *Venkata* (1903) 26 Mad., 509; *Nagendra* v. *Benoy* (1903) 30 Cal., 521; *Ganga* v. *Ghasita* (1879) 1 All., 46; *Advyapa* v. *Rudrava* (1880) 4 Bom., 104, 122.

(*u*) *Ante* § 593.

be debarred from inheritance by the other disqualifications mentioned in this chapter with the exception of the one on the ground of murder, as the statute must be construed subject to public policy (*v*).

Outcastes.

§ 601. Outcastes are now relieved by the Caste Disabilities Removal Act (XXI of 1850). The Act gives relief not only against the forfeiture of rights of persons who are deprived of caste on account of their renouncing, or being excluded from the Hindu religion, but also against the forfeiture of the rights of those who lose caste on other grounds as well (*w*). The effect of the Act has been already fully stated (§ 43).

While the Act virtually sets aside the provisions of Hindu law which penalised renunciation of religion or exclusion from caste, it does not affect any other rule of Hindu law. Accordingly, where there are circumstances which, independent of change of religion or deprivation of caste, create a disability under Hindu law, it is not removed by the Caste Disabilities Removal Act as it only relieves against forfeiture due to change of religion or degradation. The incontinence of a Hindu widow is a bar to her claiming the estate of her husband (*x*). It may be of such an aggravated character, as, for instance, the union of a Brahman woman with a Sudra involving loss of caste. Act XXI of 1850 while it removes the effect of degradation does not touch the disability which is due to her disqualification based solely on her unchastity (*y*).

Murder, a disqualification.

A murderer is disqualified from succeeding to the estate of the murdered man, just as much as a murderer is disqualified from taking as a devisee or legatee under the

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(*v*) *Kenchava* v. *Girimallappa* (1924) 51 I.A., 368, 373, 48 Bom., 569, 576, "Statutes regulating heirship or descent . . . should be read as not intended to affect paramount questions of public policy or depart from well-established principles of jurisprudence"

(*w*) *Subbaraya* v. *Ramasami* (1900) 23 Mad., 171, 174 following *Srimati Matangini Debi* v. *Jay Kali* (1870) 5 B L R, 466, 493 The view expressed in *Nalinaksha* v *Rajani* (1931) 58 Cal., 1392 that the Act refers only to deprivation of caste by reason of change of religion and not on account of other degradation appears to be wrong. *Khunni Lal* v. *Gobind Krishna* (1911) 38 I A., 87, 33 All., 356 reversing (1907) 29 All., 487; *Mitar Sen* v. *Maqbal Hasan* (1930) 57 I.A., 313, A.I.R. 1930 P C., 251; See the Bengal Regulation VII of 1832, sec. 9.

(*x*) *Ante* §§ 532, 575.

(*y*) *Moniram Kolita* v. *Keri Kolitani* (1880) 7 I.A., 115, 116, 5 Cal., 776, 792, affg. 19 W.R., 367; *Matangini* v. *Jay Kali* (1870) 5 B.L.R., 466; *Sundari* v. *Pitambari* (1905) 32 Cal., 871, 873-874.

will of the murdered person (*z*). In *Kenchava* v. *Girimallappa*, the Privy Council decided that even apart from Hindu law, principles of justice, equity and good conscience exclude a murderer from succeeding to the estate of the murdered person and that it must be regarded as a paramount rule of public policy. The murderer should be treated as non-existent and not as one who forms the stock for a fresh line of descent (*a*). The opinion expressed in *Vedanayaga* v. *Vedammal* that while the murderer is only disentitled to the beneficial interest, the succession vests in him so as to pass it to those who can claim through him (*b*), was overruled. In *Gangu* v. *Chandrabhagabai*, the wife of a murderer was held entitled to succeed to the estate of the murdered man, not because the wife deduced title through her husband, but as a gotraja sapinda in her own right (*c*). This decision has been so explained by the Privy Council and stands unaffected.

Disability only personal.

§ 602. Except in the case of degradation, the disability is purely personal, and does not extend to the legitimate issue of the disqualified person (*d*). The person excluded however does not possess any interest which he can transmit to his own heirs (*e*). To what extent and in what cases a disqualified person can make a valid adoption has already been discussed (*f*).

Disabilities apply to females.

§ 603. All grounds of disqualification which would exclude males apply equally as against female heirs (*g*). So

(*z*) See for a case of intestacy, *Re. Sigsworth, Bedford* v. *Bedford* [1935] Ch. 89, approved in *Beresford* v. *Royal Insurance Company, Ltd.* [1937] 2 All.E.R, 243 (insurance and suicide), affirmed in [1938] 2 All. E.R., 602 H.L

(*a*) (1924) 51 I.A., 368, 374, 48 Bom., 569, 576 affg. (1921) 45 Bom., 768, *Vedammal* v. *Vedanayaga* (1908) 31 Mad., 100 (murderer's mother excluded). See Brih, XXII, 29, 30.

(*b*) (1904) 27 Mad., 591.

(*c*) (1907) 32 Bom., 275. In *Mt Sind Kaur* v. *Indar Singh* (1922) 3 Lah., 103 and *Har Bhagwan* v. *Hukam Singh* (1922) 3 Lah., 242, which were before the decision of the Privy Council in *Kenchava* v. *Girimallappa* the principle of the law of attainder was evidently applied so as to disqualify the sons of the murderer from inheritance. But the decision of the Privy Council makes it clear that the murderer should be treated merely as non-existent and that *title*, as distinguished from *relationship*, cannot be traced through him.

(*d*) Mit., II, x, 9-10; D. Bh., V, 17-19.

(*e*) *Mt. Bodha Kuer* v. *Mt. Sohodra Kuer* (1931) 11 Pat., 35 (the widow of a man who was deaf and dumb from his birth was excluded from tracing title through her husband).

(*f*) *Ante* § 142.

(*g*) Mit., II, x, 8; *Bakubai* v. *Manchhabai* (1864) 2 Bom. H.C. (A.C.J.), 5; *Vallabhram* v. *Bai Hariganga* (1867) 4 Bom. H.C. (A.C.J.), 135.

too it would seem they apply to succession in respect of stridhana property (*h*).

Not a forfeiture.

§ 604. Property which has once vested in a person, either by inheritance or partition, is not divested by a subsequently arising disability (*i*).

Lets in next heir.

The effect of a disability on the part of a person who would otherwise have been heir is at once to let in the next heir. For instance, if a man left an insane son and a daughter, the latter would take at once (*j*). So if he left an insane daughter, and sons by her, the latter only would succeed (*k*). In other words, the effect of the disqualification is, for purposes of succession, exactly the same as if the disqualified person were then dead or non-existent. If the incapacitated person has issue then living, or *en ventre sa mère*, who would, if the father were actually dead, be the next heir, such issue will be entitled to succeed. But he must succeed on his own merits. He will not be allowed to step into his father's place. For instance, if a man dies, leaving a brother, and an insane brother and his son, the brother will take the whole estate, because the nephew cannot inherit while a brother is in existence. So if a man dies leaving a sister's son, who is insane, and the sister's son himself has a son, the latter cannot in Bengal inherit, because the sister's grandson is not an heir (*l*)

Removal of disqualification.

§ 605. If and when the defect which produces exclusion is subsequently removed, the right to inheritance revives but not so as to divest the estate already vested in another person (*m*). In *Deo Kishen* v *Budh Prakash*, the widow of a man was insane at the time the succession opened to his estate. His daughter's son was held to be the heir in default of a nearer qualified heir. It was also held that although a person becomes qualified to succeed to property after the

(*h*) Banerjee, M & S, 5th edn, 361-362, *Charu Chunder* v. *Nobo Sunderi* (1891) 18 Cal., 327, 330, 333 where the question whether the rules of exclusion apply to stridhana property was left open.

(*i*) Mit., II, x, 6, *Deo Kishen* v. *Budh Prakash* (1883) 5 All., 509 (F.B.); *Kery Kolitany* v. *Mooneeram* (1880) 7 I.A., 115, 5 Cal., 776; *Sanku* v. *Puttamma* (1891) 14 Mad, 289, 294, *Abilakh Baghat* v. *Bhakhi* (1895) 22 Cal., 864, *Sellam* v. *Chinnammal* (1901) 24 Mad., 441.

(*j*) 2 W. MacN., 42.

(*k*) *Bodhnarain* v. *Omrao* (1870) 13 M.I.A., 519.

(*l*) Per Peacock, C.J, in *Kalidas* v. *Krishan* (1869) 2 B.L.R., 103, 115 F.B.; See, too, *Dwarkanath* v. *Mahendranath* (1873) 9 B.L.R., 198, 203; *sub nomine*, *Dwarkanath* v. *Denubundoo* 18 W.R., 305.

(*m*) Mit., II, x, 7; V. May., IV, xi, 2.

disqualification ceases, he cannot resume property from an heir who has succeeded to it in consequence of his disqualification existing at the time the succession opened (*n*).

As in such cases the Hindu law never allows inheritance strictly so called to be in abeyance, the rule against divesting an estate already vested applies both to Dayabhaga inheritance and to obstructed inheritance under the Mitakshara law. Where in default of a qualified heir the estate has vested in the next heir, it cannot be divested by the removal of disqualification of the excluded heir who, if he were not disqualified, would have taken only as an obstructed heir (*o*). So too if the incapacitated person has a son subsequently conceived, that son will not inherit, even though he would have been the next heir if he had been in legal existence at the time the succession opened (*p*). But the case is however different under the Mitakshara law where the disqualified person is the son of the deceased. Where his disqualification is congenital, he may have no right by birth though the Mitakshara makes no such distinction between congenital and supervening disqualification. Where the disqualification arises after birth and disentitles him to take his father's property or to a share on partition, it is clear that the right by birth which is already vested in him is not destroyed by the subsequent disqualification but lies dormant (*q*). Placitum 7 of the Mit., II, x, would undoubtedly apply to a case where the supervening disqualification is removed, and possibly also to a case where the congenital disqualification is subsequently removed. In the former case, but for the disqualification, he would have taken as an unobstructed heir whether the property was ancestral property or the father's self-acquired property. His right in such a case which was dormant becomes active and enforceable and if the disqualification ceased, he would be entitled to divest the person in whom the estate was vested in the meantime as for an obstructed inheritance. So too, if a son is born to a disqualified person, whether the disqualification was congenital or arose subsequent to his birth, that son would be entitled to divest the estate of any one who had taken the estate in the meantime. The views ex-

After-born son of disqualified heir.

(*n*) (1883) 5 All., 509 F.B.

(*o*) *Kalidas* v. *Krishan* (1869) 2 B.L.R., 103 (F.B.). [Dayabhaga case]; *Narasimharazu* v. *Veerabhadra Razu* (1894) 17 Mad., 287, 292; *Krishna* v. *Sami* (1886) 9 Mad., 64 (F.B.), 69-70; *Venkateswara Pattar* v. *Mankayyammal* (1935) 69 M.L.J., 410, 417.

(*p*) *Ibid.*

(*q*) *Muthusami* v. *Meenammal* (1920) 43 Mad., 464, *Venkateswara Pattar* v. *Mankayammal* (1935) 69 M.L.J., 410, 417; *Dilraj* v. *Rikeswar Ram* (1934) 13 Pat., 712, 728.

pressed by Peacock, C.J., in *Kalidas* v. *Krishan* (*r*), a Dayabhaga case, as to the Mitakshara rule were only *obiter dicta* and have been dissented from by a Full Bench of the Madras High Court in *Krishna* v. *Sami*, where the distinction between an obstructed and an unobstructed inheritance is clearly laid down (*s*). But in *Bapuji* v. *Pandurang* (*t*) where a man died leaving his undivided son born deaf and dumb and his undivided brother's son, it was held that the nephew succeeded to the entire family estate on the death of the uncle and that a son born to the disqualified son could not divest the nephew to the extent of his share. In *Pawadewa* v. *Venkatesh*, where a widow succeeded to her husband's estate in the presence of a disqualified son, it was held that a son born subsequently to the latter would not divest the widow's estate (*u*). Both these decisions overlook the well-established distinction between the lineal succession of the male issue which is unobstructed and collateral succession which is obstructed. Even the congenitally disqualified son's right being latent, would come into operation when the disqualification ceases, as it does in the case of an after-born son (*v*). The Allahabad, Bombay and Patna High Courts have recently adopted the view laid down in *Muthusami* v. *Meenammal* (*w*).

Entrance into religious order.

§ 606. One who enters into an order of devotion severs his connection with the members of his natural family. He is accordingly excluded from inheritance. Neither he nor

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(*r*) (1869) 2 B.L.R., 103 (F.B.).

(*s*) (1886) 9 Mad., 64 (F.B.).

(*t*) (1882) 6 Bom., 616 This case followed the Dayabhaga law as pointed out in [1937] All., 825 F B

(*u*) (1908) 32 Bom., 455. Neither this case nor the case in 6 Bom., 616 *supra* could be distinguished, (as the latter was in A I R. 1936 Bom., 191 *infra*), on the ground that as the son's disqualification was congenital, he took no right by birth The grandson's right by birth in the grandfather's property was in question in both the cases.

(*v*) *Krishna* v *Sami* (1886) 9 Mad., 64 F.B (born deaf and dumb); *Raghunatha* v. *Brozo Kishore* (1876) 3 I.A., 154, 1 Mad., 69; *Muthusami* v. *Meenammal* (1920) 43 Mad., 464, *Venkateswara Pattar* v. *Mankayyammal* (1935) 69 M.L.J., 410, 417. The Legislature has, in sec. 2 of the Hindu Inheritance (Removal of Disabilities) Act, 1928, adopted the view that congenital lunacy or idiocy which is subsequently removed will not be a ground of disqualification.

(*w*) (1920) 43 Mad., 464; *Mool Chand* v. *Chahta Devi* [1937] All., 825 F B., overruling *Tirbeni* v. *Muhammad* (1906) 28 All., 247; *Vithaldas Govindram* v. *Vadilal Chhagan Lal* A.I R. 1936 Bom., 191, 38 Bom. L.R., 257; *Mt. Dilraj* v. *Rikheswar Ram* (1934) 13 Pat., 712. The decision in *Man Singh* v. *Mst. Gaini* (1918) 40 All., 77, where it was held that a disqualified person was not disqualified to manage the joint family estate cannot be regarded as good law: [1937] All., 825, 832 (F.B.).

his natural relatives can succeed to the property held by the other (*x*). The persons who are excluded on this ground come under three heads, *viz.*, the *Vanaprastha*, or hermit; the *Sanyasi* or *Yati*, or ascetic; and the *Brahmachari*, or perpetual religious student. In order to bring a person under these heads, it is necessary to show an absolute abandonment by him of all secular property, and a complete and final withdrawal from earthly affairs. The mere fact that a person calls himself a *Byragi*, or religious mendicant, or indeed that he is such, does not of itself disentitle him to succeed to property (*y*). Nor does any Sudra come under this disqualification, unless by usage (*z*). This civil death does not prevent the person who enters into an order from acquiring and holding private property which will devolve, not of course upon his natural relations, but according to special rules of inheritance (*a*).

Must be absolute and final.

(*x*) Yajn, II, 137; Vasishtha, XVII, 27; Mit., II, x, 3; D. Bh., V, 11; V. May., IV, xi, 5; *Pandit Parma Nand* v. *Nihal Chand* (1938) 65 I.A., 252, A.I.R., 1938 P.C., 195, 42 C.W.N., 1013.

(*y*) *Teeluck* v. *Shama* 1 W.R., 209.

(*z*) *Dharmapuram Pandara Sannadi* v. *Virapandiyan* (1899) 22 Mad., 302; *Kondal Row* v. *Swamulavaru* (1917) 33 M.L.J., 63; *Somasundaram Chettiar* v. *Vaithilinga Mudaliar* (1919) 40 Mad., 846; *Ramdhan* v. *Dalmir* (1909) 14 C.W.N, 191; *Har Chandra Roy* v. *Atir Mohmud* (1913) 40 Cal., 545; *Baldeo Prasad* v. *Arya Priti Nidhi* (1930) 52 All., 789; *Krishnaji* v. *Hanmareddi* (1934) 58 Bom., 536.

(*a*) (1938) 65 I.A., 252, 42 C.W.N., 1013 *supra*.

CHAPTER XVI.

STRIDHANA.

Women's peculium.

§ 607. The subject of stridhana or woman's *peculium* occupies a large place in the Sanskrit law-books. It will be discussed in this chapter under four heads: (1) the meaning and scope of stridhana; (2) its divisions; (3) the powers of disposition over it and (4) its devolution. It would appear that woman's separate property was, from the most ancient times, known as stridhana and Mr. Kane says that passages in the Veda refer to it (*a*).

Meaning of Stridhana.

The term '*stridhana*' first occurs amongst the Smritis in the Dharmasutra of Gautama and literally means woman's property (*a*[1]). The Mitakshara and the authorities that follow it take the term 'stridhana' in its etymological sense as including all kinds of property of which a woman has become the owner, whatever the extent of her rights over it (*b*). Jimutavahana restricts the term to that property of the woman over which she has absolute control even during the life of her husband (*c*). The Vyavahara Mayukha, while following the Mitakshara's comprehensive signification, makes a distinction between technical and non-technical stridhana for purposes of inheritance, designating all those kinds of stridhana that are enumerated in the Smritis as technical stridhana *(paribhashika)* (*d*). In modern Hindu law, the term 'stridhana' denotes not only the specific kinds of property enumerated in the Smritis, but also other species of property acquired or owned by a woman over which she has either absolute control or control subject only to her husband's dominion. And she forms the stock of descent in respect of such property which accordingly devolves on her own heirs.

Recognised in early Hindu law.

§ 608. A text of Manu states that a wife, a son and a slave can have no property and that the wealth which they earn is acquired for him to whom they belong (*e*). This did

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(*a*) Kane., 4; one such passage is Rigveda, 1, 109, 2, see Jha, H.L.S., II, 526.

(*a*[1]) Jolly, T.L.L., 228.

(*b*) Mit., II, xi, 2-3.

(*c*) D. Bh., IV, i, 18.

(*d*) V. May., IV, x, 18, 24-27; *Manilal* v. *Bai Rewa* (1893) 17 Bom., 758; *Dayaldas* v. *Savitri Bai* (1910) 34 Bom., 385.

(*e*) Manu, VIII, 416. For a discussion of woman's rights from early times, see §§ 494-495.

not mean that they could not own property, but as explained by Manu's commentators, they could not dispose of their property independently (*f*). This view receives support from Gautama who distinctly admits the right of a woman to hold separate property and provides for its succession (*g*). Apastamba says that the share of the wife consists of her ornaments and the wealth which she may have received from her relations (*h*). Naturally a woman's property would commence at her bridal, and would consist of gifts from the bridegroom and his family and from her own family. The original bride-price payable to the parents appears to have become transformed into the dowry for the wife. There was evidently a usage that property upto the limit of two thousand *panas* should be given annually to the wife by the father, mother, husband, brother or kindred (*i*). This was exclusive of any immovable property, the gift of which was entirely optional (*j*). Besides the gift of affection from her parent's or from her husband's family, a married woman was at liberty to receive presents from strangers or make earnings by mechanical arts during coverture, but a restriction on her power of disposal was imposed upon her lest she became too independent and neglected her marital duties and the management of household affairs (*k*). A text of Manu which requires a righteous king to punish like thieves, such relatives as appropriate the property of women during their lifetime, is quoted in all the books (*l*). It is therefore quite clear that from early times, Hindu law recognised to the full the rights of women to hold separate property (*m*).

(*f*) Medhatithi, Vol. IV, 434-5; Kulluka on Manu, VIII, 416; Bombay ed, 339; Viramit., V, 1, 2, Setlur, II, 440; V. May., IV, x, 7. Both the Mayukha and the Viramitrodaya explain Manu's verse as referring to, in the case of the wife, only to that which is acquired by mechanical arts and the like.

(*g*) Gaut., XXVIII, 24-26.

(*h*) Apas., II, 6, 14, 9.

(*i*) Katyayana and Vyasa cited in the Smritichandrika, IX, i, 6-9; V. May., IV, x, 5; Vivadaratnakara, VIII, 6; Viramitrodaya, V, i, 1. D. Bh., IV, i, 10; Jha, H.L.S., II, 540.

(*j*) Smritichandrika, IX, i, 6-10; Parasara Madhaviya, para. 83, Setlur, 344; V. May., IV, x, 5.

(*k*) *Muthukaruppa* v. *Sellathammal* (1916) 39 Mad., 298, 299.

(*l*) Manu, VIII, 29.

(*m*) Sir Henry Maine in his "Early History of Institutions" says, "It is certainly a remarkable fact that the institution seems to have been developed among the Hindus at a period relatively much earlier than among the Romans". But he seems to think that it gradually deteriorated to an insignificant position (321-324). This certainly derives no support from the comprehensive and important position ascribed from the eleventh century to stridhana by the Mitakshara and other authorities which follow it.

Their rights of disposition over many and commoner species of property too were admitted, though over others, restrictions were imposed on fairly rational grounds. This is not surprising when it is remembered that restrictions were imposed over males also in respect of dispositions of property, and especially of immovable property (*n*). From the time of Gautama, the characteristic feature of woman's property was in the matter of succession, the preference given to the female over the male children—an obviously equitable rule. In the quaint phrasing of the Mitakshara, "Woman's property goes to her daughter because portions of her abound in her female children and the father's estate goes to his sons because portions of him abound in his male children" (*o*).

Early texts as to stridhana.

§ 609. The texts relating to stridhana, except in the matter of succession, are fairly adequate and clear. The principal definition is that contained in Manu: "What was given before the nuptial fire (*adhyagni*), what was given on the bridal procession (*adhyavahanika*), what was given in token of love (*dattam pritikarmani*) and what was received from a brother, a mother, or a father, are considered as the six-fold property of a woman" (*p*). The words, "a brother, a mother, or a father" appear to be given by way of illustration, for he says in the next verse: "Such property as well as a gift subsequent (*anvadheyam*) and what was given to her by her affectionate husband shall go to her offspring even if she dies in his lifetime" (*q*). Vishnu and Yajnavalkya give a similar enumeration, but both add to the list the compensation which is given to a superseded wife (*adhivedanika*) (*r*). The text of Yajnavalkya is: "What was given to a woman by the father, mother, her husband or her brother, or received by her at the nuptial fire or presented on her supersession (*adhivedanika*) and the like (*adi*), is denominated woman's property. That which is given (to the bride) by her bandhus, *sulka, anvadheyaka,* these her kinsmen (*bandhavas*) take if she die without issue" (*s*). Vijnanesvara explains

(*n*) (1916) 39 Mad, 298, 303 *supra.*

(*o*) Mit, I, III, 10

(*p*) Manu, IX, 194.

(*q*) Manu, IX, 195.

(*r*) Vishnu, XVII, 18, Yajn, II, 143; Vijnanesvara says that the superseded wife should receive as much as is bestowed upon the second wife, Mit, II, xi, 35.

(*s*) Yajn, II, 143, 144, as explained by Katyayana cited in Mit., II, xi, 7. "What is received by a woman after marriage from the kinsmen of her lord, or from those of her parents, is called a gift subsequent (*anvadheya*)", Banerjee, M & S, 5th edn., 324.

that the term '*adi*' includes "property which she may have acquired by inheritance, purchase, partition, seizure, and finding" (*t*) and says: "The term 'woman's property' conforms in its import with its etymology and is not technical". According to him, Manu's six-fold classification is only illustrative (*u*). Obviously he is right, for, Manu, Yajnavalkya and all the other Smritis enumerate more than six kinds of stridhana.

§ 610. The kinds of stridhana enumerated in the Smritis are:— **Kinds of stridhana in the Smritis.**

(1) What is given before the nuptial fire, *adhyagni* (*v*);

(2) What a woman receives while she is conducted from her father's house to her husband's dwelling, *adhyavahanika* (*w*);

(3) What is bestowed in token of love, *pritidatta* or *bhartrudaya* (*x*);

(4) *Pritidatta* or affectionate present, as defined by Katyayana, is: "whatever has been given to a woman through affection by her mother-in-law or her father-in-law as also wealth termed *padavandanika*, that is, that which is received by a woman at the time of bowing at the feet of elders" (*y*);

(*t*) Mit., II, xi, 2. The Mitakshara says: "All these descriptions of property are denominated woman's estate by Manu and the rest". The criticism by the Judicial Committee in *Debi Mangal Prasad* v. *Mahadeo Prasad* (1912) 39 I.A., 121, 127, 34 All, 234, that the reference by Vijnaneswara to Manu is not borne out by that authority as given in para. 4 is due to Mr. Colebrooke's erroneous translation which Dr. Jolly has corrected and explained, T L L., 245. Vijnaneswara does not say that his own expansion of '*adi*' was denominated by Manu as stridhana, but that the word in the text of Yajnavalkya '*parikirtitam*' 'denominated' means 'by Manu and the rest' referring only to the categories in the Smritis. Apararka also takes 'etc.' to imply other kinds of stridhana, 21 M L.J (Jour.), 428.

(*u*) Mit, II, xi, 3-4.

(*v*) Manu, IX, 194; Yajn, II, 143, Katyayana says 'Whatever is given to women at the time of their marriage before the nuptial fire, which is the witness of nuptials, is denominated by sages *adhyagnika stridhana*", cited in the Smritichandrika, IX, i, 2, V. May, IV, x, 3; Dig., II, 585, Banerjee, M & S, 5th edn, 322; Jha, H L S., II, 528.

(*w*) Manu, IX, 194; Katyayana cited in Mit, II, xi, 5.

(*x*) Manu, IX, 194; Nar., XIII, 8, V. May., IV, x, 18; D. Bh., IV, i, 7; the husband's donation of Narada is the same as Manu's '*pritidatta*'; Banerjee, M & S, 5th edn., 320-321 The Vyavahara Mayukha uses the expression '*pritidatta*' for husband's donation, V. May., IV, x, 18.

(*y*) Katyayana cited in Mit., II, xi, 5; Smritichandrika, IX, i, 2; V. May., IV, x, 3; Viramit., V, i, 3, Setlur, II, 440; the Vivadachintamani's reading is '*lavanyarjita*' or acquisition through amiability, p. 257; Dig., II, 586. Balambhatta identifies Manu's '*dattam pritikarmani*' as referring to '*pritidattam*' of Katyayana, Mit., Setlur's edn., p. 844.

(5) Gifts made by father, mother or brother (*z*); (according to Manu, these are counted as three kinds of stridhana).

(6) Gift subsequent, that is, that which is received from her husband's family or her father's family subsequent to marriage (*anvadheyaka*) (*a*);

(7) Gift on supersession (*adhivedanika*). A present made to a woman on her husband's marriage to another wife is the gift on supersession (*b*);

(8) Gift by bandhus (*bandhudatta*), that is, what is given to the bride by the relations of her mother or of her father (*c*);

(9) *Sulka* or the fee which is variously described (i) as the gratuity for the receipt of which a girl is given in marriage (*d*); (ii) as being a special present to the bride to induce her to go cheerfully to the mansion of her lord (*e*); and (iii) as what is received as the price of household furniture, conveyance, milch-cattle and ornaments (*f*).

A text of Devala cited in the Smritichandrika and the Viramitrodaya says, "Her subsistence (*Vritti*), ornaments, fee or sulka, or her gains are the separate property of a woman" (*g*).

(*z*) Manu, IX, 194, Yajn, II, 143.

(*a*) Manu, IX, 195, Yajn, II, 144, Katyayana cited in Mit, II, xi, 7; Mr. Mandlik's translation that it is property received from the family of the bridegroom is not complete The Mitakshara understands it, as Katyayana explains it, as meaning gifts from the parents as well as the husband's family.

(*b*) Yajn., II, 143, Vishnu, XVII, 18, Mit., II, xi, 34.

(*c*) Yajn, II, 144, Mit, II, xi, 6.

(*d*) Yajn, II, 144, Mit, II, xi, 6.

(*e*) Vyasa, Dig, II, 592, D. Bh., IV, iii, 21, another explanation of sulka is given by the Dayabhaga· 'What is given to a woman to induce her husband or others of her family who are artisans to do work', D. Bh., IV, iii, 20; Viramit, V, i, 3.

(*f*) Katyayana cited in the Smritichandrika IX, i, 5; Vyavahara Mayukha, IV, x, 3; Viramit, V, i, 3; Vivadachintamani, p 258.

(*g*) Smritichandrika, IX, 2, 15; D. Bh., IV, i, 15. '*Labham*' or '*gains*' signifies what is received by a woman from any person who makes a gift at the time of propitiating Gauri or some other goddess, Viramit., V, i, 7, Setlur, p. 443, following Smritichandrika; '*Labham*' is interest received according to V. May., IV, x, 10.

Saudayika and non-saudayika.

§ 611. Katyayana indicates a cross-classification of stridhana properties, with reference to a woman's independent powers of disposal over it, into *saudayika* and non-saudayika stridhana (*h*). "That which is obtained by a married woman or by a maiden, in the house of her husband or of her father, from her brother [from her husband] or from her parents, is termed '*saudayika*'" (*i*). For the purpose of succession, another cross-division of stridhana is into *yautaka and ayautaka.* According to the Viramitrodaya, whatever is given at the time of marriage to the bride and the bridegroom sitting upon the same seat is called *yautaka* through the derivation. 'what belongs to the '*yutau*' (or the two united) is '*yautaka*'. *Ayautaka* is that which is not *yautaka* (*j*). In *Muthukaruppa* v. *Sellathammal,* it was said, "*Yautaka* is that which is given at the nuptial fire. . . . It includes all gifts made during the marriage ceremonies. *Ayautaka* is gift made before or after marriage. *Saudayika* includes both *yautaka* and *ayautaka* not received from strangers. It is defined to be gifts from affectionate kindred" (*k*). In Bombay, stridhana is divided for purposes of succession, in accordance with the Mayukha, into *paribhashika* (technical) and non-paribhashika stridhana, the former referring to the kinds mentioned in the texts and the latter to the others. Sulka is treated in all the schools as a category by itself for purposes of succession.

Yautaka and ayautaka.

The Mitakshara scheme.

§ 612. When Vijnanesvara expanded the term '*adi*' in Yajnavalkya's text as including property acquired by inheritance, purchase, partition, seizure and finding and laid down that woman's property must be understood in its etymological sense, his intention evidently was to systematise the law on the subject. Following Gautama's text, he merely pointed out that the modes of ownership were common to all,

(*h*) The Vivadachintamani apparently understands *saudayika* as a cross-classification and says that it is the name by which the different kinds of stridhana are known, p. 259; Jha, H.L.S., II, 529-531; Apararka, 21 M.L.J. (Jour.), 428.

(*i*) Katyayana cited in Mit., II, xi, 5; Smritichandrika, IX, ii, 4-5; V. May., IV, x, 8; Viramit., V, i, 3, a text of Vyasa cited in the Smritichandrika, IX, ii, 6 is to the same effect. The Dayabhaga reads 'from her husband' instead of 'from her brother,' D. Bh, IV, i, 21. The Viramitrodaya also notices this different reading, Viramit., V, i, 3, Setlur, p. 440; Dig., II, 594.

(*j*) Viramit., V, 2, 2, Setlur, p. 446; V. May., IV, x, 17; Smritichandrika, IX, iii, 13; Vivadachintamani 267-268, D. Bh., IV, ii, 13-15. The word '*Yautaka*' occurs in Manu, IX, 214, meaning 'separate property' according to Medhatithi and Kulluka. See also Dr. Jolly, T.L.L., 213.

(*k*) (1916) 39 Mad., 298, 300; *Venkareddi* v. *Hanmant* (1933) 57 Bom., 85.

irrespective of sex. But as Dr. Jolly points out, he did not lay down that all the property which a woman holds as stridhana is to be at her absolute disposal (k^1). Vijnanesvara expressly refers to property regularly inherited by a maiden as stridhana in Mit, II, xi, 30 (l). It would appear however that he did not intend by his definition to include in stridhana the property inherited by a woman as heir to her husband or to her son. The very rules of stridhana succession which he lays down postulate as a condition the legal possibility of the acquirer's male issue or her husband succeeding to her property on her death. For, in the absence of the daughter and the daughter's children, her son and son's son are to take it and in their default, her husband. But obviously there can be no conceivable possibility of her male issue or her husband taking on her death the property which a woman inherits on her husband's death only in default of male issue (m) Similarly the son's property which a woman inherits as mother, in default of the daughter or the daughter's son, could not have been regarded as stridhana. When Vijnanesvara referred to inheritance and partition, he referred to those modes of acquisition, not as applicable in all cases, but only where they were not otherwise provided for and were consistent with his scheme of stridhana succession. He evidently intended to include as stridhana, property which a daughter acquired from her father or mother and the property inherited by a daughter's daughter from her grandmother. And on this matter, Nilakantha understood the Mitakshara aright. But whatever the correct interpretation of the Mitakshara may be, his view that property inherited by a woman or allotted to a woman for her share will, in some cases, be stridhana has again and again been rejected

Property inherited from males

§ 613. It is now settled beyond doubt as well under the Mitakshara as under the Dayabhaga law, that property inherited by a woman from a male is not her absolute property and passes on her death not to her stridhana heirs, but to the heirs of the male from whom she inherited it (n). It

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(k^1) T.L.L., p. 251, but see Viv Chint 263, Jha, H.L.S, II, 530.

(l) But see *Janakisetty* v *Miriyala* (1909) 32 Mad, 521 dissenting from *Venkatarama* v *Bhujanga* (1896) 19 Mad, 107, which explained *Narasayya* v. *Venkayya* (1892) 2 M.L.J, 149, *Virasangappa* v. *Rudrappa* (1896) 19 Mad, 110

(m) Mit, II. xi, 9, 25.

(n) *Bachiraju* v. *Venkatapadu* (1865) 2 M.H.C, 402, *Kutti Ammal* v *Radakristna* (1875) 8 M.H.C, 88; *Phukar Singh* v. *Ranjit Singh* (1878) 1 All, 661, *Jullessur Kooer* v *Uggur* (1883) 9 Cal., 725; *Thakor Deyhee* v. *Rai Baluk Ram* (1866) 11 M.I.A., 139;

is equally well settled that the property which a woman has taken by inheritance from a female is not stridhana for the purpose of inheritance; she does not take it for an absolute and alienable estate, but for a qualified estate with reverter after her death to the heirs of the female who was the last full owner (*o*). The case of a maiden daughter succeeding

and from a woman not stridhana.

Bhugwandeen v. *Myna Baee* (1867) 11 M.I.A., 487; *Chotay Lall* v. *Chunnoo Lall* (1878) 6 I.A., 15, 4 Cal, 744; *Muttu Vaduganadha Tevar* v. *Dorasinga Tevar* (1881) 8 I.A, 99, 3 Mad, 290; *Venkayamma* v. *Venkataramanayamma* (1902) 29 I.A, 156, 25 Mad., 678; *Sheo Shankar* v. *Debi Sahai* (1903) 30 I.A., 202, 25 All, 468. By special custom, a Hindu widow might be entitled to her husband's property absolutely. *Krishnabai* v. *Secretary of State* (1920) 42 All., 555; *Hukum Chand* v. *Sital Prasad* (1928) 50 All., 232; *Ayisvaryanandaji* v. *Sivaji* (1926) 49 Mad., 116, 152, 153. As to the effect of the new Act in all such cases, see § 591.

(*o*) *Sheo Pertab* v. *Allahabad Bank* (1903) 30 I.A., 209, 25 All., 476; (1903) 30 I A, 202, 25 All, 468 *supra*; *Sham Biharilal* v. *Ram Kali* (1923) 45 All, 715, *Ram Kali* v. *Gopal Dei* (1926) 48 All., 648; *Hukum Chand* v. *Sital Prasad* (1928) 50 All., 232; *Sengamalathammal* v. *Velayuda* (1863) 3 M.H.C, 314; *Subramania* v. *Arunachalam* (1905) 28 Mad., 1, 9-12 (F B.); *Raghavalu* v. *Kamsalya* A I.R. 1937 Mad., 607 (co-wife); *Virasangappa* v. *Rudrappa* (1895) 19 Mad., 110, 118; *Raju* v. *Ammani* (1909) 29 Mad., 358; (1926) 49 Mad., 116 *supra*; *Huri Doyal Singh* v. *Grish Chundra* (1890) 17 Cal., 911; *Jogendra* v. *Phani Bhushan* (1916) 43 Cal., 64; *Mohendra Narayan* v. *Dakshina Ranjan* A I R. 1936 Cal, 34, 61 C L J., 537; *Sisir Kumud Saha* v *Jogneswar* (1938) 42 C W.N, 359. The actual decision (1903) 30 I.A., 202 *supra*, was that the property which a woman has taken by inheritance from a female is not her stridhana in such a sense that on her death it passes to her stridhana heirs in the female line to the exclusion of males The headnote in that decision is in accordance with the concluding paragraph of the judgment. In that case, Jagarnath, the daughter succeeded to the stridhana of Jadunath and one of the questions was whether the succession on the death of Jagarnath devolved on her sons or on her daughters, in other words, whether it passed to the daughter's son or the daughter's daughter. The decision of the Judicial Committee was discussed by the Madras High Court in *Subramania* v. *Arunachellam* (1905) 28 Mad., 1, 9, and understood altogether differently. The explanation of the difficulty as given in Mr Mayne's own words who argued as counsel for the successful appellant was that the line of female descent stated in the early books only applied to the special sort of *stridhana* described by them. That, with the exception of the Mitakshara and the commentaries which avowedly followed it, the writers who gave only the special female line of descent mentioned no other sort of *stridhana* except the earliest sort (Vivada. Chit., 256-269; Madhav., 40), that the works, such as the Dayabhaga, the Daya Krama Sangraha, the Smriti Chandrika, and the Mayukha, which enumerated various sorts of woman's property, assigned the special line to the special species, and gave different lines to the other sorts: (D. Bh., ch. IV, sect. 2, D.K.S., II, 3, 4, Sm. Ch., IX, 3; V. May., IV, 10). Admittedly no definite rule could be derived from these works, but they showed a general tendency in such cases to admit male heirs, either along with, or in preference to, females. The only cases which had been decided upon this subject came from Bombay, and in these, West, J., and Telang, J, while differing upon the rule to be laid down, had agreed in each laying down a rule which preferred males to females. *Vijiarangam* v *Lakshuman*, (1871) 8 Bom H C (O C J.), 244; *Bai Narmada* v. *Bhagwantrai* (1888) 12 Bom., 505; *Manilal Rewadat*

to the stridhana property of her mother is no exception to this rule (*p*).

Bombay.

§ 614. In Bombay, however, property inherited from a male by a woman other than the widow (*q*), mother (*r*), paternal grandmother (*s*), or the widow of a gotraja sapinda (*t*), is her stridhana. Thus a daughter (*u*), sister (*v*), niece (*w*), grandniece (*x*), and daughters of sagotra-sapindas take the property inherited by them from males absolutely. So also property inherited by a female from a female is stridhana in Bombay. In *Gandhi Maganlal* v. *Bai Jadab*, the majority of a Full Bench held that the general rule as to females inheriting the property in the Bombay Presidency is that they take it absolutely, and the limited estate is an exception applicable to cases of females

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v. *Bai Rewa* (1893) 17 Bom., 758, all of which were cited in the judgment of the Privy Council with apparent approval. It may be presumed that this argument was accepted by their Lordships, but it is to be regretted that neither the difficulty nor its solution was noticed in the judgment. In the case of *Subramaniam* v. *Arunachelam* (1905) 28 Mad., 1, 9, the Court did not understand the line which had been taken in the argument before the Privy Council, nor indeed could they have understood it, as it was not noticed in the judgment, and could not be discovered from the report.

(*p*) *Janakisetty* v. *Miriyala* (1909) 32 Mad., 521 dissenting from *Venkatarama* v *Bhujanga* (1896) 19 Mad., 107.

(*q*) *Bhaskar* v. *Mahadeo* (1869) 6 Bom. H C (O C J.), 1.

(*r*) *Vinayak* v *Lakshmibai* (1861) 1 Bom H C., 117, 122; *Narsappa* v *Sakharam* (1869) 6 Bom. H C. (A C J.), 215; *Vrijbhukandas* v. *Bai Parvati* (1908) 32 Bom., 26

(*s*) *Dhondi* v. *Radhabai* (1912) 36 Bom., 546.

(*t*) *Lulloobhoy* v *Cassibai* (1881) 7 I A., 212, 5 Bom., 110; *Gadadhar* v. *Chandrabaga Bai* (1892) 17 Bom., 690, F.B., *Bharmangavda* v. *Rudrapagauda* (1880) 4 Bom., 181, *Madhavram* v. *Dave* (1897) 21 Bom., 739, *Narayan* v *Waman* (1922) 46 Bom., 17.

(*u*) *Balwant Rao* v. *Baji Rao* (1920) 47 I A., 213, 48 Cal., 30; *Pranjivandas* v *Devkuvarbai* (1861) 1 Bom H C., 130, *Navalram* v. *Nandkishore* (1861) 1 B H.C., 209, *Vijiarangam* v. *Lakshman* (1871) 8 Bom. H C., 244, *Haribhat* v. *Damodarbhat* (1879) 3 Bom., 171; *Babaji* v. *Balaji* (1881) 5 Bom., 660, *Bulakhidas* v. *Keshavlal* (1882) 6 Bom., 85, *Bhagirthi Bai* v. *Kahnujirav* (1887) 11 Bom., 285 F.B.; *Janakibai* v *Sundra* (1890) 14 Bom., 612, *Gulappa* v *Tayawa* (1907) 31 Bom., 453, *Vithappa* v *Savitri* (1910) 34 Bom., 510; *Kisan* v. *Bapu* A I.R. 1925 Bom., 424, 27 Bom. L.R., 670, *Jawahir* v. *Jaran Lal* (1924) 46 All., 192.

(*v*) *Vinayak* v *Lakshmibai* (1861) 1 Bom H C., 117, affirmed in (1864) 9 M.I.A., 516, 520; *Bhaskar Trimbak* v. *Mahadeo* (1869) 6 Bom H C. (O.C.J.) 1; *Rindabai* v. *Anacharya* (1891) 15 Bom., 206.

(*w*) *Madhavram* v *Dave* (1897) 21 Bom., 739, 744.

(*x*) *Tuljaram* v. *Mathuradas* (1881) 5 Bom., 662.

entering the family by marriage and inheriting from a male and not from a female (§ 636) (*y*).

§ 615. In *Debi Mangal Prasad* v. *Mahadeo Prasad*, it was held by the Judicial Committee that immovable property obtained by a Hindu woman on partition of the joint family property is not her stridhana in such sense that on her death it passes to her stridhana heirs, but reverts on her death to the next heirs of her husband (*z*). **Share allotted on partition not stridhana.**

§ 615-A. The actual point decided in the above case was that there was no substantial difference in principle between a woman's property acquired by inheritance and that acquired by partition. It has however been suggested that the decision of the Privy Council limits stridhana to the kinds enumerated in the Smriti texts (*a*). This does not appear to be correct. On the other hand, their Lordships thought that the word *'adi'* would include property acquired in any other manner *ejusdem generis* with the modes mentioned by Yajnavalkya. It is difficult to see any reason why the enumeration mentioned in the Smritis should be taken as exhaustive and not as illustrative only which is the uniform opinion of all the Mitakshara authorities. Rules of Hindu law are not so inelastic as to be incapable of application to any acquisitions which were not known when the Smriti rules were first formulated (*b*). The Smriti texts are in terms not restrictive and the very fact that one Smriti adds to the list given in another shows that the subject of stridhana was in a stage

(*y*) (1900) 24 Bom., 192 (F.B.) (grandmother inheriting granddaughter's stridhana takes absolutely); *Kesserbai* v *Hunsraj* (1906) 33 I A, 176, 30 Bom., 431, 452; *Narayan* v. *Waman* (1922) 46 Bom., 17, *Parshotham* v. *Keshavlal* (1932) 56 Bom., 164. The doctrine that property which has been inherited by a woman should revert on her death to the heirs of the last male owner is not to be extended to the devolution of stridhana, *Manilal v. Bai Rewa* (1892) 17 Bom., 758; *Bhau* v. *Raghunath* (1906) 30 Bom., 229, 236; *Fakirgauda* v. *Dyamava* (1933) 57 Bom., 488, 495 (non-technical watan property).

(*z*) (1912) 39 I.A., 121, 34 All., 234; *Hemangini* v. *Kedarnath* (1889) 16 I.A, 115, 16 Cal., 758; *Sorolah* v. *Bhoobun* (1888) 15 Cal., 292; *Hridoy* v. *Behari Lal* (1906) 11 C.W.N., 239; *Shashi Bhusan* v. *Hari Narain* (1921) 48 Cal., 1059, 1065; *Bhugwandeen* v. *Myna Baee* (1876) 11 M.I.A., 487, 514 (where the point was left open); *Krishna Lal* v. *Nandeshwar* (1919) 4 Pat. L.J., 38 (share allotted to grandmother not stridhana in the Mithila school); *Munni Lal* v. *Phula* (1928) 50 All., 22; *Bhagwantrao* v. *Punjaram* A.I.R. 1938 Nag., 1. The decisions to the contrary in *Chhidu* v. *Nawbat* (1902) 24 All, 67 and in *Sri Pal Rai* v. *Surajbali*, *ibid*, 82, are in effect overruled. Where however the deed of partition in terms confers an absolute estate upon a woman, she takes it as her stridhana, *Sahab Rai* v. *Shafiq Ahmad* (1927) 31 C.W.N., 972 P.C.; *Bolye Chund* v. *Khetturpaul* (1873) 11 B.L.R., 459.

(*a*) *Muthukaruppa* v. *Sellathammal* (1916) 39 Mad., 298, 299.

(*b*) *Ram Gopal* v. *Narain* (1906) 33 Cal., 315, 319.

of development. None of the Smriti texts can be held to cover modern conditions of life or to rule out as stridhana, acquisitions which a woman might make for herself and over which she would have full powers of disposition. A woman may choose to marry late or not at all. She may be a teacher, an author or a great singer, a medical practitioner or a lawyer, a minister or a public servant. She can carry on a trade or business and earn wealth in a variety of ways. A text of Katyayana says: "Wealth acquired by mechanical arts or received through affection from any but the kindred is subject to her husband's dominion. The rest is stridhana". The Viramitrodaya explains it as meaning that the text is not a denial of its being a woman's property but that it cannot be alienated by her without the consent of her husband though it belongs to her (*c*). The Mayukha indeed treats property acquired by mechanical arts, by spinning and the like, as non-technical stridhana (*d*).

All other acquisitions are stridhana.

§ 616 With the exception of property inherited by a woman or allotted to her at a partition, Vijnanesvara's view as to the other modes of acquisition has been accepted by the Courts. Accordingly.—

I All savings made by a woman with her stridhana and all purchases made with it are of course stridhana(*e*). In *Sri Ram* v *Jagdamba*, a Hindu widow in possession of her husband's estate acquired property through the exercise of a right of pre-emption which she had in that character She however paid the pre-emption money, not by raising it on the security of her husband's estate or out of its income, but by borrowing it on the security of the estate purchased It was held that the right of pre-emption though incidental to her husband's estate, did not prevent the acquisition from being stridhana (*f*).

(*c*) Viramit, V, 1, 2, Setlur, p 439, Smriti Ch, IX, 1, 16, V May, IV, x, 7, D Bh, IV, 1, 19, Dig, II, 589, Banerjee M & S, 5th ed, 344; Jha, H L S, II, 544, *Saleamma* v *Latchman* (1898) 21 Mad, 100.

(*d*) V. May, IV, x, 26

(*e*) *Luchmun* v *Kalli Churn* (1873) 19 W R, 292 (P C), *Venkata Rama* v. *Venkatasurya* (1880) 2 Mad, 333 (P C), affirmg (1877) 1 Mad, 281. See *Hurst* v. *Mussoorie Bank* (1878) 1 All., 762

(*f*) (1921) 43 All., 374, F.B.; *Tadiboyina* v. *Kattamma* (1915) 17 M.L.T., 363 (purchase of property by mortgaging property purchased).

II. So also money or property given to a woman absolutely in lieu of maintenance, and purchases made with such money or property are both stridhana (*g*).

III. Of course the income of her husband's estate is absolutely at the disposal of the widow and would be her stridhana. Investments or purchases made with it for her own benefit are her stridhana devolving as such on her own heirs and she is entitled to dispose of them by gift *inter vivos* or by will (*h*).

IV. So also gifts or grants to her by strangers, whether made during coverture or when she is a widow, will be her stridhana (*i*).

V. A wife's earnings and property acquired by her own exertion are equally stridhana, for instance, properties acquired with the profits of a trade (*j*).

VI. Property obtained by a woman under a compromise or settlement of any claim which she makes is her stridhana where the property is granted to her absolutely (*k*).

(*g*) *Subramanian* v. *Arunachelam* (1905) 28 Mad., 1, 7-8; *Nellai Kumaru* v. *Marakathammal* (1876) 1 Mad., 166; *Manilal* v. *Bai Rewa* (1893) 17 Bom., 758; *Veeraraghava* v. *Kota Reddi* (1916) 31 M.L.J., 465. Arrears of maintenance are also stridhana, *Court of Wards* v. *Mohessur* 16 W.R., 76. Unrealised rents and profits of a woman are her stridhana, *Mohinee Mohun* v. *Rash Biharee Ghose* [1937] 2 Cal., 97.

(*h*) *Balasubrahmanya* v. *Subbiah* (1938) 65 I A., 95, 104, 42 C.W N, 449 affg. (1935) 69 M L.J, 632, *Sowdaminee Dossee* v. *The Administrator-General* (1893) 20 I A, 12, 20 Cal., 433, *Venkatadri Appa Row* v. *Parthasarathy Appa Row* (1925) 52 I.A, 214, 48 Mad., 312, 321, 324 (income of an estate held in court pending litigation as to title), *Kailasanath* v. *Vadivanni* (1935) 58 Mad, 488, *Aiswary-anandji* v. *Sivaji* (1926) 49 Mad, 116, 151, *Bhugbutti* v *Bholanath* (1875) 1 Cal, 104 P.C., [1937] 2 Cal, 97 *supra*, *Ram Das* v. *Ram Sewak* A I R. 1935 Oudh, 362. §§ 640, 641.

(*i*) *Salemma* v. *Lutchmana* (1898) 21 Mad, 100 (enfranchised service inam in favour of married woman during coverture); see also *Venkata Jagannadha* v *Virabadrayya* (1921) 48 I A., 244, 44 Mad., 643; *Palaniyandi* v. *Velayudha* (1929) 52 Mad., 6, *Brij Indar* v. *Janki Koer* (1877) 5 I A, 1 (property acquired by a widow under a *sannad* from Government), *Bai Narmada* v. *Bhagwantrai* (1888) 12 Bom., 505.

(*j*) *Muthu Ramakrishna* v. *Marimuthu* (1915) 38 Mad., 1036; *Mumma* v. *Krishna* A I.R. 1933 Rang., 347.

(*k*) *Nathu Lal* v. *Babu Ram* (1936) 63 I A., 155, 40 C.W N., 481; *Soudaminee* v. *Administrator-General* (1893) 20 I.A, 12, 20 Cal., 433, 438-9; *Sambasiva* v. *Venkatesvara* (1908) 31 Mad., 179; *Vatsalabai* v. *Vasudev* A.I.R. 1932 Bom., 83; *Parshottam* v. *Keshavlal* (1932) 56 Bom., 164; *Rai Rajeshwar* v. *Harikishen* (1922) 8 Luck., 538, A.I.R. 1933 Oudh, 170. It is otherwise where she claims and obtains it only as her husband's estate· *Rabutty Dossee* v. *Sibchundar* (1854) 6 M.I.A., 1; *Ganpat Rao* v. *Ram Chandar* (1889) 11 All., 296. § 642.

VII. When a Hindu woman takes possession of property adversely to the true owner, she may either prescribe for a Hindu woman's estate or for an absolute estate. In the latter case it will be her stridhana property (*l*). But where the circumstances are such as to show that she claimed as heir to a male or a female and consequently for the limited estate of a Hindu woman, the property so acquired will become part of that estate (*m*).

Her power of disposition.

§ 617. The Mitakshara, in treating of woman's property, includes under that term all kinds of stridhana lawfully obtained by a woman, in its most general sense, and lays down no rules whatever as to her power of disposal over them (*n*). The question is fully examined in the Smriti-chandrika, and in the Viramitrodaya, where distinctions are drawn as to a woman's power of alienating the different kinds of stridhana. Jimutavahana, however limits the term *stridhana* to that property "which she has power to give, sell, or use independently of her husband's control" (*o*). But it is evident that a woman may have absolute power over her property, as regards all other persons but her husband, and yet be fettered in her disposal of it by him. A woman's stridhana or separate property therefore falls under two heads: 1st, property over which she has absolute control; and 2nd, property as to which her control is limited by her husband, but by him only.

Property over which she has absolute control.

§ 618. FIRST:—The absolute dominion of a woman over her *saudayika* property was admitted from the earliest times. Katyayana declares: "The independence of women who have

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(*l*) *Sham Koer* v *Dah Koer* (1902) 29 I A, 132, 29 Cal, 664; *Lacchan Kunwar* v. *Manorath Nath* (1895) 22 I A, 25, 22 Cal, 445; *Mahabir Prasad* v *Adhikari* (1896) 23 Cal, 942, P C, *Mohim Chunder* v. *Kashi Kant* (1897) 2 C W N, 161, 162, *Kanhai Ram* v *Amri* (1910) 32 All, 189, *Uman Shankar* v *Mt. Aisha* (1923) 45 All, 729; *Kali Charan* v. *Piari* (1924) 46 All, 769; *Bansidhar* v *Dulhatia* (1925) 47 All., 505, *Rikhdeo* v *Sukdeo* (1927) 49 All., 713, *Suraj Balli* v. *Tilakdhari* (1928) 7 Pat, 163, *Varada Pillai* v. *Jeevarathnammal* (1920) 46 I A, 285, 43 Mad, 244, *Satgur Prasad* v *Kishore Lal* (1919) 46 I A, 197, 42 All, 152, *Mt. Maluka* v. *Pateshar* (1926) 1 Luck, 273, A.I R 1926 Oudh, 371; *Mt Hubraji* v. *Chandrabali* (1931) 6 Luck, 519, A I R. 1931 Oudh, 89 (2)

(*m*) *Lajwanti* v. *Safa Chand* (1924) 51 I.A., 171, 5 Lah., 192; *Vengamma* v. *Chelamayya* (1913) 36 Mad, 484, *Dhurjati* v. *Ram Bharos* (1930) 52 All, 222; *Parbati* v. *Ram Prasad* (1932) 7 Luck., 320, A.I R. 1933 Oudh, 92.

(*n*) Mit., II, xi, 2, 3.

(*o*) D. Bh., IV, i, 18, 19; D K.S., II, ix, 24; Raghunandana, ix, 1.

received the *saudayika* wealth, is desirable (in regard to it), for it was given (by their kindred) for their maintenance out of affection. The power of women over *saudayika* at all times is celebrated both in respect of gift and sale, according to their pleasure, even in (the case of) immovables" (*p*). The Smritichandrika would confine *saudayika* to *yautaka* or the like, received by a woman from her own parents or persons connected with them, in the house of either her father or her husband, from the time of her betrothment to the completion of the ceremony to be performed on the occasion of her entering her lord's house (*q*). But this view has not been followed (*r*). The texts of Katyayana and Vyasa have been explained by other commentators as including gifts received by her from her husband, and from others after her marriage (*s*). The decisions of courts take the same view. Provided the gift is made by her husband or by her parents, or by relatives either of her husband or of parents, it is immaterial whether it is made before marriage, at marriage, or after marriage; it is equally her *saudayika* (*t*). In other words, *saudayika* means all gifts and bequests from relations, but not gifts and bequests from strangers. *Saudayika* of all sorts are absolutely at a woman's own disposal. She may spend, sell, devise, or give it away at her

(*p*) Katyayana cited in Vyavahara Mayukha, IV, x, 8 (Mandlik's trans., p. 94); Smritichandrika, IX, ii, 3, Viramitrodaya, V, i, 3, p. 440; D. Bh., IV, i, 21. Vyasa quoted in the Smritichandrika (IX, ii, 1-2) says, "What has been given to a woman by her husband, she may consume as she pleases".

(*q*) Smritichandrika, IX, ii, 7.

(*r*) *Muthukaruppa* v. *Sellathammal* (1916) 39 Mad., 298.

(*s*) Viramit., V, i, 3; Madhaviya, § 83, Setlur, I, 344; D. Bh., IV, i, 21.

(*t*) *Doorga* v. *Mt Tejoo* (1866) 5 W.R., Mis., 53; *Gangadaraiya* v *Parameswaramma* (1869) 5 Mad H C, 111; *Jeewun* v. *Mt. Sona* 1 N.-W P, 66; *Radha* v *Biseshur* 6 N -W P., 279; *Hurrymohun* v. *Shonatum* (1876) 1 Cal, 275; *Bhau* v *Raghunath* (1906) 30 Bom, 229; *Muthu Karuppa Pillai* v *Sellathammal* (1916) 39 Mad, 298; *Judoonath* v. *Bussunt Coomar* (1873) 11 B.L.R., 286, 296, 19 W.R., 264 (bequest from father); *Damodar* v. *Purmanandas* (1883) 7 Bom., 155 (bequest from husband); *Basanta Kumari* v. *Kamikshya* (1906) 32 I.A., 181, 33 Cal., 23 (bequest from brother); *Atul* v. *Sanyasi* (1905) 32 Cal., 105 (bequest from son); *Venkareddi* v. *Hanmantgauda* (1933) 57 Bom., 85 (bequest from maternal grandfather); *Emperor* v. *Sat Narain* (1930) 53 All., 437; *Mt. Janku* v. *Zeboo* A.I.R. 1926 Nag., 350.

own pleasure (*u*). The same rule applies to land which a woman has purchased by means of such *saudayika* (*v*). Her husband can neither control her in her dealings with it, nor use it himself. But he may take it in case of extreme distress, as in a famine, or for some indispensable duty, or during illness, or while a creditor keeps him in prison. Even then he would appear to be under at least a moral obligation to restore the value of the property when able to do so What he has taken without necessity he is bound to repay with interest (*w*). This right to take the wife's property is purely a personal one in the husband. If he does not choose to avail himself of it, his creditors cannot (*x*). The word 'take' in the text of Yajnavalkya means 'taking and using'. Hence if the husband taking his wife's property in the exceptional circumstances mentioned in the texts does not actually use it, the wife still remains its owner and the husband's creditors have no claim against the property (*y*).

A woman's power of disposal, independent of her husband's control, is not confined to *saudayika* but extends to other properties as well. Devala says,

(*u*) D Bh., IV, 1 21-23, D K S., II, 2, §§ 26, 31, 32, Raghunandana, IX, 3-5, V May., IV, 10, §§ 8, 9, Smritichandrika, IX, 2, §§ 1-12; *Luchmun* v *Kali Churn* (1873) 19 W R, 292, *Kullammal* v. *Kuppu* 1 Mad H C, 85, 2 W MacN, 215, *Wulubhram* v *Bijlee* 2 Bor, 440 [481], *Damodar* v *Paramanandas* (1883) 7 Bom., 155, *Munia* v. *Puran* (1883) 5 All., 310, *Venkata Rama* v *Venkata Suriya* (1880) 2 Mad., 333 (P C.), *Atul Krishna* v *Sanyasi Churn* (1905) 32 Cal., 1051; *Basanta Kumari* v *Kamikshya* (1906) 32 I A., 181, 33 Cal., 23, *Sham Shivendar* v *Janki Koer* (1909) 36 I A., 1, 36 Cal., 311, *Muthu Karuppa Pillai* v *Sellathammal* (1916) 39 Mad., 298, (1933) 57 Bom., 85 *supra*

(*v*) (1880) 2 Mad., 333 P C., *Supra* where a married woman with *stridhana* contracts, she will be assumed to have intended to satisfy her liability out of her separate property, *Govindji* v *Lakmidas* (1880) 4 Bom., 318, *Narotam* v *Nanka* (1882) 6 Bom., 473, and it makes no difference that her husband has contracted jointly with her. If she is unmarried at the time of her contract, she will be liable personally, and not merely to the extent of her *stridhana*, for payment of her debt, even though she marries before it is enforced, *Nahalchand* v *Bai Shiva* (1882) 6 Bom., 470

(*w*) Mitakshara, II, 11, §§ 31, 32, Smritichandrika, IX, 2, §§ 13-22, Madhaviya, § 51, V May, IV, 10, § 10, D Bh., IV, 1, § 24; D K S., II, 2, § 33. Yajnavalkya (II, 147) says "A husband is not liable, unless he be willing, to make good the property of his wife taken by him in a famine, or for the performance of religious duties, or during illness, or while under restraint"

(*x*) Viramitrodaya, Setlur's ed., II, 442, 1 Stra H L., 27, 2 Stra. H L., 23, *Tukaram* v *Gunaji* (1871) 8 Bom H C. (A C J), 129; *Radha* v *Biseshur* 6 N-W.P 279

(*y*) *Nammalwar* v *Tayarammal* (1927) 50 Mad., 941.

"A woman's maintenance (*vritti*), ornaments, perquisites (*sulka*), gains (*labha*), are her *stridhana*. She herself has the exclusive right to enjoy it. Her husband has no right to use it except in distress. In case of consumption or disbursement without cause, he must refund it to the wife with interest" (*z*). This text gives no countenance to the view that a woman's powers of alienation during coverture are confined to *saudayika*. For, her exclusive right over *sulka* is admitted. 'Gain' in Devala's text, according to the Vyavahara Mayukha, means interest or profit (*a*). The Smritichandrika and the Viramitrodaya include in it what is received from *any* person who makes presents for the purpose of pleasing Gauri or other Goddess (*b*). The term *'labha'* would include the earnings of a woman in a profession or trade or other employment. It would seem therefore that the property which is mentioned by Devala as *labha*, is not confined to gifts from relations only, and such property therefore as well as *sulka*, must stand on the same footing as *saudayika*. The view of Jimutavahana that a woman has the sole power of disposal as regards all kinds of stridhana, except the two species discussed in the next paragraph, is decisive on the question (*b*[1]).

Property subject to husband's control.

§ 619. SECONDLY:—Katyayana makes two exceptions: "Wealth which is earned by mechanical arts, or which is received through affection (*pritya*) from any other but her kindred, is subject to her husband's dominion. The *rest* is pronounced to be her stridhana" (*c*). Jimutavahana explains 'from any other' as meaning "other than the family of her father, mother, or her husband and that her husband has a right to take, even though no distress exists, property which is received through affection from any other but her kindred and that which is earned by mechanical arts. Even in those cases, the wealth is hers, though it is not her stridhana because she has no independent power over it. But, in other descriptions of property excepting these two, the woman has the sole power of gift, sale or other aliena-

(*z*) Smriti Chandrika, IX, ii, 15; V. May., IV, x, 10 (Mandlik trans., p. 94), Viramit, V, i, 7, Vivada Ratnakara, VIII, 10, D Bh., IV, i, 15.

(*a*) V. May., IV, x, 10.

(*b*) Smriti Chandrika, IX, ii, 15; Viramit, V, i, 7, p. 443.

(*b*[1]) D. Bh., IV, i, 21; *Brij Indar* v. *Janki Koer* (1877) 5 I.A., 1; *Subramania* v. *Arunachalam* (1905) 28 Mad., 1, F.B

(*c*) D. Bh., IV, i, 19; II Dig., 589.

tion" (*d*). According to the Smritichandrika, "A woman has not full dominion over other sorts of property than *saudayika* and husband's donation except immovable although they are stridhana" (*e*). The Vyavaha Mayukha suggests that the wife has no absolute dominion over the compensation received by her on her supersession (*adhivedanika*) (*f*). The statement in Manu that women should never make any disbursement even out of their own property without the permission of their husbands (*g*), must be construed only as a moral precept; as otherwise, it would be contradicted by the texts of Katyayana, Devala and Vyasa. The non-existence of dominion in the husband and others over stridhana is stated by Katyayana: "Neither the husband nor the son nor the father nor the brothers have authority over stridhana to take it or to give it away" (*h*). And provision is made for repayment with interest as well as for imposition of fine where the husband or other person takes a woman's stridhana by force. Where the husband uses it with her consent, he is to pay the principal only when he is able to do so (*i*). As the Smritichandrika puts it, "It also appears from repayment of the principal being enjoined even where stridhana is used with permission that the husband and the like are wanting not only in independent power, but also in ownership over stridhana" (*j*). While the two excepted kinds of property mentioned in Katyayana's text are excluded from Jimutavahana's definition of stridhana, they are stridhana, according to the Smritichandrika, Mayukha and other Mitakshara authorities, devolving on her own heirs, though the woman has no independent power over them. All are agreed that the husband has no ownership in them. Her authority over such property is only subject to her husband's control. He may take it, but nobody else can. If he dies before her, she becomes unrestrained owner of the property, and at her

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(*d*) D Bh, IV, i, 20-21 In *Ram Gopal* v *Narain Chandra* (1905) 33 Cal, 315, 320, the Court observed: "Under the Bengal School of Hindu law, a female has not absolute power of disposition over (i) what she earns by the mechanical arts, (ii) what is given to her by strangers at any time other than that of marriage, and (iii) what she inherits from a male or a female relation."

(*e*) IX, ii, 12.

(*f*) V. May, IV, x, 7.

(*g*) Manu, IX, 199.

(*h*) V. May, IV, x, 10 (Mandlik's trans, p. 94), Smriti Chandrika, IX, ii, 13; Viramitrodaya, V, i, 6; Vivada Ratnakara, VIII, ii; Dig., II, 594; D. Bh., IV, i, 24.

(*i*) V. May., IV, x, 10 (Mandlik, p. 94).

(*j*) IX, ii, 14.

death it passes to her heirs, not to those of her husband (*k*). And of course the rule would be the same, if the acquisitions were made by a widow (*l*). The restrictions in these texts cannot be more than moral precepts any more than the restrictions upon the father's power in respect of his self-acquired immovable property (*l*[1]). Neither the husband nor her issue have any joint interest in the property along with her. And restrictions on her powers can only be on the ground of the presumed incapacity of a woman to act without her husband's permission while he is alive. But this incapacity is not recognised by the texts in respect of most of the species of stridhana. Where a woman is the sole owner and nobody else has any vested interest in it, her absolute dominion is a necessary legal result. There can be no doubt that a husband would always be able to exercise a very strong pressure upon his wife, but cases may occur where they live apart or where she is a superseded wife, or where her husband may unreasonably withhold his assent to a proper use of her property, for instance, in favour of her children. Very probably, the Sanskrit authorities did not intend these rules to be legal prohibitions. As his power to take her *saudayika* property in distress does not deprive her of her absolute dominion, his power to take other stridhana property, whether in distress or otherwise, does not deprive it of its character as stridhana or of her dominion over it. But it has been held by the Bombay High Court in *Bhau* v. *Raghunath*, that except in the kind known as *saudayika*, a woman's power of disposal over her stridhana is, during her coverture, subject to her husband's consent and without such consent she cannot bequeath it by will when she is survived by her husband who is not shown to have consented to the will (*m*).

Restrictions merely moral precepts.

Immovable property, when given or devised by a husband to his wife, is stated by the Sanskrit authorities to be never at her disposal, even after his death (*n*) though it is her

Immovables given by husband.

(*k*) See *Salemma* v. *Lutchmana* (1898) 21 Mad., 100; *Madavarayya* v. *Tirtha Sami* (1878) 1 Mad., 307.

(*l*) 2 W. MacN., 239; *Brij Indar* v. *Jankı* (1877) 5 I.A., 1, 15, 1 C.L.R., 318.

(*l*[1]) *Rao Balwant* v. *Rani Kishori* (1897) 25 I.A., 54, 69, 20 All., 267; see *ante* § 19.

(*m*) (1906) 30 Bom., 229; *Fakirgauda* v. *Dyamawa* (1933) 57 Bom., 488, 497; in *Bhagvan Lal* v. *Bai Divali*, A.I.R. 1925 Bom., 445, it was held that a Hindu wife who lived separately from her husband for 30 or 40 years could dispose of her non-saudayika property, namely, property inherited from her father even without her husband's consent.

(*n*) Narada cited in V. May., IV, x, 9; Smritichandrika, IX, ii, 10-11; Viramit., V, i, 5; D. Bh., IV, i, 23.

stridhana in that it passes to her heirs, not to his. It is, however settled that a husband can by gift *inter vivos* or by will confer upon his wife an absolute estate in his immovable property. And it is only a question of construction as to what he intended to give or bequeath (*o*). Accordingly, in *Shalig Ram* v. *Charanjit Lal*, the Judicial Committee, referring to the supposed rule of Hindu law that in the case of immovable property given or devised by a husband to his wife, she had no power to alienate unless the power of alienation was conferred upon her in express terms, held that that proposition was unsound (*p*). The husband either intends that his wife should have a life-estate in the immovable property or intends that she should have an absolute estate. In the former case, no rule of Hindu law is required; in the latter, the husband agrees to her full powers of alienation. And in both the cases the intention is either express or inferred as a matter of construction.

Succession,

§ 620 The succession to stridhana varies according as the deceased woman was married or unmarried, and according as her marriage was in an approved or an unapproved form (*p*[1]). It also varies with the species of stridhana. Lastly the lines of succession vary with the different schools of law (*q*).

To maiden's property.

§ 621 As regards succession to the property of a maiden, there is no difference between the schools. The only text upon the subject is one which is variously ascribed to Baudhayana and to Narada, but which cannot be found in the existing works of either writer. "The wealth of a deceased damsel let the uterine brothers themselves take. On failure of them, it shall belong to her mother, or if she be dead to her

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(*o*) *Jagmohan Singh* v *Sri Nath* (1930) 57 I A, 291, A I R 1930 P.C, 253, *Suraj Mani* v *Rabinath* (1908) 35 I A, 17, 30 All, 84, *Sasiman* v *Shib Narayan* (1922) 49 I A, 25, 1 Pat, 305, *Narsingh Rao* v *Mahalakshmi* (1928) 55 I.A, 180, 50 All, 375 But property bequeathed to a woman is not her absolute property, where the will contains a valid prohibition against alienations *Suraj Prasad* v. *Mt Gulab Dei* A I R. 1937 All, 197

(*p*) (1930 57 I A, 282, 289, 59 M L J, 437, 34 C W N, 1073.

(*p*[1]) The approved forms of marriage are the Brahma and the Gandharva according to the Dayabhaga, and all the Mitakshara authorities except the Mitakshara alone which treats the Gandharva as unapproved See *ante* §§ 89, 94, Banerjee, M & S, 5th ed, 438. The unapproved marriage is the Asura. The other five forms are all obsolete

(*q*) The disqualifications from inheritance apply to stridhana succession See *ante* § 603 Chastity is not a condition precedent, see *ante* § 600.

father" (*r*). The text is silent as to the rule of succession to be applied in default of the father. The Viramitrodaya supplies the omission as follows: "In default of the mother and the father, it goes to their nearest relations" (*s*), namely, their sapindas. The term 'nearest relations of the parents' in this context means the sapindas of the father and in their default, the sapindas of the mother, both in the order of propinquity (*t*). The Bombay High Court deduces this rule from the principle that where the specific enumeration stops, the general maxim laid down by the Mitakshara (II, xi, 8) 'her kinsmen take it, if she die without issue' must take effect. It was accordingly held that the father's mother's sister was entitled to succeed in preference to the maternal grandmother of a deceased maiden (*u*). Affirming that view, a Full Bench of the Bombay High Court has held that in default of the father, his nearest heirs are the heirs to the maiden's property and observed that there was no conflict between the Mitakshara and the Mayukha on the point (*v*). According to that decision, a father's sister in Bombay took a maiden's stridhana in preference to his male gotraja sapindas as she was the nearer heir. The Calcutta and Madras High Courts have accepted the principle of the Bombay decisions, though of course without reference to the authority of the Mayukha (*w*). In working out the rule thus established, the nearness of the sapinda relationship must be determined by the particular system of law applicable to the case under consideration, always treating the father as the person proximity to whom is to be ascertained.

(*r*) Mit., II, xi, 30; Smriti Ch., IX, iii, 35; V. May., IV, x, 34, Viramit., V, ii, 9, Setlur, II, 454, Madhaviya, § 50; D. Bh., IV, iii, 7; D.K.S., II, i, 1.

(*s*) Viramit, V, ii, 9, Setlur, 454, *Gandhi Maganlal* v. *Bai Jadub* (1900) 24 Bom., 192, 212 F.B.

(*t*) In *Dwarka Nath* v. *Sarat Chandra* (1912) 39 Cal., 319, the Calcutta High Court laid down that in the absence of any rule determining the nearness among relations of the father in the case of succession to a maiden's property, the question should be decided on the analogy of the order of succession to the *stridhana* of a childless woman married in a disapproved form, so far as it is applicable, for in both cases the succession is confined to the father's family.

(*u*) *Janglubai* v. *Jetha Appaji* (1908) 32 Bom., 409; the term 'nearest relation' has been held to mean first, the sapindas of the father and then the mother's sapindas. *Vithal Tukaram* v. *Bala Bapu* (1936) 60 Bom., 671, 677

(*v*) *Tukaram* v. *Narayan Ramchandra* (1912) 36 Bom., 339 (F.B.).

(*w*) *Dwarka Nath* v. *Sarat Chandra* (1912) 39 Cal, 319 (sister and sister's son preferred to father's brother's son), *Kamala* v *Bhagirathi* (1915) 38 Mad., 45 (stepmother preferred to mother's sister); *Sundaram Pillai* v. *Ramaswami Pillai* (1920) 43 Mad., 32 (paternal uncle's son preferred to father's sister).

Succession to *Sulka* Mitakshara.

§ 622. The Mitakshara lays down only two lines of succession to the stridhana of a married woman: (1) Succession to sulka and (2) succession to all other stridhana property. The order of succession to *sulka* is according to all the Mitakshara schools as follows. First it goes to the brothers of the whole blood, after them to the mother, and in default of her, to the father. The Smritichandrika, the Parasara Madhaviya, the Vivadachintamani, and the Viramitrodaya read the text of Gautama in this way (*x*). But that text as cited in the Mitakshara and the Mayukha and as translated by Dr. Buhler, would appear to place the mother before the uterine brothers (*y*). Haradatta in his commentary on Gautama considers that sulka is the money which at an asura wedding the father has received for giving his daughter away and his order of succession is father, mother and uterine brothers (*z*). This apparently was the correct order so far as the original sulka was concerned which was paid to the parents (*a*). The Sarasvati Vilasa construes this text as meaning that it is only after the mother's death, the sister's sulka goes to the uterine brothers (a^1). The preponderance of authority is in favour of the view taken by the Viramitrodaya.

The Mitakshara (II, xi, 14) states that the succession to sulka is an exception to the daughter succeeding to the mother's goods. A woman's children are therefore evidently excluded in the first instance. There is however nothing to show what the order of succession is in default of uterine brothers, mother and father. There is no reason why in default of the heirs mentioned, her own issue should be excluded altogether. They are the nearest of kin and the general rule of propinquity must always apply. The analogy of succession to a woman married in an unapproved form does not exclude her own issue. But it was assumed in *Bhola Ram* v *Dhani Ram*, where it was found that no sulka was in fact given, that the essential characteristic of sulka is

(*x*) Gaut., XXVIII, 25, 26, Smritichandrika, IX, iii, 32-34, Madhaviya, § 86, Setlur, II, 346, Vivadachintamani, p. 270, Viramit., V, 2, 12, Setlur, II, p. 455, Aparaka, trans. in 21 M.L.J. Journal, 431. The Vivada Ratnakara (X, 5, 6) states both the views and is not very definite. The two views are found even in two texts of Gautama (XXVIII, 25, 26). According to Mr. Colebrooke's translation, Jimutavahana cites the text of Gautama as meaning that the uterine brothers come first (D. Bh., IV, iii, 27-29).

(*y*) Mit., II, xi, 14, V. May., IV, x, 32.

(*z*) S.B.E., Vol., II, p. 306.

(*a*) This is also the view of the Arthasastra. Shamasastri, 186-187.

(a^1) Sarasvati Vilasa, §§ 303-305.

that a woman's own children are absolutely excluded by her paternal and maternal relations in the matter of inheritance (*b*). The *sulka* in the older sense of bride-price, ultimately received by the bride herself is obsolete; where it is now paid to the parents or the brother in the Asura marriage, it does not raise any question of succession to her stridhana. Where it is paid to the bride herself, either as the price of ornaments or household furnishings or as a complimentary present (*c*), it would be her ordinary stridhana; for there is no reason why any dowry given to the wife by the husband in modern times should be treated as attracting a special order of succession which was applied to some obscure form of the ancient bride-price, which the father may be supposed, after receiving, to have handed back to his daughter.

Dayabhaga order.

The order of succession to sulka in the Dayabhaga school is the same as that to *anvadheya* or gift subsequent and to property given by kindred during maidenhood, her issue taking in the first instance in all the three cases (*d*). (§ 632).

Mitakshara: stridhana other than sulka.

§ 623. The order of succession to all other kinds of stridhana is the same in all the Mitakshara schools except to some extent in Bombay. The Mitakshara says: "Hence, if the mother be dead, daughters take her property in the first instance; and here in the case of competition between married and maiden daughters, the unmarried take the succession; but on failure of them, the married daughters; and here again, in the case of competition between such as are provided and those who are unendowed, the unendowed take the succession first; but, on failure of them, those who are endowed" (*e*). The order of succession is therefore as follows:—

1. Unmarried daughter;

(*b*) A.I.R. 1929 All., 25.

(*c*) D. Bh., IV, 1, 15, IV, iii, 21, Smritichandrika, IX, ii, 15, Vyasa, cited in Dig., II, 592; Apararka, 21 M.L.J. Journal, 431, Jolly, T.L.L., 232-233, Katyayana cited in Viv. Chint. 258. See *Palaniappa* v. *Chockalingam* 57 M.L.J., 817 for a custom of parents' gift to daughter reverting to them on her death without issue.

(*d*) D. Bh., IV, iii, 20-22, 26-29; D.K.S., II, iii, 15-18; *Judoonath* v. *Bussunt Coomar* 19 W.R., 264, *Hurrymohun* v. *Shonatun* (1876) 1 Cal., 275; *Gopal Chandra* v *Ram Chandra* (1901) 28 Cal., 311, *Ram Gopal* v. *Narain* (1906) 33 Cal., 315; Banerjee, M & S, 5th edn., 487, 491-495. Sarkar, H.L. (7th edn.), 830, Ghose, H.L., I, 344-346.

(*e*) Mit., II, xi, 9, 12, 15-19, 24, Viramit., V, 2, 3, Setlur, II, p. 447; V. May, IV, x, 20-23, *Jagannath* v. *Ranjit Singh* (1898) 25 Cal., 354; *Muthappudayan* v. *Ammani* (1898) 21 Mad., 58; *Salemma* v. *Lutchmana* (1898) 21 Mad., 100; *Subramanian* v. *Arunachalam* (1905) 28 Mad., 1 F.B., *Nanja* v. *Sivabagyathachi* (1913) 36 Mad., 116. In (1898) 21 Mad., 100 *supra*, Subramania Iyer, J., observed "the Mitakshara lays down rules which are easy of application, complete in themselves and on the whole equitable."

2. Married daughter who is either indigent or childless (*f*);

3 Married daughter who is provided for, whether she is childless or not (*g*);

4. Daughter's daughter (*h*),

When there are several grand-daughters by different mothers and they are unequal in number, they take *per stirpes*. But where the deceased dies leaving children and grandchildren, the latter do not so completely represent their deceased parents as to inherit along with the children of the deceased (*i*). There is no preference as between married and unmarried grand-daughters (*j*).

5. Daughter's son (*k*). Sir G. Banerjee suggests that the adopted son of a daughter cannot be regarded as a daughter's son for the purpose of succession to stridhana (*l*). This position is obviously untenable, unless the adoption is made after the daughter's death by her husband (§ 189). The rule of Hindu law is clear that an adopted son stands in the same position as an aurasa son except in one or two matters which are expressly stated in the texts (§§ 187, 188) (*m*).

6. Son (*n*);

7. Son's son (*o*);

(*f*) *Uma Devi* v *Gokoolanund* (1878) 5 I.A, 40, 3 Cal, 587, the Mitakshara says "Unprovided, that is, such as are destitute of wealth or without issue", II, xi, 13 Unmarried daughter is preferred to married daughter also among the Jains, *Jaiwanti* v. *Anandi* (1937) A.W.R, 1184, A I R 1938 All, 625

(*g*) *Binode Koomaree* v *Purdhan Gopal* 2 W R C R., 176, *Totawa* v. *Basawa* (1899) 23 Bom, 229

(*h*) Mit, II, xi, 15, *Subramania* v. *Arunachelam* (1905) 28 Mad, 1 (daughter's daughter succeeds before daughter's son), *Sham Bihari Lal* v *Ram Kali* (1923) 45 All., 715 (daughter's daughter before son's son), *Ram Kali* v *Gopal Dei* (1926) 48 All, 648, *Hukum Chand* v. *Sital Prasad* (1928) 50 All, 232, *Amarjit* v *Algu* (1929) 51 All, 478 (daughter's daughter preferred to daughter's son).

(*i*) Gaut, XXVIII, 15, Mit, II, xi, 9, 12, 15-19, 24, Banerji M & S, 5th edn, 411, 420-421, *Nagesh* v *Gururao* (1893) 17 Bom, 303, 305, *Karuppai* v. *Sankaranarayana* (1904) 27 Mad, 300, 308.

(*j*) (1926) 48 All, 648 *supra*

(*k*) (1905) 28 Mad, 1 *supra*, (1929) 51 All., 478 *supra*

(*l*) M & S, 5th edn., p. 412.

(*m*) *Teencowri* v *Dinonath* 3 W R., 49, *Gangadhar* v. *Hiralal* (1916) 43 Cal, 944, 971

(*n*) *Karuppai* v *Sankaranarayana* (1904) 27 Mad, 300 (sons take as tenants in common without survivorship, and not as joint tenants), *Bai Parsan* v *Bai Somli* (1912) 36 Bom, 624 Sons do not include illegitimate sons, *Jagannath* v *Narayan* (1910) 34 Bom, 553 In the case of succession to the stridhana of a Hindu widow who remarries, her sons by her two husbands inherit together, *Bapu Appa Hakka* v. *Kashinath* A.I.R 1934 Bom, 113 (1)

(*o*) *Sham Bihari Lal* v *Ram Kali* (1923) 45 All., 715 (son's son takes after a daughter's daughter), (1928) 50 All, 232 *supra*, *Ram Kali* v. *Gopal Dei* (1926) 48 All, 648.

Grandsons by different sons inherit *per stirpes* (*p*).

§ 624. In default of the above heirs, succession proceeds in two lines according as she was married in an approved or unapproved form. If she was married in an approved form, succession devolves upon her husband (*q*), and after him on the husband's heirs in the order in which they succeed to his property (*r*). Her husband's heirs would be her step-son (*s*), and *his* son (*t*) and grandson, co-wife (*u*), step-daughter (*v*), and her son, mother-in-law, father-in-law, husband's brother (*w*), husband's brother's son, sapindas, samanodakas and bandhus (*x*). In Bombay, the widows of gotraja sapindas would also be entitled to succeed. On failure of her husband's heirs, her own blood-relations are entitled to succeed; in other words, her mother and her father and in their default, their nearest kinsmen and heirs in order, by the rule of propinquity (*y*).

In case she was married in an unapproved form, the succession goes in default of her son's sons, to her mother,

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(*p*) Banerji, M & S, 5th edn, pp. 420-421

(*q*) Mit., II, xi, 11, *Bhimacharya* v. *Ramacharya* (1909) 33 Bom., 452 (husband takes in preference to step-son), *Gur Dial* v. *Bhagwan Devi* (1927) 8 Lah., 366.

(*r*) *Bai Kesserbai* v *Hunsraj* (1906) 33 I A, 176. 30 Bom., 431; *Jodha* v. *Darbari Lal* A I R. 1927 Oudh, 339 This would not include the new statutory heirs under the Act of 1937.

(*s*) (1909) 33 Bom, 452 *supra* (step-son comes in after husband).

(*t*) *Gojabai* v. *Shahajirao* (1893) 17 Bom., 114 (step-grandson takes before co-widow and before the husband's brother's son).

(*u*) *Kesserbai* v *Hunsraj* (1906) 33 I A., 176, 30 Bom, 431 (co-widow takes in preference to husband's brother and his nephew); *Krishnai* v *Shripati* (1906) 30 Bom., 333

(*v*) *Nanja* v *Sivabagyachachi* (1913) 36 Mad. 116 (step-daughter succeeds before husband's paternal uncle's son).

(*w*) A whole brother takes before a half-brother, *Parmappa* v. *Shiddappa* (1906) 30 Bom, 607

(*x*) *Ganeshi Lal* v. *Ajodhia Prasad* (1906) 28 All., 345 (husband's sister's son is preferred to her own sister's son).

(*y*) Mit., II, xi, 11, *Kanakammal* v. *Ananthamathi* (1914) 37 Mad, 293, *Ganpat* v *Secretary of State* (1921) 45 Bom, 1106, *Motichand* v. *Kunwar Kalika* (1926) 48 All., 663. In *Vithal Tukaram* v. *Balu Bapu* (1936) 60 Bom, 671, 678, a Mitakshara case, it was held that if a Hindu widow married in an approved form dies without leaving any issue or any heir in her husband's family, her stridhana property (other than sulka) should be divided in equal shares between her brother and sister, following *Manilal* v. *Bai Rewa* (1893) 17 Bom, 759 and *Rajeppa* v *Gangappa* (1923) 47 Bom., 48. But the former is confined to Mayukha jurisdiction and the latter raised no competition between male and female As between bandhus of the same class and degree a male is preferred to a female, *Kenchava* v. *Girimallappa* (1924) 51 I.A., 368, 48 Bom., 569 That two bandhus of different relationship but of equal propinquity should share equally would seem to be a reasonable rule, but is opposed to the observations of the Privy Council in *Jatindra Nath* v. *Nagendra Nath* (1931) 58 I.A., 372, 59 Cal., 576.

father, and the father's heirs in order and in their default, by analogy, it would go to her husband and his sapindas in order, as in modern Hindu law a wife passes into her husband's gotra even if her marriage be in an unapproved form (*z*) (§ 89) Manu's rule of propinquity would entitle the husband and his sapindas to succeed after the heirs named

Mithila School.

§ 625 According to the Vivadachintamani, while succession to sulka is the same as in other Mitakshara schools, *vautaka stridhana* devolves upon daughters and failing them, upon their sons (*a*) Apparently unmarried daughters are preferred to married daughters All other kinds of stridhana devolve on sons and unmarried daughters equally (*b*). In default of descendants down to the daughter's son, the order of succession to the property of a woman in the Mithila school is the same as under the Mitakshara law (*c*).

Mayukha law

Anvadheya and *pritidatta*

§ 626. In the Island of Bombay, the District of Gujerat and Northern Konkan where the Mayukha is the paramount authority, as regards succession to *anvadheya* stridhana or the gift subsequent, and the *pritidatta* or the property given by the husband through affection, both the sons and daughters take equally, the unmarried among the latter having preference over the married (*d*) On failure of sons and daughters, daughter's daughters and daughter's sons take together (*e*). Then succeed son's sons (*f*). Failing these, succession goes to her husband and his heirs or her father and his heirs according to the general Mitakshara scheme (*g*).

(*z*) Mit, II, xi, 11, V May, IV, 28, *Raju* v *Ammani* (1906) 29 Mad, 358 (sister succeeds before her son), *Bhimacharya* v *Ramacharya* (1909) 33 Bom, 452, *Chunilal* v *Surajram* (1909) 33 Bom, 433, *Govind Ramji* v *Savitri* (1919) 43 Bom, 173 (sister is an heir and succeeds before paternal uncle), *Dulkin Parbati* v *Baijnath* (1935) 14 Pat, 518 (step mother is entitled to succeed).

(*a*) Vivadachintamani, 266-269, at p 268, following Yajn, II, 117 and Katyayana

(*b*) Vivadachintamani, p 266, following Manu, IX, 192 and a text of Brihaspati, cited in the Smritichandrika, IX, iii, 7, Banerjee, M & S, 5th edn, 468-469.

(*c*) *Kamla Prasad* v *Murli Manohar* (1934) 13 Pat, 550 following *Bachha* v *Jugmon* (1886) 12 Cal, 348, Banerjee, M & S, 5th edn, 368-369, but see *Mohun Pershad* v *Kishen* (1894) 21 Cal., 344

(*d*) *Dayaldas* v *Savitri Bai* (1910) 34 Bom, 385, Banerjee, M & S, 5th edn, p. 436

(*e*) V. May, IV, x, 20-21, *Jagannath* v *Narayan* (1910) 34 Bom, 553. A husband succeeds in preference to her son born of her adulterous intercourse. The word '*aprajah*' (without issue) in Yajn, II, 145, must be read as correlative to her husband and excludes sons not born of marriage to him

(*f*) Banerjee, M & S, 5th edn., 436.

(*g*) *Bai Kesserbai* v *Hunsraj* (1906) 33 I.A, 176, 197, 30 Bom., 431.

All other technical or *paribhashika* stridhana as classified by the Vyavahara Mayukha other than the *anvadheya* and the *pritidatta* is governed by the Mitakshara order of succession. Succession to *yautaka* is stated at IV, x, 17 in the Vyavahara Mayukha as devolving on unmarried daughters alone and not on sons (*h*). In default of unmarried daughters, the succession to it appears to be the same as that for other technical stridhana dealt with in the succeeding passage. For, the unmarried daughter's succession to *yautaka*, in the first instance, is no departure from the Mitakshara rule of succession that unmarried daughters take first their mother's stridhana and Nilakantha says nothing as to what is to happen in default of unmarried daughters. All other technical stridhana.

§ 627. The Mayukha states a special rule as regards non-technical or *aparibhashika* stridhana: "Even if there be daughters, the sons or other heirs alone succeed to the mother's property save the technical stridhana" (*i*). On this text, it has been held in *Manilal* v. *Bai Rewa*, that as regards succession to stridhana, not mentioned in the texts (non-technical stridhana), the general preference given to male offspring over female offspring in Hindu law should have effect, though in the case of collateral relations no similar distinction should be maintained. But in other respects, the succession to technical and non-technical stridhana is identical (*j*). On the authority of Mayukha IV, x, 28, the woman herself is recognised as the only stock of descent, and there is therefore no reverter, on the death of any female heir that takes the estate, to the heirs of last full female owner. Accordingly it was held that a woman's daughter succeeds in preference to her husband. In *Bai Raman* v. *Jagjivandas*, it was held that the non-technical stridhana of a woman governed by the Mayukha descends to her son in priority to her son's sons, and that sons, grandsons and great-grandsons will not take collectively the stridhana property of a woman as they take the property of their father (*k*). The order of succession therefore is as follows: 1. Sons; 2. Son's sons; 3. Son's son's sons; 4 Daughters; 5. Daughter's sons; 6. Daughter's daughters; and in their default, the husband and his heirs, or the father and his heirs, according as the woman was married in an approved or unapproved form. In *Kesserbai* v. *Hunsraj*, the Privy Council, in deciding that Non-technical stridhana

(*h*) V. May., IV, x, 17-18. Banerjee, M & S, 5th edn., 437.

(*i*) V. May., IV, x, 26.

(*j*) (1893) 17 Bom., 758. According to Nilakantha, 'his nearest sapindas' in the Mitakshara means her near sapindas through him, V. May, IV, x, 28.

(*k*) (1917) 41 Bom., 618.

the stridhana of a widow dying without issue goes to her co-widow in preference to her husband's brother or brother's son, held that the Mayukha (IV, x, 28-30) does not on its true construction alter or supersede the doctrine of the Mitakshara, that the text of Brihaspati quoted in the Mayukha as well in the Ratnakara which refers to a group of six heirs is too ambiguous to be of any value and that it does not indicate any order of succession (*l*). The Dayabhaga arrived at a similar result by treating Brihaspati's text not as declaratory of the order of inheritance but merely as suggesting that the persons named therein are also heirs (*m*).

Dayabhaga School.

§ 628 The Dayabhaga divides *stridhana* for purposes of succession into three classes I The *yautaka*, II. the *anvadheyaka* or gifts and bequests made by the father subsequent to marriage, and III the *ayautaka* (*n*) The *ayautaka* includes not only gifts and bequests made by relations including the father before marriage, but also gifts and bequests made by relations other than the father after marriage. *Yautaka* consists of gifts "given before the nuptial fire". The High Court of Calcutta has held that this is only a term to signify all gifts during the continuance of the marriage ceremonies (*o*).

The above classification is however material only for the earlier series of heirs As to the later series of heirs, there is no difference and the order of succession is the same for all kinds of stridhana.

Succession to *yautaka*.

§ 629. The order of succession to *yautaka* is, in the first instance, as follows (*p*) —(1) unaffianced daughters; (2) daughters betrothed but not actually married; (3) married daughters who have or are likely to have male issue (*q*); (4) daughters who are barren and widowed daughters who are

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(*l*) (1906) 33 I A, 176, 190, 30 Bom, 431 approving *Bachha* v *Jugmon* (1886) 12 Cal, 348, and *Gojabai* v *Shahajirao* (1893) 17 Bom, 114 The text of Brihaspati as explained by Sir G Banerjee (M & S, 5th edn, 455-456) is referred to by the Privy Council

(*m*) D Bh, IV, iii, 31-36

(*n*) D Bh, IV, ii, iii, Banerjee, M & S, 5th edn, 473

(*o*) *Bistoo Pershad Burrai* v *Radha Soonder Nath* 16 W R, 115; Dayatattva, X, 15, Setlur, II, 501.

(*p*) D Bh., IV, ii, 13, 22, 23, 26; D K.S., II, iii. 5-7, Dayatattva X, 12-15, 17-20; Banerjee M & S, 5th edn, 477-483.

(*q*) Including a widowed daughter having a son at the time the succession opens, *Charu Chander Pal* v. *Nobo Sunderi Dasi* (1891) 18 Cal., 327.

childless taking together equally (*r*); (5) sons (*s*); (6) daughter's sons (*t*); (7) son's son; (8) son's grandson (*u*). Failing the great-grandson, the succession devolves on the son of a rival wife, and on his son and grandson in order (*v*). Thereafter, if the marriage was in an approved form, the successive heirs to *yautaka* are the husband, brother, mother and father (*w*). If the marriage was in an unapproved form, the order of succession is mother, father, brother and husband (*x*).

Later series of heirs

§ 630. In default of all the above heirs, whether the deceased woman was married in an approved or unapproved form, the order of succession is uniform for all descriptions of stridhana (*y*): (1) husband's younger brother (*z*); (2) husband's brother's son; (3) sister's son (*a*); (4) husband's sister's son; (5) brother's son; (6) daughter's husband. In default of all these six heirs, the father-in-law, her husband's elder brother and her husband's other sapindas according to the nearness of sapinda relation succeed to stridhana (*b*); failing them, her husband's sakulyas and samanodakas (*c*). Lastly, according to Jagannatha, the father's kinsmen come in as heirs and after them, the mother's kinsmen (*d*).

Succession to *pitrudatta ayautaka* stridhana.

§ 631. The successive heirs, in the first instance, to the gifts or bequests made by the father after marriage (*pitru-datta ayautaka* stridhana) are (1) the maiden daughter;

(*r*) Dig., II, pp. 611-612.

(*s*) D. Bh., IV, ii, 25

(*t*) D.K S., II, iii, 9.

(*u*) D.K S., II, iii, 10

(*v*) *Ibid*, 11-13.

(*w*) D K S, II, iii, 14-17, Banerjee, M & S, 5th edn., 490-491.

(*x*) D Bh, IV, iii, 6, D.K.S, II, iii, 19-22; Banerjee. M & S, 491.

(*y*) D. Bh, IV, iii, 37, Dayatattva, X, 27-36; D K S., II, vi, 1-9.

(*z*) *Debi Prasanna Roy* v *Harendra Nath* (1910) 37 Cal., 863 (husband's younger brother succeeds before step-brother); see also *Gunamani* v. *Debi* (1919) 23 C.W N., 1038

(*a*) Sister's son includes son of a step-sister; *Dasarathi* v. *Bipin* (1905) 32 Cal., 261; *Sashi Bhusan* v *Rajendra Nath* (1903) 40 Cal., 82. But a sister's son's son is no heir under the Dayabhaga, *Satish Chandra* v. *Haridas* A I.R. 1934 Cal, 399

(*b*) D. Bh., IV, iii, 39, D.K.S., II, vi, 10, Dayatattva, X, 38; Dig., II, 624·—"First, the father-in-law's great-grandson in the male line succeeds, after him, the husband's paternal grand-father or his issue; and next, the husband's paternal great-grand-father or his offspring" See Banerjee, M & S, 5th edn. 499.

(*c*) D. Bh., IV, iii, 37; Dayatattva, X, 27-36; D.K.S., II, vi, 1, 9, 13; Vyavastha Darpana, p. 727 note, Dig., II, 623-624; M & S, 5th edn., 496-499.

(*d*) Dig., II, p. 624.

(2) the son (*e*); (3) the daughters who have or are likely to have male issue (*f*); (4) son's son; (5) daughter's son; (6) son's grandson; (7), (8) and (9) the son of a rival wife and his son and grandson; and (10) the barren and the sonless widowed daughters taking together (*g*).

Succession to *ayautaka* stridhana.

The heirs to *ayautaka* stridhana in the first instance are successively (1) the unbetrothed daughter (*h*) and the sons in equal shares (*i*), on failure of both of them, (2) married daughters (*j*) who have, or are likely to have, male issue, this class must include a betrothed daughter; (3) son's sons; (4) daughter's sons (*k*); (5) barren and childless widowed daughters (*l*). According to the Daya Krama Sangraha, the great-grandson, the step-son, and his son and grandson should come before barren and childless widowed daughters and after the daughter's son (*m*).

§ 632. The succession to property given by kindred, including parents during maidenhood, to sulka or perquisite and to gifts subsequent to marriage (*anvadheya*) including gifts or bequests made by the father, in other words, to all kinds of stridhana except *yautaka*, devolves in default of lineal descendants, on the uterine brother, the mother, the father and the husband. This is the order given in the Dayabhaga (*n*) and has been followed by Mr Justice Mitter in *Juddo Nath* v *Busunta Kumari* (*o*)

(*e*) *Prosanno Kumar* v *Sarat Shoshi* (1909) 36 Cal, 86 (son is preferred to a married daughter)

(*f*) *Charu Chunder Pal* v *Nobo Sundari* (1891) 18 Cal, 327 (a widowed daughter with a dumb son preferred to a daughter's son).

(*g*) M & S, 5th edn, 484

(*h*) D Bh, IV, II, 9 *Sreenath* v *Surbo* 2 B L R (A C J), 144, 10 W R, 488, Banerjee, M & S, 5th edn, 475-477

(*i*) *Basanta* v *Kamikshya* (1906) 32 I A, 181, 33 Cal, 32

(*j*) *Delanney* v *Pran Hari* (1918) 22 C W N, 990 (a married daughter is excluded by a son)

(*k*) D Bh, IV, II, 10, 11 A daughter's son does not include step-daughter's son and a brother's son is preferred to a step-daughter's son, *Krishnabihari* v *Sarojini* (1933) 60 Cal, 1061

(*l*) D Bh, IV, II, 12

(*m*) D K S., II, IV, 9, MacN, 39-40, Vyav Darp, 716-719, M & S, 5th edn, p. 477

(*n*) D. Bh., IV, III, 10, 29.

(*o*) 19 W.R., 264 (mother succeeds before husband), *Hurry Mohun Shaha* v *Sonatun Shaha* (1876) 1 Cal, 275 (the husband not the heir until after the brother, the mother and the father); *Gopal Chandra* v *Ramchandra* (1901) 28 Cal., 311 (brother succeeds before husband); *Ram Gopal* v. *Narain Chandra* (1906) 33 Cal, 315 (mother takes before husband), *Mahendra* v. *Girls* (1915) 19 C.W.N, 1287 (brother inherits before husband).

In default of these heirs, the order is uniform for all descriptions of stridhana and is the same as that stated above for *yautaka* stridhana (§ 630) (*p*).

Succession to degraded women.

§ 633. After some conflict of authority, it has been held by a Full Bench of the Calcutta High Court that prostitution does not sever the tie which connected a woman to her kindred by blood and that her stridhana passes on her death to her brother's son in the absence of nearer heirs (*q*). The same view is taken by all the High Courts (*r*).

Succession to dancing girls.

§ 634. Succession to the property of dancing girls more or less follows succession to stridhana, females taking in preference to males. In *Subbaratna Mudali* v. *Balakrishnaswami Naidu*, it was held that the ordinary Hindu law does not apply to such property, that usage gives preference to females in matters of succession and that when they succeed, they take absolutely (*s*). In *Balasundaram* v. *Kamakshi*, a distinction was made in the case of a dancing girl who married but during her widowhood reverted to her original calling, and it was held that her daughter succeeding to her took only a limited estate (*t*). In *Bera Chandramma* v. *Chandran Nagamma*, it was held that in the case of dancing girls, sons and daughters share the inheritance equally according to custom (*u*). In *Shanmugathammal* v *Gomathi Ammal*, it was held that the members of the dancing girl caste are not governed by the ordinary Hindu law in matters of succes-

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(*p*) Banerjee, M & S, 5th ed., 495-498

(*q*) *Hiralal Singha* v. *Tripura Charan* (1913) 40 Cal., 650 F.B. (brother's son is an heir) overruling on this point *In re Kaminey Money Bewah* (1894) 21 Cal, 697 and *Sarna Moyee* v *Secretary of State* (1898) 25 Cal, 254 and approving *Tripuracharan* v *Harimati Dassi* (1911) 38 Cal, 493. The illegitimate daughter will succeed to her mother's property but is excluded by legitimate issue, § 563.

(*r*) *Subbaraya Pillai* v. *Ramaswami* (1900) 23 Mad., 171 (step-son is an heir), *Meenakshi* v. *Muniandi* (1915) 38 Mad, 1144; *Narain Dass* v. *Tirlok Tiwari* (1907) 29 All, 4 (husband), *Narayan* v. *Laxman* (1927) 51 Bom., 784 (there is heritable blood between degraded woman and her sister), *Kothandaram Naidu* v. *Subbier* (1927) 52 M.L.J, 514; *Taleb Ali* v. *Abdul Razack* A.I.R. 1925 Cal., 748 (succession to a prostitute's stridhana is governed by the ordinary Hindu Law of Inheritance—a Dayabhaga case). See also *Sundari Dossee* v. *Nemye Charan* (1907) 6 Cal.L.J., 372; *Ishwari Prasad* v. *Rai Hari* (1927) 6 Pat., 506, 540; *Neelawa* v. *Gurshidappa* A.I.R. 1937 Bom., 169.

(*s*) (1917) 33 M.L.J., 207; *Subramania* v *Rathnavelu* (1918) 41 Mad, 44, 73 F.B.; *Narayan* v *Laxman* (1927) 51 Bom., 784, 786

(*t*) [1937] Mad, 257, *Visvanatha* v *Doraiswami* (1925) 48 Mad, 944, 947.

(*u*) (1923) 45 M.L.J., 228.

sion, but by caste custom and usage (*v*). There does not seem to be any valid reason why the property of a dancing girl should not be governed by the rules of succession to the stridhana property except to the extent to which there is a usage to the contrary. Whether the texts relating to stridhana directly apply to dancing girls or not, the rules of succession they lay down will apply to them as rules of justice, equity and good conscience; they will also apply by the rule of analogy (*w*). As to the estate taken by a female heir succeeding to a dancing girl's property, since it would be difficult in most cases to apply the doctrine of reverter, she must be deemed to be a stock of descent taking absolutely except where her succession is to the property of a married woman

(*v*) (1934) 67 M L J, 861.

(*w*) *Ante* § 51, *Subramania* v *Rathnavelu* (1918) 41 Mad, 44, 74, 75 F B., *Vithal Tukaram* v *Balu Bapu* (1936) 60 Bom, 671, 678 following *Meenakshi Ammal* v *Rama Aiyar* (1912) 37 Mad, 396

CHAPTER XVII.

WOMAN'S ESTATE.

In inherited property.

§ 635. The typical form of estate inherited by a woman from a male is the widow's estate (*a*). The same limitations apply to all estates derived by a female by descent from a male, or a female, whether she inherits as daughter, mother, grandmother, sister or as any other relation. In the phraseology of English law, her estate is neither a fee nor an estate for life, nor an estate tail (*b*). This is the view in all the schools except in Bombay.

Not a life estate.

It was at one time common to speak of a widow's estate as being one for life. But this was wholly incorrect. It would be just as untrue to speak of the estate of a father under the Mitakshara law as being one for life. Hindu law knew nothing of estates for life, or in tail, or in fee. It measured estates not by duration but by use (*c*). A Hindu widow is entitled to the full beneficial enjoyment of the estate. So long as she is not guilty of wilful waste, she is answerable to no one (*d*). The restrictions upon the use of an estate inherited by a woman are similar in kind to those which limit the powers of a male holder but different in degree. The distinctive feature of the estate is that, at her death, it reverts to the heirs of the last male owner, or to the heirs of the last full female owner in the case of stridhana property. She never becomes a fresh stock of

Reverts to heirs of last full owner.

(*a*) The Hindu Women's Rights to Property Act (XVIII of 1937) describes it as the limited interest known as a Hindu woman's estate. [Section 3 (3).] See *ante* § 589.

(*b*) *Rangasami Gounden* v. *Nachiappa Gounden* (1919) 46 I.A., 72, 79, 42 Mad., 523.

(*c*) *Vasonji* v. *Chanda Bibi* (1915) 37 All., 369 P.C.; *Ram Bahadur* v. *Jagarnath* (1918) 3 P.L.J., 199, 212, F.B. This may be true of early Hindu law, but Katyayana and Jimutavahana evidently knew the distinction between a life estate and an estate of inheritance: "Let her enjoy her husband's estate during her life and not as with her separate property, make a gift, mortgage or sale of it at her pleasure But when she dies, the daughters or others who would regularly be heirs, in default of the wife, take the estate." (D. Bh., XI, 1, 57). *Debi Prasad* v. *Golap Bhagat* (1913) 40 Cal., 721, 766, 767, 772, *per* Mookerjee, J And from before the *Tagore* case, estates for life have been known in connection with gifts and bequests in Hindu law.

(*d*) *Renka* v. *Bhola Nath* (1915) 37 All., 177.

descent (*e*). The restrictions on her powers of disposition are the same whether she inherits from a male or a female (*f*).

While the Sanskrit authorities state that a widow has restricted powers in dealing with the estate she may inherit from her husband, they nowhere lay down in terms that the same restrictions apply to other female heirs Again, the course of inheritance laid down in the earlier texts seems to assume that the estate reverts after a widow to the heirs of the last male; but until we come to Jimutavahana, we are nowhere told that it is the rule (*g*). The wording of the Mitakshara suggests that except in the case of the widow or mother it is not the rule (*h*).

Limited power of disposal.

As regards the former point, *viz*, the limited powers of disposal possessed by a female, we must recollect that, according to Hindu law, restriction was the rule, absolute power the exception (*i*). Katyayana says: "Let the childless widow, preserving unsullied the bed of her lord, and abiding with her venerable protector, enjoy with moderation the property until her death After her, let the heirs take it But she has not property therein to the extent of gift, mortgage, or sale" (*j*)

Woman's estate in Bombay.

§ 636. In Bombay the Courts have divided the female heirs into two classes (1) those who by marriage have entered into the gotra of the male whom they succeed and (2) those who

(*e*) *Collector of Masulipatam* v *Cavaly Vencata* (1861) 8 M.I.A., 529, 550, *Kery Kolitany* v *Moneeram* (1875) 13 B L R., 5, 53, 76, 19 W R, 367, *Vasonji* v *Chanda Bibi* (1915) 37 All, 369, 379, P C, *Bijoy Gopal* v *Krishna Mahishi* (1907) 34 I.A., 87, 91-92, 34 Cal, 329

(*f*) *Sheo Shankar* v *Debi Sahai* (1903) 30 I A, 202, 25 All., 468: *Sheo Partab* v *The Allahabad Bank, Ltd* (1903) 30 I A, 209, 25 All., 476, *Debi Mangal Prasad* v *Mahadeo Prasad* (1912) 39 I A., 121, 34 All, 234, *Keerut* v *Koolahul* (1839) 2 M I A, 331, *Collector of Masulipatam* v *Cavaly Vencata* (1861) 8 M I A., 529, *Thakur Deyhee* v *Rai Baluk Ram* (1866) 11 M.I A, 139, *Bhugwandeen Doobey* v. *Myna Baee* (1867) 11 M.I A, 487, 510

(*g*) D Bh, XI, 1, 57-59, XI, 11, 30, 31, Vivamit, III, 1, 3.

(*h*) See *ante* § 612.

(*i*) Manu, VIII, 416, IX, 2, 3, 104, Baudh, II, 2, 27, Narada, XII, 28-30, Smritichandrika, XI, 1, 35 39, D. Bh., XI, 1, 61, *Collector of Masulipatam* v *Cavaly Vencata* (1861) 8 M I A., 529, 551

(*j*) D Bh, XI, 1, 56, V May, IV, 8, 4, Vivada Chintamani, 292, Brihaspati, cited Smritichandrika, XI, 1, 28, Viramit., p 136, Narada, I, 2, 26 27, "The sages declare that the transactions of a woman have no validity, especially the gift, hypothecation or sale of a house or field —such transactions are valid when they are sanctioned by the husband; or on failure of the husband, by the son, or on failure of the husband and the son, by the king"

are of a different gotra, or who upon their marriage will become of a different gotra from the last male owner (*k*). Under the former head come the widow (*l*), mother (*m*), paternal grandmother (*n*), paternal great-grandmother and the widows of gotraja sapindas (*o*), like a son's widow (*p*), brother's widow, uncle's widow. They take a limited estate similar to that of a widow and on their death, the property passes not to their heirs, but to the heirs of the last male owner (*q*). Under the latter head are ranked the daughter, the son's daughter, the daughter's daughter, the sister and the daughters of descendants, ascendants and collaterals within five degrees who inherit as bandhus in the order of propinquity. They take the property inherited by them from males absolutely as full owners (*r*). On their death, such property passes as stridhana property to their own heirs in accordance with the Mitakshara or the Mayukha rules of succession as recognised in Bombay. They have already been stated (§§ 623, 624, 627). The above distinction between the

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(*k*) *Navalram* v. *Nand Kishor* (1865) 1 Bom. H.C., 209, *Vijiarangam* v. *Lakshuman* (1871) 8 Bom. H.C. (O.C.J.), 244, *Haribhat* v. *Damodarbhat* (1879) 3 Bom, 171; *Bharmangauda* v. *Rudrapgauda* (1880) 4 Bom., 181, *Tuljaram* v. *Mathuradas* (1881) 5 Bom., 662, 670; *Bulakhidas* v. *Keshavlal* (1882) 6 Bom, 85, *Bhau* v. *Raghunath* (1906) 30 Bom., 229 approved on this point in *Balwant Rao* v. *Baji Rao* (1921) 47 I.A., 213, 223, 48 Cal., 30, *Vithappa* v. *Savitri* (1911) 34 Bom., 510; *Gulappa* v *Tayawa* (1907) 31 Bom., 453.

(*l*) *Bhaskar* v. *Mahadeo* (1869) 6 Bom. H.C. (O.C J), 1.

(*m*) *Vrijbhukandas* v *Bai Parvati* (1908) 32 Bom., 26, *Vinayak* v. *Lakshmibai* (1861) 1 Bom. H.C, 117, *Narsappa* v. *Sakharam* (1869) 6 Bom. H.C. (A C J.), 215.

(*n*) *Dhondi* v *Radhabai* (1912) 36 Bom., 546; *Madhav Ram* v. *Dave* (1897) 21 Bom, 739.

(*o*) *Lulloobhoy* v. *Cassibai* (1881) 7 I.A., 212, 5 Bom., 110.

(*p*) *Gadadhar* v *Chandrabhagabai* (1893) 17 Bom., 690 F.B.

(*q*) *Bhau* v. *Raghunath* (1906) 30 Bom., 229.

(*r*) *Balwant Rao* v. *Baji Rao* (1920) 47 I A., 213, 48 Cal., 30. The leading case as to the rights of daughters is one known as *Dewcooverbace's* case (1 Bom H.C., 130) decided on the Equity Side of the Supreme Court in 1859. *Haribhat* v. *Damodarbhat* (1879) 3 Bom., 171, *Bulakhidas* v. *Keshavlal* (1882) 6 Bom., 85; *Babaji* v. *Balaji* (1881) 5 Bom., 600; *Bhagirthibai* v. *Kahnuji Rao* (1887) 11 Bom., 285, F.B., *Jankibai* v. *Sundra* (1890) 14 Bom., 612, *Gulappa* v. *Tayawa* (1907) 31 Bom., 453, *Vithappa* v. *Savitri* (1910) 34 Bom, 510. The leading case as to the sister is *Vinayak* v. *Luxumeebaee* (1861) 1 Bom. H.C., 117, affd in (1864) 9 M I.A., 516, 520, *Rindabai* v. *Anacharya* (1891) 15 Bom, 206; *Tuljaram* v. *Mathura Das* (1881) 5 Bom., 662 (grandniece); *Bhagwan* v. *Warubai* (1908) 32 Bom., 300. After the later decisions of the Judicial Committee in (1903) 30 I.A., 202 and (1903) 30 I.A., 209, the question of the character of the estate of the daughter, sister and similar heirs was again examined and reaffirmed in *Bhau* v. *Raghunath* (1906) 30 Bom., 229; *Shidramappa Nilappa* v. *Neelawabai* (1933) 57 Bom., 377, 383.

two classes of female heirs in Bombay does not obtain where a female inherits the stridhana property of a female, for in all those cases, she takes it as full owner absolutely (*s*). Where there are several daughters or sisters, they take absolute estates in severalty, and not as joint tenants (*t*).

Hindu Women's Rights to Property Act, 1937.

§ 637 By the Hindu Women's Rights to Property Act, 1937, the widow of a Hindu and his widowed daughter-in-law and grand-daughter-in-law are entitled to inherit to his estate, not only in default of, but along with, his male issue. Their shares are stated in the Act and its provisions have already been discussed (Chap. XIV). The widow of a deceased coparcener in a Mitakshara Hindu family succeeds, whether her husband has left male issue or not, to his interest in the coparcenary property, thus defeating the right of survivorship of his collaterals. The interest devolving on a Hindu widow in the above cases under the Act is the limited interest known as a Hindu woman's estate [sec. 3 (3)].

Her power of disposal.

§ 638. EXTENT OF A WOMAN'S ESTATE.—The nature of a woman's estate must, as already stated, be described by the restrictions which are placed upon it, and not by terms of duration It is not a life-estate, because in certain circumstances she can give an absolute and complete title (*u*). Nor is it in any sense an estate held in trust for reversioners. Within the limits imposed upon her, the female holder has the most absolute power of enjoyment and is accountable to no one (*v*) She fully represents the estate, and, so long as she is alive, no one has any vested interest in the succession The Privy Council observed in *Janaki Ammal* v. *Narayanaswami* (*w*): "Her right is of the nature of a right of property; her position is that of owner: her powers in that character are however limited". As was more fully stated by their Lordships in *Moniram Kolita* v. *Kerry Kolitany*,

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(*s*) *Gandhi Maganlal* v *Bai Jadab* (1900) 24 Bom, 192 F B.; *Narayan* v *Waman* (1922) 46 Bom, 17, *Parshottam* v *Keshav Lal* (1932) 56 Bom, 164

(*t*) *Rindabai* v *Anacharya* (1891) 15 Bom, 206, *Vithappa* v. *Savitri* (1910) 34 Bom, 510, *Kisan* v *Bapu* A I R 1925 Bom., 424, 27 Bom L.R., 670.

(*u*) *Bijoy Gopal Mukherji* v. *Krishna Mahishi* (1907) 34 I.A., 87, 91, 34 Cal, 329, *Rangaswami Gounden* v. *Nachiappa Gounden* (1919) 46 I A, 72, 79, 42 Mad, 523, *Radha Rani* v *Brindarani* A I.R. 1936 Cal., 392, 395, 63 C L J., 263, *Ram Sumran* v. *Govind Das* (1926) 5 Pat, 646, 676.

(*v*) *Renka* v *Bhola Nath* (1915) 37 All, 177, *Awadh Narain* v. *Santan Narain* A I R. 1937 Pat, 325

(*w*) (1916) 43 I.A, 207, 209, 39 Mad., 634, 637; *Vasonji* v. *Chanda Bibi* (1915) 37 All., 369, 379 P.C., citing the last sentence.

"The whole estate is for the time vested in her absolutely for some purposes, though in some respects for only a qualified interest. Her estate is an anomalous one, and has been compared to that of a tenant-in-tail. It would perhaps be more correct to say that she holds an estate of inheritance to herself and the heirs of her husband. But whatever her estate is, it is clear that until the termination of it, it is impossible to say who are the persons who will be entitled to succeed as heirs to her husband. The succession does not open to the heirs of the husband until the termination of the widow's estate. Upon the termination of the estate, the property descends to those who would have been the heirs of the husband if he had lived upto and died at the moment of her death" (*x*).

Her power of disposal defined by Judicial Committee.

The limitations upon her estate are the very substance of its nature and not merely imposed upon her for the benefit of reversioners. They exist as fully if there are absolutely no heirs to take after her, as if there were. Acts which would be unlawful as against heirs expectant are equally invalid as against the Sovereign claiming by escheat (*y*). The principles which restrict a widow were laid down by the Judicial Committee in *Collector of Masulipatam* v. *Cavaly Vencata* as follows: "It is admitted, on all hands, that, if there be collateral heirs of the husband, the widow cannot of her own will alien the property except for special purposes. For religious or charitable purposes, or those which are supposed to conduce to the spiritual welfare of her husband, she has a larger power of disposition than that which she possesses for purely worldly purposes. To support an alienation for the last, she must show necessity. On the other hand, it may be taken as established that an alienation by her, which would not otherwise be legitimate, may become so if made with the consent of her husband's kindred. But it surely is not

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(*x*) (1880) 7 I.A., 115, 154, 5 Cal., 776, 789, *Mohadeay Kooer* v. *Haruk Narain* (1883) 9 Cal., 244; *Anandabai* v. *Rajaram* (1898) 22 Bom., 984; *Lakshmi* v. *Anantarama* [1937] Mad., 948 F.B.; *Ram Krishna* v. *Kausalya* A.I.R. 1935 Cal., 689.

(*y*) *Collector of Masulipatam* v. *Cavaly Vencata* (1861) 8 M.I.A., 529, 550, *Kundan* v. *Secretary of State* (1926) 7 Lah., 543; *Dhondo* v. *Balkrishna* (1884) 8 Bom., 190; but see *Karuppa Tevan* v. *Alagu* (1882) 4 Mad., 152. The widow of a Nambudri Brahman is governed by the same rules, *Vasudevan* v. *Secretary of State* (1888) 11 Mad., 157, 165. The powers of a Hindu widow as administratrix of an estate are wider. A Hindu widow who is an executrix or an administratrix will have the powers under secs. 307 (1) and 308 of the Indian Succession Act, 1925, subject to the restrictions contained in sub-sec. 2 of sec. 307; see *Kamakhya* v. *Hari Churn* (1899) 26 Cal., 607; *Chuni Lal* v. *Srimati Makshada* (1919) 23 C.W.N., 652.

the necessary or logical consequence of this latter proposition, that, in the absence of collateral heirs to the husband, or on their failure, the fetter on the widow's power of alienation altogether drops. The exception in favour of alienation with consent may be due to a presumption of law that, where that consent is given, the purpose for which the alienation is made must be proper" (*z*).

Full power of enjoyment.

§ 639. It is probable that, in early times, a widow was morally, if not legally, bound to restrain her personal expenditure within the modest limits which were considered suitable to her bereaved condition (*a*). But whatever may in former times have been the force of the injunctions contained in such passages of the Sastras, or whatever may now be their effect as religious or moral precepts, they cannot be regarded at the present day as of any legal force, in restricting a widow in the use and enjoyment of her husband's property while she lives. And, of course, there could be still less reason for imposing any such restrictions upon other female heirs.

Not a trustee.

A woman's absolute right to the fullest benefit of her life-interest has long been recognized (*b*). She is in no sense a trustee for those who may come after her. She is not bound to save the income, nor to invest the principal. If she chooses to invest it, she is not bound to prefer one form of investment to another as being more likely to protect the interests of the reversioners. She is forbidden to commit waste, or to endanger the property in her possession, but, short of that, she may spend the income and manage the principal as she thinks proper (*c*). If she makes savings, she can give them away

Her savings.

(*z*) The position of a widow in the Punjab appears to be exactly the same, [(1926) 7 Lah, 543 *supra*] except that her powers of disposition are only to be exercised for secular objects, Punjab Customary Law II, 177, 179, 203, 209.

(*a*) It seems to have been the opinion of Mitter, J, that she was still subject to such a restraint. See his remarks, *Kery Kolitany* v. *Moneeram* (1874) 13 B L.R., 5, 19 W.R., 367, but see *contra*, per Glover and Kemp, JJ, *ib.*, 53, 76.

(*b*) *Kamavadhini* v *Joysa* (1866) 3 Mad. H.C., 116, *Cossinaut Bysack* v. *Hurrosundry* 2 M. Dig., 198, 214, affirmed in Privy Council, Morton, 85; V. Darp., 97, *Gooroobuksh* v *Lutchmana* Mad. Dec. of 1850, 61; *Ram Sumran* v. *Gobind Das* (1926) 5 Pat., 646; *Radharani* v. *Brindarani* A.I.R. 1936 Cal., 392, 395, 63 C.L.J., 263.

(*c*) *Hurrydoss* v. *Uppoornah* (1856) 6 M.I.A., 433; *Biswanath* v. *Khantomani* (1870) 6 B.L.R., 747; *Hurrydoss* v. *Rungunmoney* Sev, 657, *Sarat Chandra* v. *Charusilla* (1928) 55 Cal., 918. As to the right of a widow to work or to lease quarries, and to apply the proceeds as her own income, see *Subba Reddi* v. *Chengalamma* (1899) 22 Mad., 126, *Bishu Nath* v. *Ram Ratan* A.I.R. 1925 Oudh, 529.

as she likes. She is however bound to pay out of her income the interest on, but not the principal of, the last owner's debts. She is not entitled to ignore the charges which are legally payable out of the gross income such as the peishcush and maintenance payable to the other members of the family, thus adding to the debt left by the husband or other full owner so as to prejudice the reversioners (*d*).

Her interest in accumulations

§ 640. The law as to the right of a woman to accumulations from the estate of the last male holder is now settled. These accumulations may be: 1st. Accumulations made by her husband, or other male to whom she succeeds. 2nd. Accumulations made or income accrued and due to her after his death, and before the estate came into her possession. 3rd. Accumulations made by herself personally, and either invested, or converted into some different form, or else remaining uninvested in her possession.

made by last holder

(1) Accumulations made by the last male holder would in general be accretions to his estate, and follow it (*e*). In such a case, of course, no question could arise. The female would take the whole as an entire estate, subject to the usual restrictions. There might, however, be a special settlement which would cause the *corpus* of the last male holder's estate to pass to a male, and the accumulations to go by heirship to a female. In such a case she would hold these accumulations as a new estate, subject to the restrictions which apply to the property inherited by a female (*f*).

After her estate fell in

(2) Accumulations which have been made from the income of the estate after the death, but before it reached the hands of the widow or other limited owner belong to her absolutely. They are her income and it is not easy to see how they can be accretions to the estate. Of course it is open to the limited owner to make it such an accretion. But in the absence of any such incorporation, proved or presumed, the surplus income of the estate can only be

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(*d*) *Jaganadham* v. *Vighnesvarudu* (1932) 55 Mad., 216; *Appalaswamy* v. *Venkanna* (1914) M.W.N., 488; *Boddu Joggayya* v. *Goli Appalaraju* (1913) M.W.N., 275; *Thiruvengadam Pillai* v. *Gnana Sambandha* A.I.R. 1932 Mad., 97 (2); *Gade Subbayya* v. *Raja Kundakuri* (1932) 35 M.L.W., 93, A.I.R. 1932 Mad., 257; *Ramasami Chetti* v. *Mangaikarasu* (1895) 18 Mad., 113; *Debi Dayal* v. *Bhau Partap* (1904) 31 Cal., 433; *Veerabadra* v. *Marudaga* (1911) 34 Mad., 188, 192.

(*e*) *Chundrabullee* v. *Brody* 9 W.R., 584; *In re Harendranarayan's goods* (1869) 4 B.L.R. (O.C J.), 41.

(*f*) *Soorjeemoney* v. *Denobundo* (1862) 9 M.I.A., 123.

treated as absolutely at her disposal (*g*). Where the limited owner has never been in possession of the estate or was a minor, no intention to make it an accretion to the estate can be attributed to her: she never had the option of saving or spending it and therefore her right to the full usufruct must be recognised (*h*).

Made by herself.

(3) The third class of case is the one on which there has been a conflict of decisions (*i*). It is admitted that a female heir need not make any savings at all. She may spend her whole income every year, either upon herself, or by giving it away at her pleasure (*j*). But suppose she does not choose to spend her whole income, but accumulates the savings, may she dispose of these at her pleasure? If she has invested them, or purchased property with them, does it still remain at her disposal during her life? If she has not disposed of it, does it pass at her death with the rest of the property, or does it pass as her separate property to her own heirs? In *Isri Dut* v. *Hansbutti*, the Judicial Committee considered that "a widow's savings from her husband's estate are not her stridhan. If she has made no attempt to dispose of them in her lifetime, there is no dispute but that they follow the estate from which they arose. The dispute arises when the widow, who might have spent the income as it accrued, has in fact saved it, and afterwards attempts to alienate it" (*k*). The decision appears to have proceeded either upon some concession that income undisposed of must follow the estate from which it arose or it must be treated as a decision on a question of fact. For, in the subsequent decision in *Sowdaminee Dossee* v. *The Administrator-General* where the corpus of the estate never came to the widow and there was therefore no room for any presumption that the income of the estate went with it, the Judicial Committee made

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(*g*) *Sowdaminee Dossee* v. *The Admr. Genl. of Bengal* (1893) 20 I.A., 12, 20 Cal., 433; *Raja Parthasarathy* v. *Raja Venkatadri* (1923) 46 Mad., 190, 220 F B., *Ayisvaryanandaji* v. *Sivaji* (1926) 49 Mad., 116, 135, 151; *Kailasanatha* v. *Vadivanni* (1935) 58 Mad., 488, 495, 496.

(*h*) *Soorjeemoney Dossee* v. *Denobundo Mullick* (1862) 9 M.I.A., 123, approved in *Isri Dut* v. *Hansbutti* (1884) 10 I.A., 150, 159, 10 Cal., 324. The decision in *Grose* v. *Amirtamayi Dasi* (1870) 4 B.L.R. (O.C.J.), 1 is no longer law being at variance with the decision in 9 M.I.A., 123 *supra*.

(*i*) *Isri Dut* v. *Hansbutti* (1883) 10 I.A., 150, 10 Cal., 324 (held part of husband's estate); *Sheo Lochun* v. *Saheb Singh* (1887) 14 I.A., 63, 14 Cal., 387 (held part of husband's estate), *Nabakishore Mandal* v. *Upendra Kishore* (1922) 42 M L.J., 253 P.C ; *Sridhar Chattopadhyaya* v. *Kalipada* (1911) 16 C W.N, 106.

(*j*) *Ante* § 639

(*k*) (1883) 10 I.A., 150, 158, 10 Cal., 324, 335.

it clear that the income a woman receives from her husband's estate is her absolute property. Their Lordships observed: "It was said she had placed it in investments of a permanent nature. Had she done so, it does not appear to their Lordships that this circumstance alone would have added the fund to the estate devolving on her husband's heir" (*l*). In *Venkatadri Appa Rao* v. *Parthasarathi Appa Rao*, the widow never obtained actual possession of the income to which she was entitled and the question arose as to whether she was entitled to dispose of it by will. Their Lordships observed: "That income or any part of it, she could, while she remained entitled to it, have added as an accretion to the Medur estate if she had wished to do so. There is no evidence to suggest that she had ever added any part of that income as an accretion to the Medur estate. She was consequently entitled to dispose of it by will or otherwise" (*m*). In *Kailasanatha* v. *Vadivanni*, the Madras High Court, on a review of all the cases, held that purchases made out of the income of her mother's stridhana inherited by a daughter, are the latter's stridhana devolving on her own heirs (*n*). The Court also expressed the view that when a widow who can dispose of her accumulated income by will dies intestate, the surplus amounts must be treated as her absolute property for purposes of devolution as well (*o*). In *Navaneethakrishna Marudappa Thevar* v. *Collector of Tinnevelly*, the Madras High Court, following the two decisions of the Privy Council cited above, held as well established that the income of a woman's estate remains at her disposal in the absence of anything done by her to show that she treated the accumulation as part of the last male holder's estate (*p*). The Privy Council, affirming that decision, held that both the savings which were in the hands of the Court of Wards and the money which was in the widow's own possession were the personal property of the Rani and would pass under her will (*q*).

(*l*) (1892) 20 I.A., 12, 24, 20 Cal., 433.

(*m*) (1925) 52 I.A., 214, 225, 48 Mad., 312, affg. 46 Mad., 190 F.B.

(*n*) (1935) 58 Mad., 488; see also *Dulhin Parbati Kuer* v. *Baijnath* (1935) 14 Pat., 518.

(*o*) (1935) 58 Mad., 488, 504.

(*p*) (1935) 69 M.L.J., 632, 644, 'husband's estate' is a slip for 'son's estate', as the Rani succeeded on her adopted son's death.

(*q*) *Balasubramanya* v. *Subbayya* (1938) 65 I.A., 93, 104, 42 C.W.N., 449; *Nabakishore Mandal* v. *Upendra Kishore* (1922) 42 M.L.J., 253 P.C., 1922 M.W.N., 95 was only a decision on the facts of that case and was treated both in (1935) 69 M.L.J., 632 *supra* and in (1935) 58 Mad., 488 *supra*, as not laying down any general principle. As the Privy Council have affirmed the decision in (1935) 69 M.L.J., 632 *supra*, they must have taken the same view.

Intention, the test of accretion.

§ 641. Where nothing more appears than that a widow effected savings from the income of her husband's property, and with those savings acquired other property, the presumption is that it is not an accretion to the original estate. In a case decided in 1901, the Madras High Court, in deciding that there could be no presumption that it is an accretion, gave the following reason: "The acquirer of property presumably intends to retain dominion over it, and in the case of a Hindu widow the presumption is none the less so when the fund with which the property is acquired is one which, though derived from her husband's property, was at her absolute disposal In the case of property inherited from the husband, it is not by reason of her intention but by reason of the limited nature of a widow's estate under the Hindu Law, that she has only a limited power of disposition But her absolute power of disposition over the income derived from such limited estate being now fully recognised, it is only reasonable that, in the absence of an indication of her intention to the contrary, she must be presumed to retain the same control over the investment of such income. The mere fact that properties thus acquired by her are managed and enjoyed by her without any distinction, along with properties inherited from her husband, can in no way affect this presumption. She is the sole and separate owner of the two sets of properties so long as she enjoys the same, and is absolutely entitled to the income derived from both sets of properties"(*r*) This view was approved by Subramania Iyer, O C J. in *Subramanian* v. *Arunachelam* (*s*), by another Bench in *Ayiswaryanandaji* v. *Sivaji* (*t*), by the Allahabad High Court in *Bharosa Shukul* v. *Manbasi Kuer* (*u*),

(*r*) *Akkanna* v *Venkayya* (1902) 25 Mad, 351, 359, 360 it is not analogous to the case of an undivided member of a Hindu family who, by throwing into the common stock his separate property, makes it the joint family property, nor is it analogous to the case of a father or managing member making purchases from the profits of the joint estate as in such profits all coparceners are equally interested, *Ramakrishna* v *Rakmavathi* (1920) 11 M L W, 112 "There is no presumption that properties purchased by her out of such income are accretions to the estate", *Nirmala* v *Deva Narayan* (1928) 55 Cal, 269, *Mt Malan* v *Kishore Chand* A.I R. 1923 Lah, 17, *Wahid Ali* v. *Tori Ram* (1913) 35 All, 551.

(*s*) (1905) 28 Mad., 1 F.B.

(*t*) (1926) 49 Mad., 116.

(*u*) (1932) 54 All., 1014.

and by the Bombay High Court in *Keshav* v. *Maruti* (*v*). The same view is taken by the Patna High Court (*v*[1]). In *Raja of Ramnad* v. *Sundara Pandiyasami*, Lord Phillimore observed: "A widow may so deal with the income of her husband's estate as to make it an accretion to the corpus. It may be that the presumption is the other way. A case has been cited to their Lordships which seems so to say (*w*). But at the outside it is a presumption and it is a question of fact to be determined, if there is any dispute, whether a widow has or has not so dealt with her property" (*x*).

Evidence of intention.

The intention of the widow or other limited owner to make her savings or purchases part of her husband's estate can be evidenced by any unambiguous act or declaration on her part. The conduct of the widow in dealing with the income affords the best evidence of her intention (*y*). The erection of a building upon land belonging to the husband's estate (*z*), the purchase of a share of land in which the husband had already held other shares (*a*), the investment of moneys belonging to the husband's estate with a banker on the agreement that the interest thereon should be added to the principal (*b*) and the acquisition by the widow of tenant rights (*c*) would point to an accretion. Where, in exercise of a right of pre-emption vested in her in her husband's right, property was acquired without detriment to the husband's estate and with the aid of borrowed money, it was held that it was open to the widow

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(*v*) (1922) 46 Bom, 37. See *Sarnam* v. *Raja Bisheswar* (1930) 5 Luck., 608, A.I.R. 1931 Oudh, 66; *Pahlad Maharaj* v. *Gawri Dull* A.I.R. 1937 Pat., 619, *Mt. Malan* v *Kishore Chand* A I.R. 1923 Lah., 17, 19· The decisions in *Sarat Chandra* v. *Charusila* (1928) 55 Cal., 918 and in *Subbamma* v. *Venkat Krishna* A.I.R. 1925 Mad., 151 are not good law, a later decision of the Calcutta High Court in *Bankim Behary* v. *Prabodh Chandra* A.I R. 1934 Cal., 284 has followed (1905) 28 Mad, 1 (F B) *supra*.

(*v*[1]) *Dulhin Parbati* v. *Baijnath Prasad* (1935) 14 Pat., 518.

(*w*) The reference is to (1902) 25 Mad., 351 *supra*.

(*x*) (1919) 46 I.A., 64, 42 Mad., 581, 588.

(*y*) *Nirmala Sundari* v. *Deva Narayan* (1928) 55 Cal., 269 (property purchased benami in the name of another evidences an intention to keep it separate).

(*z*) *Raja Venkatanarasimha* v. *Raja Suranemi* (1908) 31 Mad., 321.

(*a*) *Kulachandra* v. *Bamasundari* (1914) 41 Cal., 870; *Sheo Lochun* v. *Sahebsingh* (1887) 14 I.A., 63, 14 Cal., 387; (1883) 10 I.A, 150, 10 Cal., 324 *supra*, *Jagarnath* v. *Suraj Deo* A.I.R. 1937 Pat., 483. See *Mt. Tehl Kuar* v. *Amar Nath* A.I.R. 1925 Lah., 2.

(*b*) *Narayanan Chetty* v. *Suppiah* (1920) 43 Mad., 629.

(*c*) *Nabakishore* v. *Upendrakishore* (1923) 37 C.L.J., 319, 42 M.L.J, 253 P C., A I.R. 1923 Cal., 563; *Ram Shanker* v. *Lal Bahadur* (1926) 1 Luck., 98, A.I.R. 1926 Oudh, 277.

to deal with it as she liked (*d*). A sum of money representing rents accrued during the last year of the widow's life was held to pass to the widow's representatives and not to the reversioner (*d*[1]). It must now be taken that all the surplus income of the estate, whether invested by the widow or not during her lifetime, belongs to her absolutely so as to be alienable by her (*e*). Where any property is given to a woman for her life, the income and any purchase made with it are her absolute property (*f*). In *Phool Kunwar* v. *Rikhi Ram,* it was rightly held that the income of the husband's estate is liable to be attached in execution of a decree against the husband, a question quite different from the one that arises between her legal representatives and her reversioners (*g*). For, as between herself and the reversioner, she is not bound to discharge the principal of her husband's debt out of the income (*h*).

Express power of disposal.

§ 642. None of the restrictions discussed in connection with a widow's estate apply to property which has passed to a female, not as heir, but by deed or other arrangement which expressly or impliedly empowers her to appropriate the profits. The savings of such property, and everything which is purchased out of such savings, belong absolutely to herself. They may be disposed of by herself at her pleasure, and, at her death, they pass to her representatives, and not to the heirs of the last male (*i*). But the mere fact that a Hindu female takes under a will or a deed of gift or arrangement, that to which she is really entitled as heiress, does not necessarily enlarge her powers. The question will still be, what estate was she intended to take? It will be a

Devise or grant.

(*d*) *Sri Ram Jankiji* v *Jagadamba* (1921) 43 All, 374 F B, *Mahna Singh* v *Thaman Singh* (1931) 11 Lah, 393

(*d*[1]) *Rivett Carnac* v *Jivibai* (1886) 10 Bom, 478, 483; see *Sarnam* v *Raja Bisheshwar* A I R. 1931 Oudh, 66, 5 Luck, 608 The decision in *Bharateswari Dasi* v. *Bhogaban Chandra* (1928) 33 C.W.N, 193 is not good law, being opposed to (1925) 52 I A., 214, 48 Mad., 312 *infra*

(*e*) *Venkatadri Appa Rao* v *Parthasarathi Appa Rao* (1925) 52 I A., 214, 48 Mad., 312.

(*f*) *Mohinee Mohun Basu* v *Rash Behary Ghose* [1937] 2 Cal., 97, *Srimati Krishna* v. *Bhaiya Rajendra* 2 Luck., 43, A.I.R 1927 Oudh, 240.

(*g*) (1935) 57 All., 714, disapproving *Rani Kanno Dai* v. *B J Lacy* (1897) 19 All, 235.

(*h*) *Ramaswami* v. *Mangaikaresi* (1895) 18 Mad., 113; *Virabadra* v *Marudaga* (1911) 34 Mad, 188, 192, *Jagannadha* v *Vignaneswaradu* (1932) 55 Mad., 216

(*i*) *Bhagbutti* v *Chowdhry Bholanath* (1875) 2 I.A., 256; *Guru* v. *Nafar* (1869) 3 B.L.R. (A.C.J.), 121, *Nellaikumaru* v. *Marakathammal* (1876) 1 Mad., 166.

question of construction in each case depending upon the language of the document and the surrounding circumstances (*j*). An estate given to a widow of an undivided family by way of maintenance lapses into the family property at her death (*k*), but not if it was an absolute grant in full satisfaction of the claim to maintenance (*l*). Where in compromise of a claim made by a Hindu widow in respect of her husband's estate with coparceners or reversioners, property was given to her, the fact that she claimed it as the widow would not cut down the estate to a life estate, if on the construction of the document or having regard to surrounding circumstances, the intention was to give her an absolute estate (*l*[1]). But the compromise by which she purported to acquire a larger interest would not bind the actual reversioners unless they were parties to it, or unless the persons with whom she entered into a compromise were entitled to the property and had not merely a *spes successionis* (*l*[2]). Where all that appears is that there was merely a settlement between several members of a family of their disputes and there was no intention to confer a new title on one party or the other, the compromise or settlement, in the absence of express words giving a larger interest, will be construed as only acknowledging and defining the antecedent title which it recognised (*l*[3]).

Under compromise.

Where a personal inam held by the husband was enfranchised in favour of the widow, the grant of the inam title-deed to her will not constitute the property, her absolute property (*l*[4]). But it is otherwise as to service inam lands which are enfranchised in favour of the widow or daughter of a

Grants in inam.

(*j*) *Moulvie Mahomed Shumsool* v. *Shewukram* (1874) 2 I A., 7; (1875) 2 I.A., 256, 261 *supra*, explaining the decision in *Rabutty* v. *Sibchunder* (1854) 6 M I.A., 1, *Nathu* v. *Babu Ram* (1935) 63 I A., 155, *Lakshmibai* v. *Hirabai* (1887) 11 Bom., 69, affd., p. 573; *Ganpat Rao* v. *Ramchander* (1889) 11 All., 296; *Nunnu Meah* v. *Krishnasami* (1891) 14 Mad, 274; *Kunhacha* v. *Kutti Mammi* (1893) 16 Mad., 201.

(*k*) *Dhup Nath* v. *Ram Charitra* (1932) 54 All., 366.

(*l*) *Sri Raja Venkata* v. *Sri Raja Rao* (1894) 17 Mad., 150, 156; *Ramachandra* v. *Vijayaragavulu* (1908) 31 Mad., 349.

(*l*[1]) *Sambasiva Ayyar* v. *Venkataswara Ayyar* (1908) 31 Mad., 179, *Nathu Lal* v. *Babu Ram* (1935) 63 I.A., 155, 167-8, 40 C.W.N., 481.

(*l*[2]) (1935) 63 I.A., 155, 168.

(*l*[3]) *Rani Mewa Kuwar* v. *Rani Hulas Kuwar* (1874) 1 I A., 157, 166; *Khunni Lal* v. *Gobind Krishna* (1911) 38 I.A., 87, 102, 33 All., 356, but see *Lekhraj Kunwar* v. *Harpal Singh* (1912) 34 All., 65 P.C., where the compromise was construed to create an independent title.

(*l*[4]) *Narayana* v. *Chengalamma* (1887) 10 Mad., 1; *Vongala* v. *Vangala* (1906) 28 Mad., 13; *Kashi Prasad* v. *Inda Kunwar* (1908) 30 All., 490.

deceased holder in which case the grantee becomes an absolute owner (*m*).

Powers of alienation.

§ 643. The purposes which authorise a Hindu woman to mortgage, sell, or otherwise alienate, in whole or in part, the estate inherited by her, are stated by the Judicial Committee partly in the passage already quoted from *Collector of Masulipatam* v. *Cavaly Vencata* and partly in *Hunooman Persaud's* case, the principles of which have been applied to women holding a limited interest (§§ 361, 362) (*n*). A widow or other female limited owner has therefore a power of alienation only (1) for religious or charitable purposes or those which are supposed to conduce to the spiritual welfare of her husband; (2) for other purposes when they amount to what is termed 'legal necessity' (*o*) and (3) for the benefit of the estate (*o*[1]). A widow or other limited owner has a larger power of disposition for religious and pious purposes than for purely worldly purposes. To support an alienation for the latter, there must be necessity (*p*). These restrictions on her power apply in all the provinces whether the property inherited by her was the self-acquired or ancestral property of the last male owner and whether it be immovable or movable. According to the Mithila School a widow, however, has absolute powers of disposition over her husband's movables which she inherits. It is her stridhana and descends as such (*q*). In Bombay, in cases governed by the Mayukha, a widow has an absolute power of disposal over movables inherited by her or allotted to her on a partition with her son, by sale, gift, or other alienation *inter vivos*, but not by will. Of course, on her death, the property descends

Movables

(*m*) *Venkata* v. *Virabadrayya* (1921) 48 I A, 244, 44 Mad., 643; *Palaniyandi* v *Velayudhan* (1929) 52 Mad, 6

(*n*) (1861) 8 M I A, 529, (1856) 6 M.I.A, 393, *ante* § 638

(*o*) *Bhugwandeen* v *Myna Baee* (1867) 11 M I.A, 487, *Lala Amarnath* v *Achan Kuar* (1892) 19 I A, 196, 14 All., 420, *Sham Sundar* v. *Achhan Kunwar* (1898) 25 I A, 183, 191, 21 All, 71, *Bijoy Gopal* v *Krishna Mahishi* (1907) 34 I A, 87, 34 Cal, 329, *Obala Kondama* v *Kandasami Gounden* (1924) 51 I A, 145, 152, 47 Mad, 181, *Bijoy Gopal* v *Girindranath* (1914) 41 Cal, 793 P C, *Buchi Ramayya* v *Jagapathi* (1885) 8 Mad, 304, *Narasimha* v *Venkatadri* (1885) 8 Mad, 290, *Durganath* v *Chintamoni* (1904) 31 Cal, 214, *Gadadhar* v *Chandrabagabai* (1893) 17 Bom, 690 F B., *Jagdeo Singh* v. *Mt. Raja Kuer* (1927) 6 Pat, 788, *Ram Sumran* v *Shyam Kumari* (1921) 49 I.A, 342, 1 Pat, 741, 745

(*o*[1]) *Bhushana Rao* v *Subbayya* A I R 1936 P C, 283

(*p*) (1861) 8 M I A., 529, 551 *supra*, *Raja Lukhee* v. *Gokool Chunder* (1869) 13 M.I A., 209

(*q*) *Sureshwar* v. *Maheshrani* (1921) 47 I.A, 233, 238, 48 Cal., 100; *Latur Rai* v. *Bhagwan Das* A I.R. 1936 Pat, 80, *Jagarnath Prasad* v. *Suraj Deo Narain* A.I R. 1937 Pat., 483.

to the heirs of the last full owner and not as her stridhana (*r*). Now, under the Hindu Women's Rights to Property Act, 1937, in these two cases as well as in the case of Jain or other widows who by custom may have absolute rights, their estates would seem to be only the ordinary limited interest of a Hindu woman (§ 591).

Alienation for religious purposes.

§ 644. The principles applicable to a Hindu widow's or other female owner's alienation for religious purposes have been laid down in a number of cases (*s*). In *Sardar Singh* v. *Kunj Behari Lal*, a Hindu widow made a gift of immovable property, about one-seventy-fifth of the whole estate, for food offerings to a deity and for the maintenance of the priests of the temple, though she had sufficient income to provide for them without alienating any part of the corpus. It was held by the Judicial Committee, affirming the judgment of the Allahabad High Court, that the alienation was valid as the gift was for the spiritual benefit of her husband (though it was not an obligatory purpose) and as the property alienated was but a small fraction of the whole estate. Their Lordships observed, "There can be no doubt upon a review of the Hindu law, taken in conjunction with the decided cases, that the Hindu system recognizes two sets of religious acts. One is in connection with the actual obsequies of the deceased, and the periodical performance of the obsequial rites prescribed in the Hindu religious law, which are considered as essential

Two sets of religious acts.

(*r*) *Bechar* v. *Bai Lakshmi* (1863) 1 Bom. H.C., 56; *Dewcooverbaee's* case (1859) 1 Bom. H.C., 130, *Bhagirathibai* v. *Kahnuji Rao* (1887) 11 Bom., 285 F.B.; *Gadadhar* v. *Chandrabagabai* (1893) 17 Bom., 690 F.B , *Chamanlal* v. *Doshi Ganesh* (1904) 28 Bom., 453; *Chamanlal* v. *Bai Parvati* (1934) 58 Bom., 246. In *Pandharinath* v *Govind* (1908) 32 Bom, 59, a Mitakshara case, it was held that a widow has no greater powers over movables than over immovables In Allahabad and Calcutta, a custom is recognised by which a childless Jain widow acquires an absolute right in her husband's property, whether ancestral or self-acquired: *Harnabh* v. *Mandil* (1900) 27 Cal, 379, *Sheo Singh* v. *Dakho* (1878) 5 I.A., 87, 1 All., 688, *Shimbu Nath* v *Gayan Chand* (1894) 16 All., 379, *Hukum Chand* v. *Sital Prasad* (1928) 50 All., 232. In Bombay, a Jain widow has absolute power to deal only with the self-acquired movable property of her husband, but not with self-acquired immovables nor with ancestral property. It was also held in that case that the right of a Jain mother to deal with property inherited from her son was not made out. *Bhikabai* v. *Manilal* (1930) 54 Bom., 780, 796.

(*s*) *Khub Lal Singh* v. *Ajodhya Misser* (1915) 43 Cal, 574; *Venkata Subba Rao* v. *Ananda Rao* (1934) 57 Mad., 772, 774; *Madan Mohun* v. *Rakhal Chandra* (1930) 57 Cal., 570; *Panachand* v. *Mancharlal* (1918) 42 Bom., 136; *Tatayya* v. *Ramakrishnamma* (1911) 34 Mad., 288; *Ram Surat* v. *Hitanandan* (1931) 10 Pat., 474; *Radha Madhab* v. *Rajendra Prasad* (1933) 12 Pat., 727, 743; See Vyav. Chand., I, 135, 138. "It is impossible to define the extent and limit of the power of the widow to dispose for religious purposes": per Lord Giffard in *Cossinaut* v. *Hurrosoondry* 2 M. Dig., 197.

for the salvation of the soul of the deceased. The other relates to acts which, although not essential or obligatory, are still pious observances which conduce to the bliss of the deceased's soul. In the later cases, this distinction runs clearly through the views of the learned judges." "With reference to the first class of acts, the powers of the Hindu female who holds the property are wider than in respect of the acts which are simply pious and if performed are meritorious so far as they conduce to the spiritual benefit of the deceased. In the one case, if the income of the property, or the property itself, is not sufficient to cover the expenses, she is entitled to sell the whole of it. In the other case she can alienate a small portion of the property for the pious or charitable purpose she may have in view" (*t*). The primary religious purpose which a widow is bound to carry out at any expense to the estate is the performance of the funeral obsequies of her husband and the periodical performance of the obsequial rites enjoined by the religious law (*u*). These are spiritual necessities. There are other religious benefits procurable for him the securing of which is of an optional character Such religious purposes include a portion to a daughter, building temples or the installation of idols for religious worship, digging tanks and the like (*v*).

An alienation by a widow for the performance of her husband's mother's *sraddha* is valid (*w*). A daughter's alienation for the expenses of her mother's *sraddha* is also valid (*x*). A gift made by a daughter in connection with the performance of her father's *sraddha* has been upheld (*y*). An alienation for the expenses of the excavation and consecration of a tank by a widow has been upheld as a religious and charitable purpose

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(*t*) (1922) 49 I A, 383, 391, 44 All., 503 affg. 41 All., 130 and approving *Tatayya* v. *Ramakrishnamma* (1911) 34 Mad., 288 and the judgment of Mookerjee, J, in *Khub Lal* v *Ajodhya* (1916) 43 Cal., 574.

(*u*) *Latur Rai* v *Bhagwandas* A.I.R. 1936 Pat, 80; *Ratanchand* v. *Javherchand* (1898) 22 Bom, 818; *Lakshminarayana* v. *Dasu* (1888) 11 Mad, 288, *Srimohan* v. *Brij Behary* (1909) 36 Cal., 753 approving *Raj Chunder* v. *Sheeshoo* 7 W.R, 146.

(*v*) The Mitakshara says "Moreover, if the word sacrifice import religious duty in general, the succession of women to estates is most proper, since they are competent to the performance of auspicious and conservatory acts as the making of a pool or a garden." Mit, II, i, 24. Futwah in *Cossinaut* v *Hurrosoondry* cited in Vyav Darp., 101.

(*w*) *Chowdry Junmejoy* v *Russomoyee* 11 B.L R, 418; *Tatayya* v. *Ramakrishnamma* (1911) 34 Mad., 288, 291.

(*x*) *Srimohun* v. *Brijbehary* (1909) 36 Cal, 753, *Nabinchandra* v. *Sm Shona Mala* (1930) 35 C W.N, 279; *Raj Chunder* v. *Sheshoo* 7 W R., 146.

(*y*) (1911) 34 Mad., 288, 291 *supra.*

conducive to the spiritual welfare of her husband (*z*). An alienation for the debts contracted for defraying the expenses of the thread and marriage ceremonies of one of her daughter's sons by a widow has been held valid (*a*).

Pilgrimages

§ 645. Pilgrimages and sacrifices performed by a widow are pious acts conducive to the spiritual welfare of her husband provided the expenditure is within reasonable limits (*b*). It has been held in some cases that a widow is not authorised to sell her husband's property for pious and religious purposes intended to secure her own spiritual welfare (*c*). But the distinction between acts of which the religious benefit is solely acquired by the female heir and acts of which the religious merit accrues to the deceased or is shared by her with him cannot be sustained in the case of the widow,

(*z*) *Khublal* v. *Ajodhya Misser* (1915) 43 Cal., 574; *Ram Surat* v. *Hitanandan* (1931) 10 Pat., 474; *Krishnamurthi* v. *Lingayya* A.I.R. 1936 Mad., 677 (gift of one-sixth of the estate for building temple for her husband's and her own salvation valid); *Govind* v. *Lakshmi* (1921) 43 All., 515 (gift of about 1|11 to husband's purohit on the widow's return from pilgrimage to Gaya, valid); *Makhan Lal* v. *Gayan Singh* (1911) 33 All, 255 (alienation for a feast given on return from a pilgrimage was held invalid); *Bai Chanchal* v. *Chimanlal Chunilal* A.I.R. 1928 Bom., 238 (pilgrimages commendable but not absolutely necessary—invalid); *Indar Bux* v. *Sheo Naresh* (1927) 2 Luck., 713; A.I.R. 1927 Oudh, 450 (gift of 1|55 share, valid); *Baldeo Prasad* v. *Fateh Singh* (1924) 46 All., 533 (gift of small portion); *Panachand* v. *Manoharlal* (1918) 42 Bom., 136 (gift of considerable portion—invalid), *Radha Madhab* v. *Rajendra* (1933) 12 Pat., 727 (gift of 1|3—invalid); *Ishwari* v. *Babunandan* (1925) 47 All., 563, 571 (gift to priest being considerable—invalid).

(*a*) *Venkatasubba Rao* v. *Ananda Rao* (1934) 57 Mad., 772, reversing (1929) 58 M.L.J., 127 and approving *Mallayya* v. *Bapireddi* (1932) 62 M.L.J., 39; *Rustam Singh* v. *Moti Singh* (1896) 18 All., 474 (woman can mortgage her father's estate to meet expenses of her daughter's marriage if her husband is too poor); *Narainbati* v. *Ramdhan* (1916) 20 C.W.N., 734 (no obligation to marry daughter's daughter), but see *Ramcoomar* v. *Ichamoyi* (1881) 6 Cal., 36; *Jai Ram* v. *Bhagat Ram* A.I.R. 1935 Lah., 440 (legal and moral obligation to marry daughter's daughter).

(*b*) *Rama* v. *Ranga* (1885) 8 Mad., 552; *Muteeram* v. *Gopal* 11 B.L.R., 416; *Darbari Lal* v. *Govind* (1924) 46 All., 822; *Ganpat* v. *Tulsiram* (1912) 36 Bom., 88. In *Hari* v. *Bajrang* (1909) 13 C.W.N., 544, 547, it was said that a pilgrimage to Benares was not a necessity but it was a proper and pious act; see also *Bai Chanchal* v. *Chiman Lal* A.I.R. 1928 Bom., 238.

(*c*) *Puran Dai* v. *Jai Narain* (1882) 4 All., 482; *Ram Kawal* v. *Ram Kishore* (1895) 22 Cal., 506; *Bishen Dayal* v. *Mt. Jaisari Kuer* A.I.R. 1918 Pat., 323, 48 I.C., 746; *Sham Dei* v. *Birbadra* (1921) 43 All., 463; *Munshi Lal* v. *Shiv Devi* (1923) 4 Lah., 336; *Har Mitra* v. *Raghubar* A.I.R. 1928 Oudh, 342, 3 Luck., 645; *Thakur Prasad* v. *Mt. Dipa Kuer* (1931) 10 Pat., 352. Though some of these decisions can be supported on the ground that the alienations were not within proper limits or in accord with the common notions of Hindus, they cannot be supported on the view that they were only concerned with the spiritual welfare of the widow which is inseparable from her husband's spiritual welfare. A gift of property to an educational institution fails, as this would not be a religious purpose under Hindu law: *Sohanlal* v. *Bhagwati* A.I.R. 1936 All., 205.

whether or not it is valid in the case of the daughter or the mother: for the wife is associated in all the religious offerings and rituals with the husband and this mutual relation is not dissolved by the death of either (*d*). Brihaspati says. "In Scripture and in the Code of law, as well as in popular practice, a wife is declared by the wise to be half the body of her husband equally sharing the fruit of good and evil acts" (*e*). On this point. the true principle is stated by Mookerjee J. in *Khub Lal* v *Ajodhya Misser* (*f*), by Dhavle J. in *Thakur Prasad* v. *Mt Dipa Kuer* (*g*), and by Venkata-ramana Rao J. in *Prabhala Krishnamurthi* v. *Valluri Lingayya* (*h*).

Husband's debts.

§ 646. The obligation of a widow taking her husband's property to pay his debts has been held to be a pious duty coming under the head of religious benefit Of course there could be no such duty where the debts were contracted for immoral purposes or where they were repudiated by the husband during his lifetime (*i*). It was formerly held

Barred debts.

that where the debts were already barred by lapse of time, she could not burden or dispose of the estate for their discharge (*j*) and this is certainly the law as regards an ordinary manager of the family (*k*). This seems sensible enough as a matter of mundane equity, though it may be doubted whether a plea of the statute would be accepted in the Court of the Hindu Rhadamanthus (*l*) In more recent cases it has been repeatedly held that a widow's obligation to pay her husband's debts, and her right to alienate the property which she inherited from him are not affected by the statute of limitations

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(*d*) Manu, IX, 96, Dayabhaga, XI, 1, 43-44.

(*e*) Brih., XXV, 46.

(*f*) (1916) 43 Cal., 574, 582.

(*g*) (1931) 10 Pat., 352.

(*h*) A.I.R. 1936 Mad., 677.

(*i*) *Chetty Colum* v *Rungaswamy* (1859) 8 M I.A., 319, *Jayanti Subbiah* v *Alamelu Mangamma* (1904) 27 Mad., 45, *Bhagwat* v. *Nivratti* (1915) 39 Bom, 113 (debt repudiated by husband), *Bajrang Singh* v. *Govind* A I.R. 1935 Oudh, 373 (a minor's debt).

(*j*) *Melgirappa* v *Shivappa* (1869) 6 Bom H C (A.C J), 270.

(*k*) *Chinnayya* v. *Gurunathan* (1882) 5 Mad, 169 F B. See *ante* § 310 A.

(*l*) Cited with approval in *Ashutosh* v. *Chidam* (1930) 57 Cal., 904, *Daroga Rai* v. *Basdeo* (1937) 16 Pat., 45, 50.

or any similar contrivance for getting rid of his obligations (*m*).

§ 647. The Privy Council decided in *Soni Ram* v. *Kanhaiya Lal* (*n*) that the widow could not acknowledge her husband's debt so as to bind the estate. This would lead to the logical conclusion that she cannot pay a barred debt so as to bind the reversioners (*o*). Now section 21 (3) (a) of the Indian Limitation Act, 1908, as amended by Act I of 1927 makes an acknowledgment or payment made in respect of any liability by a widow or other limited owner, valid as against the reversioners. Acknowledgment of debt.

§ 648. Payment, out of her own moneys, by a Hindu wife of her husband's debts during his life-time must, in the absence of evidence to the contrary, be considered as a voluntary payment which will not support her alienation after her husband's death of properties descended to her from him (*p*). The Allahabad High Court has held that a Hindu mother succeeding to her son's estate cannot validly alienate a part of that estate to pay off time-barred debts of her husband which were not charged on the estate, though her son might be under a pious obligation to pay them (*q*). Whatever may be the case as regards the widow's pious duty to pay her husband's barred debts, the liability of any limited owner including the widow, to pay the debts of the last full owner which are not barred is obviously a legal necessity and a worldly purpose. This would seem to be the effect of the decision in *Bhushana Rao* v. *Subbayya:* Other debts.

(*m*) *Bhala* v. *Parbu* (1878) 2 Bom., 67; *Chimnaji* v. *Dinkar* (1887) 11 Bom., 320; *Bhau Babaji* v. *Gopala* (1887) 11 Bom., 325 (where the same principle was applied to a widowed daughter-in-law who was in possession of the estate of her father-in-law); *Kondappa* v *Subba* (1890) 13 Mad., 189; *Udai Chunder* v. *Ashutosh* (1893) 21 Cal., 190, *Gauri Sankar* v. *Sheonandan* (1924) 46 All., 384, 388, *Gajadhar* v *Jagannath* (1924) 46 All., 775, 785 F.B.; *Gauri Shankar* v. *Kamla Prasad* A.I.R. 1926 All., 645; *Santu Ram* v. *Mt. Dodam Bai* (1928) 9 Lah., 85; *Tulshi Prasad* v. *Jagmohan Lal* A.I.R. 1934 All., 1048. The widow need not pay the principal amount of the debt out of her income. *Ramaswami* v. *Mangaikarasu* (1895) 18 Mad., 113; *Debi Dayal* v. *Bhau Pratap* (1904) 31 Cal., 433; *Jagannadham* v. *Vighnesvarudu* (1932) 55 Mad., 216, § 639.

(*n*) (1913) 40 I.A., 74, 35 All., 227 affirming (1910) 32 All., 33.

(*o*) On the question whether a widow or other limited owner is entitled to acknowledge her husband's debt so as to bind the estate, the Privy Council held the contrary observing that to hold otherwise would be "to extend the power of a Hindu woman in possession of her limited interest to bind the estate to an extent which has not been sanctioned by authority."

(*p*) *Bhawani* v. *Himmat* (1911) 33 All., 342 P.C., affirming (1908) 30 All., 352.

(*q*) *Sheo Ram* v. *Sheo Ratan* (1921) 43 All., 604.

"The power of a Hindu widow to alienate the estate inherited by her for purposes other than religious or charitable is analogous to that of a manager of an infant's estate, as described in 6 M.I.A., 393. She can alienate it, not only for legal necessity, but also for the benefit of the estate". In this case, the circumstances of necessity justifying the alienation were considered before the mortgage was upheld (*r*).

Payment must be *bona fide*.

Payment of the debts, however, must be made *bona fide* in discharge of the duty of the widow to pay all her husband's debts equally as far as she can. She must act fairly to all the creditors as a body and not unduly prefer any one of them (*s*).

Maintenance marriage expenses and gifts.

§ 649. As a female heir is bound to maintain the other members of the family and perform their marriages and other ceremonies, she may mortgage or sell the property to procure the necessary funds (*t*). *A fortiori*, of course, she may do so to procure maintenance for herself, or to defray the expense of her own religious ceremonies (*u*). As a qualified owner is entitled under Hindu law to do all reasonable and proper acts which are incidental to a marriage, a gift to a daughter on the occasion of her marriage or the *gowna* ceremony and a gift to a son-in-law on the occasion

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(*r*) A.I.R. 1936 P.C. 283, 41 C.W.N., 18. See also *Awadh Narain* v. *Santan Narain* A.I.R. 1937 Pat., 325.

(*s*) *Rangilbhai* v. *Vinayak* (1887) 11 Bom, 666

(*t*) *Debi Dayal* v. *Bhan Pertab* (1904) 31 Cal, 433, 441, *Ramcoomar* v. *Ichamoyi* (1881) 6 Cal, 36, *Ganpat Valad* v *Tulsiram* (1912) 36 Bom, 88, *Makhan Lal* v. *Gayan Singh* (1911) 33 All, 255, but not for the marriage of a daughter's daughter, *Narainbati* v. *Ramdhari Singh* (1916) 1 Pat.L.J, 81, 20 C.W.N, 734, but see *Jai Ram* v. *Bhagat Ram* A.I.R. 1935 Lah., 440, *Rustam Singh* v. *Moti Singh* (1896) 18 All, 474 (marriage of a daughter by the daughter who inherited her father's estate), *Brij Mohan* v. *Mt. Racchpal* A.I.R. 1933 Oudh, 426 (marriage of unmarried daughter and sister of deceased, necessary, gift of ¼ of the estate to son-in-law—valid). *Sailabala Deb* v. *Baikuntha* A.I.R. 1926 Cal., 486 (maintenance of husband's widowed sister is a legal necessity—gift to son-in-law on occasion of daughter's marriage not restricted to ¼). *Bhagwati Shukul* v. *Ram Jatan* (1923) 45 All, 297 (daughter's alienation for her son's marriage—valid), *Ram Sumran* v. *Gobind Das* (1926) 5 Pat., 646 (gift of one-fortieth to son-in-law valid), *Kamla Prasad* v. *Lalji Prasad* (1930) 9 Pat, 721 (daughter's marriage), *Mallayya* v. *Bapi Reddi* (1932) 62 M.L.J., 39 (daughter's alienation for her son's marriage—valid)

(*u*) *Sadashiv* v. *Dhakubai* (1881) 5 Bom., 450, *Venkatarazu* v. *Kotayya* (1912) 23 M.L.J, 223 (destitute widowed daughter), *Darbari Lal* v. *Gobind Saran* (1924) 46 All., 822. See §§ 644, 645.

of the daughter's marriage are, if reasonable in extent, within her powers (*v*).

§ 650. These are some of the cases specially pointed out as authorising a woman to dispose of her inheritance. Others come under the general head of necessity (*w*). It should be observed *in limine* that the word 'necessity' when used in this connection has a somewhat special, almost technical, meaning. Necessity does not mean actual compulsion but the kind of pressure which the law recognises as serious and sufficient (*x*); in other words, she must wait till the necessity arises. She must not anticipate her wants by raising money or contract for the discharge of liabilities before they arise (*y*). In order to justify legal necessity, it must be shown that the expenses could not have been met from the income of the property in the widow's hands and that they were reasonable (*z*). **Necessity.**

§ 651. Subject to the exception that she is not bound to apply the surplus income to the payment of the principal amount of her husband's debts, it is only if there are no other means available that she can alienate the properties (*a*). It is of course impossible to define what is necessity. Every case must be judged upon its own facts. A female limited owner cannot certainly have less power than the manager

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(*v*) *Ramasami* v. *Vengiduswami* (1898) 22 Mad., 113 (gift to son-in-law); *Churaman Sahu* v. *Gopee Sahu* (1910) 37 Cal., 1 (gift on gowna ceremony); *Jowala Ram* v. *Hari Kishen* (1924) 5 Lah., 70 (70 out of 300 bighas on the occasion of daughter's marriage); *Ram Sumran* v. *Gobind Das* (1926) 5 Pat., 646 (gift of one-fortieth to son-in-law—valid), *Sailabala* v. *Baikuntha* A I R. 1926 Cal., 486 (expenses of daughter's marriage not limited to one-fourth estate); *Madho Prasad* v. *Dhan Raj Kuar* 1 Luck., 277, A.I.R. 1926 Oudh, 425, *Uda Dat* v. *Ambika Prasad* A I.R. 1927 Oudh, 110, 2 Luck., 412 (alienation for daughter's dowry valid); *Brij Mohan* v. *Racchpal* A I.R. 1933 Oudh, 426 (gift to daughter).

(*w*) 'The touchstone of authority is necessity." *Sham Sundar* v. *Achhan Kunwar* (1898) 25 I.A., 183, 191, 21 All., 71; *Obala Kondama* v. *Kandasami* (1924) 51 I.A., 145, 152, 47 Mad., 181.

(*x*) *Ram Sumran Prasad* v. *Shyam Kumari* (1922) 49 I.A., 342, 346, 1 Pat., 741.

(*y*) *Ramyad Panday* v. *Rambihara Pande* (1919) 4 P.L.J., 734.

(*z*) *Ravaneshwar* v. *Chandi Prasad* (1916) 43 Cal., 417 P.C., affirming (1911) 38 Cal., 721. The decision in *Sardar Singh* v. *Kunj Behari Lal* (1922) 49 I.A., 383 does not depart from this general rule. The widow there, though the income was ample, arranged for the perpetual performance of pious acts and therefore immovable property had to be endowed.

(*a*) *Ram Sumran* v. *Shyam Kumari* (1922) 49 I.A., 342, 346, 1 Pat., 741, 745. "If there is no other available source of supply." *Ravaneshwar* v. *Chandi Prasad* (1911) 38 Cal., 721; *Santosh Kumar Mullick* v. *Ganesh Chandra* (1926) 31 C.W.N., 65, 73; *Bhushana Rao* v. *Subbayya* A.I.R. 1936 P.C., 283, 284.

of a family property, and does not in this respect appear to have more (*b*). The principles laid down by the Privy Council in the well-known case of *Hunoomanpersaud* v. *Mt. Babooee* will equally apply to her acts (c), and to the obligation of those who deal with her to enquire into the circumstances which justify her dealings (*d*). But it must be remembered, that in regard to her alienations it is not a question of absolute but of relative invalidity. She cannot, in the absence of legal necessity, bind the inheritance for her own personal debts or private purposes as against reversioners (*e*). A Hindu widow or other limited owner can always transfer her life interest in the property inherited by her (*f*). Any alienations in excess of her powers are not void, but voidable in the sense that it is open to the reversioner to elect to abide by them when the estate falls into his possession, either by express ratification, or by acts done by him which treat them as valid and binding (*g*). An alienation by the limited owner when it is not for necessity does not require to be set aside by the reversioners. He can treat it as a nullity without the intervention of a Court (*h*). As the alienation beyond her life is invalid, the reversioner is entitled to mesne profits from

Acts good for her own life.

(*b*) See ante §§ 361, 365-367.

(c) *Hanoomanpersaud* v. *Mt Babooee* (1856) 6 M I A, 393; *Kameswar* v. *Run Bahadur* (1881) 8 I A, 8, 6 Cal, 843, *Lala Amarnath* v. *Achhan Kunwar* (1892) 19 I A, 196, 14 All., 420, *Sham Sundar* v. *Achhan Kunwar* (1898) 25 I A, 183, 21 All, 71, *Bhagwat Dayal* v. *Debi Dayal* (1908) 35 I A, 48, 35 Cal, 420, *ante* §§ 361, 366, 371

(*d*) See *ante* §§ 366, 371

(*e*) *Lala Bynath* v *Bissen* 19 W R, 80.

(*f*) *Durga Kunwar* v *Matu Mal* (1913) 35 All, 311 F B, *Monram Kolita* v *Kery Kolitani* (1880) 7 I A, (146), 5 Cal, 766; *Sreeramulu* v. *Kristamma* (1903) 26 Mad, 143, 149 overruled on another point in *Vaidyanatha* v. *Savitri* (1918) 41 Mad., 75 F.B.; *Golandmoni* v *Shamlal* B L R. Supp Vol., 48, *Kamavadhani* v. *Joysa* (1866) 3 Mad H C, 116; *Melgirappa* v. *Shivappa* (1869) 6 Bom H.C. (A C J.). 270. The same rule has been applied, even where the widow held under a condition against alienation. *Bibi Sahodra* v. *Rai Jung* (1882) 8 Cal, 224, 8 I A., 210.

(*g*) *Modhu Sudan* v *Rooke* (1898) 24 I.A., 164, 25 Cal, 1; *Dattaji* v. *Kalba* (1897) 21 Bom., 749; *Sitaram* v. *Khandou* (1921) 45 Bom., 105, *Hayes* v. *Harendra Narain* (1904) 31 Cal., 698; *Bipat* v. *Kulpat* (1934) 13 Pat., 182; *Lilku Mahto* v. *Amar Mahto* A.I.R. 1936 Pat, 602; *Wazir* v. *Ganga Ram* A.I R. 1924 Lah., 370; *Bijoy Gopal* v. *Krishna* (1907) 34 I A., 87, 34 Cal, 329, *Ramgouda Anna Gouda* v. *Bhau Saheb* (1928) 54 I A., 396, 52 Bom., 1; see *ante* § 404.

(*h*) *Bijoy Gopal* v. *Krishna* (1907) 34 I A, 87, 34 Cal., 329; *Obala Kondama* v. *Kandasamy* (1923) 51 I.A, 145, 152, 47 Mad., 181; *Ramgouda Annagouda* v. *Bhausaheb* (1928) 54 I.A., 396, 52 Bom., 1.

the date of her death when he becomes entitled to possession (*i*).

Existing necessity sufficient.

§ 652. The decision in *Hunoomanpersaud's* case shows, that if there is an actually existing necessity for an advance of money, the circumstance that this necessity is brought about by previous mismanagement does not vitiate the loan, unless the lender has himself been a party to the misconduct which has produced the danger (*j*). And this rule has been followed in more recent decisions. Of course it will be necessary to show that there was an actual pressure, such as an outstanding decree or impending sale, and one which the heiress had no funds capable of meeting (*k*). One very common case of necessity is that of a loan of money, or a mortgage or sale of part of the property to pay off arrears of Government revenue provided there is no other available source (*l*). A widow is justified in charging or alienating her husband's property in order to pay the costs properly incurred in establishing her title to it or in defending it (*m*), but not in a merely speculative suit brought to recover property, not belonging to his

Government revenue.

(*i*) *Bhagwat Dayal* v. *Debi Dayal* (1908) 35 I.A., 48, 59, 35 Cal., 420. "As the deeds of sale are not good as such, the claim for mesne profits is well-founded." The decision to the contrary in *Mohan Lal* v. *Jagjivan* A.I.R. 1938 Bom., 298, [1938] Bom., 292 overlooks the Privy Council decision and cannot be regarded as correct. Even where a conveyance of property was procured by fraud or undue influence and the deed was fully valid until rescinded by the Court, the Privy Council held that the defrauded person was entitled to an account of the mesne profits from the date of the conveyance and not only from the date of the suit. *Satgur Prasad* v *Har Narain Das* (1932) 59 I.A., 147, 7 Luck., 64, A I.R. 1932 P.C., 89. See *ante* § 404.

(*j*) (1856) 6 M.I.A., 393.

(*k*) *Lalla Amarnath* v. *Achan Kunwar* (1891) 19 I.A., 196, 14 All., 420; *Lakshman* v. *Radhabai* (1887) 11 Bom., 609; *Dharam Chand* v. *Bhawani* (1897) 24 I.A., 83, 25 Cal., 189; *Ghansham* v. *Badiya Lal* (1902) 24 All., 547.

(*l*) *Srimohan Jha* v. *Brijbehary Misser* (1909) 36 Cal., 753; *Ganesh Lal* v. *Khetra Mohan* (1926) 53 I.A., 134, 5 Pat., 585; *Jiban Krishna Roy* v. *Brojo Lal Sen* (1903) 30 I.A., 81, 30 Cal., 550 (arrears of rent); *Jagannath* v. *Gurcharan* A.I R. 1929 Oudh, 422; *Rameswar* v. *Provabati* (1914) 20 C.L.J., 23, 19 C.W.N., 313; payment of arrears of rent due under a lease taken by the widow for her own benefit is not a necessity. *Ishwari Prasad* v. *Babunandan* (1925) 47 All., 563.

(*m*) *Karimuddin* v. *Gobindkrishna* (1909) 36 I.A., 138, 147, 31 All., 497; *Krishna* v. *Muthulakshmi* A.I.R. 1934 Mad., 169; *Jagadat Singh* v. *Kanhaiya Baksh* (1929) 4 Luck., 26, A.I.R. 1929 Oudh, 364; *Bhagwan Das* v. *Mahadeo Prasad* (1923) 45 All., 390; *Jado Singh* v. *Nathi Singh* (1926) 48 All., 592; *Upendranath* v. *Kiran Chandra* A.I.R. 1926 Cal., 1046; *Ram Asre Singh* v. *Ambica Lal* A.I.R. 1929 Pat., 216. See also *Thirumalaisamy* v. *Venkatarama* A.I.R. 1929 Mad., 601.

estate, but to which she alleged a title (*n*). So a debt incurred for the necessary repairs of the property will bind the reversioners (*o*). The question under what circumstances an alienation will be valid when the necessity is only partial has been already discussed (§ 367).

Benefit of the estate.

§ 653. It was held by the Privy Council in *Bhushana Rao* v. *Subbayya* that a widow or other limited owner can alienate not only for legal necessity but also for the benefit of the estate (*p*). The explanation of this expression has given rise to conflicting opinions and has been discussed before (§363). Too narrow a view has been taken in some of the cases (*q*). There can be little doubt that the power to alienate for the benefit of the estate possessed by the widow must be a real power and not an illusory one (*r*). At the same time she cannot embark upon costly improvements which may or may not be beneficial to the estate. The intermediate view taken by the Full Bench of the Bombay High Court as to the meaning of "benefit of the estate" will properly apply in judging of the acts of a limited owner (*s*).

Widow's power to sell.

§ 654. Where a case of necessity exists, the heiress is not bound to borrow money, with the hope of paying it off before her death. Nor is she bound to mortgage the estate, and thereby reduce her income for life. She is at liberty, if she thinks fit, absolutely to sell off a part of the estate. And even if a mortgage would have been more beneficial, still if the heiress and the purchaser are both acting honestly, the transac-

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(*n*) *Amjad Ali* v *Moniram* (1886) 12 Cal, 52, *Debi Dayal* v. *Bhan Pertap* (1904) 31 Cal., 433, *Indar Kuar* v. *Lalta Prasad* (1882) 4 All, 532.

(*o*) *Hurry Mohun* v. *Ganesh Chunder* (1884) 10 Cal., 823 F.B.; *Ganap* v *Subbi* (1908) 32 Bom., 577, *Ram Nayak* v *Mt. Rup Kali* A I.R. 1934 All, 557.

(*p*) 41 C W N, 18, A I R 1936 P C, 283, *Ram Sumran* v. *Shyam Kumari* (1922) 49 I.A, 342, 1 Pat, 741, *Palaniappa* v. *Deva Sikhamony* (1921) 48 I.A., 147, 44 Mad, 709

(*q*) *Ganesa Aiyar* v. *Amirthasami Odayar* (1918) M W.N., 892; *Ganap* v. *Subbi* (1908) 32 Bom, 577. *In re Krishnaswami Doss Reddi* (1912) M.W.N., 167.

(*r*) *Mahalakshmamma* v. *Ramaswami* (1926) 50 M.L.J, 651; *Ram Sumran* v. *Shyam Kumari* (1922) 49 I A, 342, 1 Pat, 741; see *Subramanya Chetti* v *Ramakrishnamma* (1924) 20 M.L.W., 627, A.I.R. 1925 Mad., 403. In *Bhogaraju* v. *Seshayya* (1902) 35 Mad, 560, a debt for the construction of a house which was not necessary was held not to bind the reversioners *Mohammed Ali Khan* v. *Kanai Lal* A I R. 1935 Cal., 625. Compare the powers of a manager, *Jagat Narain* v. *Mathura Prasad* (1928) 50 All, 969 F.B; *Amrej Singh* v. *Shambu* (1933) 55 All., 1 F.B.; *Niamat Rai* v. *Debi Dayal* (1927) 54 I.A., 211, 8 Lah., 597; *Sellappa* v. *Suppan* [1937] Mad., 906.

(*s*) *Hemraj* v. *Nathu* (1935) 59 Bom., 525 F.B.

tion cannot be set aside at the instance of the next heir (*t*). So where the income of property which has been mortgaged is not sufficient to pay the interest on the debt, the widow is justified in selling it before the debt is due, if in the circumstances this is a proper, though not a necessary course to take. "A widow, like a manager of a family, must be allowed a reasonable latitude in the exercise of her powers, provided she acts fairly to her expectant heir" (*u*).

Rate of interest.

Any stipulation for a high rate of interest, where there was no necessity for it, is not binding on the reversioners, though agreed to by the widow (*v*).

Onus of proof.

§ 655. When a person deals with a widow or other limited owner, he must prove the existence of necessity or benefit upon which he relies as giving validity to the transaction. In *Sham Sundar Lal* v. *Achhan Kunwar*, it was laid down: "In a suit like the present, on a bond made by a person with restricted powers of alienation, the defendants are not required to plead the absence of legal necessity for the borrowing. It is for the plaintiff to allege and prove the circumstances which alone will give validity to the mortgage" (*w*). Nor is the burden thrown upon the reversioners

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(*t*) *Singam Chetti Sanjivi* v. *Droupadi Bayamma* (1908) 31 Mad., 153; *Balkrishna Das* v. *Hira Lal* (1919) 41 All., 338; *Taraprosad* v. *Madhu Sudan* (1925) 30 C.W.N., 204; *Kuthalinga* v. *Shanmuga* (1926) 50 M.L.J., 234.

(*u*) *Venkaji* v. *Vishnu* (1894) 18 Bom., 534. As regards widow's power to lease, see *Dayamani Debi* v. *Srinibash Kundu* (1906) 33 Cal., 842; *Md. Ali Khan* v. *Kanai Lal Haldar* A.I.R. 1935 Cal., 625 (lease for 99 years bad), *Sankar Nath* v. *Bejoy Gopal Mukherji* (1908) 13 C.W.N., 201, affirmed in (1914) 41 Cal., 793 P.C. (60 years lease good). *Nabakishore* v. *Upendra Kishore* (1922) 42 M.L.J., 253 P.C. (permanent lease bad); *Mt. Imrat Bai* v. *Phula* A.I.R. 1934 Nag., 103 (perpetual lease invalid). A ryoti settlement by a widow is valid: *Biswanath* v. *Ram Prasad* (1931) 10 Pat., 572. As to whether a widow or a manager who is a landholder under the Madras Estates Land Act can convert private land into ryoti land so as to bind coparceners or reversioners, see *Veerayya* v. *Venkata Bhasyakarala Rao* A.I.R. 1936 Mad., 887. The decision was under section 181 as it stood before its amendment in 1934 which expressly confers the right to convert.

(*v*) *Hurro Nath* v. *Randhir* (1891) 18 I.A., 1, 18 Cal., 311; *Radhakisheen* v. *Jado Sahu* (1925) 51 I.A., 278, 4 Pat., 19. See as to compound interest, *Sunder Mull* v. *Satya Kinker* (1928) 55 I.A., 35, 7 Pat., 294; *Nazir Begam* v. *Rao Raghunath Singh* (1919) 46 I.A., 145, 41 All., 571.

(*w*) *Sham Sundar Lal* v. *Achhan Kunwar* (1899) 25 I.A., 183, 191, 21 All., 71; *Medai Dalavoi* v. *Nainar Thevan* (1922) 27 C.W.N., 365 P.C.; *Obala Kondama* v. *Kandaswami* (1924) 51 I.A., 145, 152, 47 Mad., 181; *Maheshar Bakshsingh* v. *Ratan Singh* (1896) 23 I.A., 57, 23 Cal., 766; *Dharam Chand* v. *Bhawani Misrain* (1898) 24 I.A., 183, 25 Cal., 189; *Bhagwat Dayal* v. *Debi Dayal* (1908) 35 I.A., 48, 35 Cal., 420; *Upendra Nath* v. *Kiran Chandra* A.I.R. 1926 Cal., 1046; *Meenambal Ammal* v. *Aburubammal* A.I.R. 1930 Mad., 688, 59 M.L.J., 160.

of proving that the estate left by the husband was sufficient to meet the claims upon the widow (*x*). It is settled law that even though there may not be legal necessity in fact, the alienee will be protected if he honestly did all that was reasonable to satisfy himself that the required necessity existed (*y*). Sec. 38 of the Transfer of Property Act and the illustration to it directly apply, as Chapter II of the Act has now been made applicable to Hindus and Buddhists (*z*).

Creditor need not see to application of money.

§ 656. The creditor or alienee however is not bound to see to the application of the money unless it is his own debt or unless he undertakes to pay the debts himself or enters in some way upon the management of the property (*a*). One who claims title under a conveyance from a woman holding a limited estate and seeks to enforce it against the reversioners is always subject to the burden of proving, not only the genuineness of his conveyance, but the full comprehension by the limited owner of the nature of the alienation she was making (*b*). The amount of proof may vary according as he is the immediate party to the transaction, or only the representative of such party, and according to the lapse of time that has taken place, and other similar circumstances. And if he once proves the existence of a debt, which would justify the transaction, its continuance will be assumed, unless the person who contests the transaction shows sufficient cause for assuming that it was satisfied (*c*).

Recitals.

§ 657 Recitals in an instrument of mortgage or sale that it was executed for a particular purpose are not evidence either of the existence of the purpose or of the adequacy of the

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(*x*) (1896) 23 I.A., 57, 23 Cal., 766 *supra*.

(*y*) *Hunooman persaud* v *Mt Babooee Munraj* (1856) 6 M.I.A., 393, *Anant Ram* v *Collector of Etah* (1918) 40 All, 171 P C ; *Obala Kondama Naicker* v. *Kandasami* (1924) 51 I.A., 145, 152, 47 Mad, 181.

(*z*) See the amending Act XX of 1929, see *ante* § 371.

(*a*) *Hurronath Rai* v. *Rundhir Singh* (1891) 18 Cal., 311, *Ghansham Singh* v. *Badiya Lal* (1902) 24 All., 517, *Lala Amarnath* v *Achan* (1892) 19 I A, 196, 14 All., 420.

(*b*) *Bhagwat Dayal* v. *Debi Dayal* (1908) 35 I.A., 48, 57, 58; *Sham Koer* v. *Dah Koer* (1902) 29 I A., 132, 137, compare *Faridunissa* v. *Mukhtar Ahmad* (1925) 52 I.A., 342.

(*c*) *Hunoomanpersaud's* case (1856) 6 M I.A., 393, *Cavaly Vencata* v. *Collector of Masulipatam* (1867) 11 M.I A., 619, *Raj Lukhee* v. *Gokool* (1869) 13 M I A, 209, *Rao Karun* v *Nawab Mohamed* (1871) 14 M.I.A., 187, *Lala Amarnath* v. *Achan Kunwar* (1892) 19 I.A., 196, 14 All., 420, *Sham Sunder* v. *Achan Kunwar* (1899) 25 I.A., 183, 21 All., 71, see *Ram Nayak* v. *Mt. Rup Kali*, A I R 1934 All , 557

enquiry (*d*). The alienee or the creditor is bound to adduce some independent evidence of such circumstances (*e*). But, after a long period has elapsed between the alienation and the suit to set it aside when all those who could have given evidence on the relevant points have grown old or have passed away, a recital consistent with the probabilities and circumstances of the case assumes greater importance and cannot lightly be set aside. It is clear evidence of the representation, and if the circumstances are such as to warrant the belief that an enquiry would have confirmed its truth, then when evidence of actual enquiry has become impossible, the recital coupled with such circumstances would be sufficient to support the transaction (*f*). In such a case presumptions are permissible to fill in the details which have been effaced by time (*g*). It is hardly necessary to add that, as between the widow herself and the person dealing with her, the transaction must be absolutely free from fraud, and must be shown to have been entered into with the fullest knowledge by her of its nature and consequences (*h*).

In *Vasonji Morarji* v. *Chanda Bibi*, the Judicial Committee held that recitals which were necessary if the executant were disposing of her absolute interest, but serving no purpose if the object was only to convey her limited interest, expressed an intention to deal with the entire estate (*i*).

Husband's estate not bound by personal obligation of widow.

§ 658. A mortgage by a widow for proper and necessary purposes will bind the estate, though she contracted not as a widow in her own right but as guardian for a supposed adopted son, whose adoption turned out to be invalid (*j*). Where a Hindu widow obtains a loan, she is at liberty to bind

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(*d*) See *ante* §§ 372, 373.

(*e*) *Brij Lal* v. *Inda Kunwar* (1914) 36 All., 187 P.C.; *Rekha Thakur* v. *Ramanadhan Rai* A.I.R. 1936 Pat., 7.

(*f*) *Bangachandra* v. *Jugut Kishore* (1917) 43 I.A., 249, 44 Cal., 186; *Somayya* v. *Venkayya* A.I.R. 1925 Mad., 673, 48 M.L.J. 224; *Ankula Sanyasi* v. *Gundala Ramachandra* A.I.R., 1926 Mad., 692; *Kumaraswami* v. *Narayanaswami* A.I.R., 1932 Mad., 762; *Bhojraj* v. *Sitaram* A.I.R. 1936 P.C., 60, 70 M.L.J., 225; *Thimmanna* v. *Rama Bhatta* A.I.R. 1938 Mad., 300.

(*g*) *Venkata Reddi* v. *Rani Saheba of Wadhwan* (1920) 47 I.A., 61, 43 Mad., 541; *Thakur Singh* v. *Mst. Uttam Kaur* (1929) 10 Lah., 613.

(*h*) *Kameshwar* v. *Run Bahadoor* (1881) 8 I.A., 8, 6 Cal., 843; *Sudisht* v. *Mt. Sheobara* (1881) 8 I.A., 39, 7 Cal., 245; *Shambati Koeri* v. *Jago Bibi* (1902) 29 I.A., 127, 29 Cal., 749; *Sadashiv* v. *Dhakubai* (1881) 15 Bom., 450.

(*i*) (1915) 37 All., 369 P.C.

(*j*) *Lala Parbu Lal* v. *Mylne* (1892) 14 Cal., 401, 418.

herself personally or where the purpose for which she borrows is a necessary one, she is equally entitled to bind her husband's estate. Whether in a particular case the widow intended to bind herself alone, or to bind the estate as well must be gathered from the recitals, if any, in the deed or from the surrounding circumstances (*k*). In this respect there is no real distinction in principle between a case where a charge is formally created by the widow and another where she executes a bond for money advanced. In the former case, the indication to make her husband's estate liable may be clearer than where she executes a promissory note. But when once the intention is established, the effect of her act must depend upon the nature of the debt which is recoverable from the estate in the hands of the reversioner, namely, whether it has been incurred for necessary purposes (*l*).

Simple money debts.

On the question however whether the estate would be liable to satisfy debts contracted by the widow where she neither charged the estate nor purported to execute the bonds as representing the estate, even if such debt be for legal necessity, there has been a considerable conflict of opinion One view is that the creditor has advanced the loan or taken the bond only on the personal liability of the widow and has consequently no right to proceed against the estate (*m*). The better opinion would seem to be that where the debt is for necessity, the creditor looks to the estate for repayment and the widow obtains the loan as representing the estate and therefore an intention to bind the estate may be presumed (*n*). The

(*k*) *Rameshwar Mondal* v. *Provabati Debi* (1914) 19 C.W.N, 313, 319.

(*l*) *Rameswar Mandal* v. *Provabati Debi* (1914) 19 C W N., 313, *Sheikh Ghasit Mean* v. *Thakur Pauchanan* (1936) 15 Pat., 798 (where all the cases are reviewed), *Dhondy Yeshwant* v. *Mishri Lal* (1936) 60 Bom., 311 F.B.

(*m*) *Dhiraj Singh* v. *Manga Ram* (1897) 19 All, 300, *Mt. Kishen Devi* v. *Chand Mal* A I R. 1934 All, 423, *Bisheshwardas* v. *Anjor Singh* A I R 1926 Nag, 334, *Ramaswami Mudaliar* v *Sellatammal* (1882) 4 Mad, 375, *Kallu* v *Faiyaz Alikhan* (1908) 30 All., 394; *Baramdeo* v. *Lal Bahadur* (1934) 15 Pat L.T, 583, *Giribala Dassi* v. *Srinath Chandra* (1908) 12 C W N, 769; *Kumarchandra* v *Gobinda Das* A.I.R. 1937 Cal, 280, *Baijun Doobey* v *Brij Bhookun* (1875) 2 I.A., 275, 1 Cal., 233.

(*n*) *Ram Coomar Mitter* v *Ichamoyi Dasi* (1881) 6 Cal., 36; *Hurry Mohun* v. *Ganesh Chander Doss* (1883) 10 Cal., 823 F B.; *Ragella Jogayya* v *Nimushakavi* (1910) 33 Mad, 492, *Kristo Gobind* v. *Hemchunder* (1889) 16 Cal., 511, *Kingshi* v. *Kandaji* A.I R. 1929 Nag, 191; *Dhondu Yeshwant* v. *Mishro Lal* (1936) 60 Bom., 311 F.B., *Veerabadra* v. *Marudaga Nachiar* (1911) 34 Mad, 188; *Parathnath* v. *Rameshwar* A.I R 1938 All, 491. In *Lalit Mohun Pal* v. *Srimati Daya Moyi* A I R. 1927 P.C., 41, the decree against the minor daughter of the last male holder on a bond executed by her guardian to pay off a debt of the last maleholder, was held

rule in *Hunooman Persaud's* case as to the sufficiency of reasonable inquiry is equally applicable to unsecured debts contracted by a limited owner, if incurred for purposes which would justify a charge on such estate (*o*). Of course trade debts, that is, debts ordinarily incurred by a widow in the management of a business concern inherited by her are recoverable against the assets of the business as against the reversioners even in the absence of a specific charge (*p*).

Trade debts.

§ 659. The question whether the consent of reversioners will validate an alienation by a widow or other limited owner which is not justified by any legal necessity has had a long history marked by fluctuations of opinion. It is now well settled that "when the alienation of the whole or part of the estate is to be supported on the ground of necessity, then if such necessity is not proved *aliunde* and the alienee does not prove inquiry on his part and honest belief in the necessity, the consent of such reversioners as might fairly be expected to be interested to dispute the transaction will be held to afford a presumptive proof which, if not rebutted by contrary proof, will validate the transaction as a right and proper one" (*q*). The true view is that consent of the reversioners

Consent of reversioners to alienation by widow.

Presumptive proof of necessity.

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to be a personal decree in the High Court and in the Privy Council on the ground that the creditor in his suit, asked only for a personal decree and the decision went upon the frame of that suit. The question, whether a decree is personal or against the estate is a different question from the liability on the bond. *Sheik Ghasit Mean* v. *Thakur Panchanan* (1936) 15 Pat., 798; *Chandra Singh* v. *Gobinda Das* A I.R. 1937 Cal., 280, *Ram Sewak* v. *Jamuna Prasad* A I.R. 1937 Pat., 667.

(*o*) *Maharajah of Bobbili* v. *Zamindar of Chundi* (1912) 35 Mad., 108.

(*p*) *Sakrabhai* v. *Maganlal* (1902) 26 Bom., 206, *Dhondu Yeshwant* v *Mishrilal* (1936) 60 Bom., 311 F.B.; *Popat Viiji* v. *Damodar* A.I.R. 1934 Bom, 290; *Pahalwan Singh* v. *Jiwan Das* (1920) 42 All., 109, *Subramanya Chetty* v. *Ramakrishnamma* (1924) 20 M L.W., 627, A.I.R. 1925 Mad., 403, *The South Indian Export Co., Ltd*, v *Subbier* (1915) 28 M.L.J, 696; *Barada Porsad* v. *Krishna Chandra* A.I.R., 1934 Cal., 414.

(*q*) *Rangasami* v. *Nachiappa* (1919) 46 I.A., 72, 84, 42 Mad., 523, 536 approving of the propositions laid down by Jenkins, C J., and Mookerji, J., in *Debi Prasad* v. *Golap Bhagat* (1913) 40 Cal, 721 F.B. and disapproving *Rangappa Naick* v. *Kamti Naick* (1908) 31 Mad,. 366 F.B.; *Bijoy Gopal* v. *Girindra Nath* (1914) 41 Cal., 793 P.C., *Hari Kishen* v. *Kashi Pershad* (1915) 42 I.A., 64, 42 Cal., 876; *Bajrangi* v. *Manokarnika* (1907) 35 I.A, 1, 30 All., 1, *Marudamuthu* v. *Srinivasa* (1898) 21 Mad., 128 F.B., *Abdulla* v. *Ram Lal* (1912) 34 All., 129; *Ghisawan* v *Mt Raj Kumari* (1921) 43 All., 534; *Bhup Singh* v. *Jhamman Singh* (1922) 44 All., 95; *Darbari Lal* v. *Gobind* (1924) 46 All., 822; *Muhammad Said* v. *Kunwar Darshan* (1928) 50 All., 75; *Pilu* v. *Babaji* (1910) 34 Bom., 165; *Bai Parvati* v. *Manchharam* (1920) 44 Bom., 488; *Thimmanna* v. *Rama Bhatta* A.I.R. 1938 Mad., 300.

does not by its own force give validity to the alienation but is only of evidentiary value (*r*). It raises a presumption that the transaction was a fair one and one justified by Hindu law (*s*). The consent of reversioners, by itself, could only validate an alienation on the theory that the reversioner together with the widow could convey the whole estate; but that is impossible as the reversioners have no vested interest, but only a *spes successionis* (*t*). As the consent of reversioner raises a presumption only, it is open to any reversioner other than the consenting reversioner to prove that in fact there was no necessity for the alienation. Its only effect is to shift the burden of proof which originally was on the alienee to the reversioner (*u*). But where the alienation is without consideration and is therefore in form or in substance a gift, the reversioner's consent cannot possibly be held to be one in respect of an alienation for value for purposes of necessity and the transaction therefore cannot stand in spite of the consent (*v*).

In all cases of partial alienation, where necessity is negatived either because the alienation is in favour of a volunteer or because actual proof is forthcoming of want of necessity, the consent of the reversioner is wholly ineffectual as against anyone but himself. But if the alienation be total and the reversionary heirs who consent be the nearest, it would fall within the doctrine of surrender (*w*).

Quantum of consent.

§ 660. The quantum of consent necessary is ordinarily the consent of the whole body of persons constituting the next reversion, though there may be cases in which special circumstances may render the strict enforcement of the rule

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(*r*) (1914) 41 Cal, 793 P.C. *supra*, (1913) 40 Cal, 721 F B.; *Thakur Prasad* v. *Mt Dipa Kuer* (1930) 10 Pat, 352.

(*s*) *Raj Lukhee* v. *Gokool Chundar* (1869) 13 M I A, 209.

(*t*) (1919) 46 I.A, 72, 81-2, 84, 42 Mad, 523, *supra*, *Ramamurthy* v. *Bhimasankarran* (1938) 1 M L J, 296.

(*u*) (1938) 1 M.L.J., 296 *supra*, *Ramesh Chandra* v. *Sasi Bhusan* (1919) 30 C L J., 56, *Satyanarayana* v *Venkanna* (1933) 65 M L.J., 282, *Thimmanna* v. *Ramabhatta* A I.R 1938 Mad, 300, *Indarjit* v *Jaddu* (1933) 55 All, 157.

(*v*) *Rangasami* v *Nachiappa* (1919) 46 I.A., 72, 85, 42 Mad., 523; *Bakhtawar* v. *Bhagwana* (1910) 32 All, 176, *Abdulla* v. *Ram Lal* (1912) 34 All, 129, *Khawani Singh* v. *Chet Ram* (1917) 39 All, 1; *Ghisiawan* v *Mt Rajkumari* (1921) 43 All., 534; *Harihar* v. *Udainath* (1923) 45 All., 260, *Pilu* v. *Babaji* (1909) 34 Bom., 165, *Bai Parvati* v. *Manchharan* (1920) 44 Bom., 488; *Tukaram* v. *Yesu* (1931) 55 Bom, 46, *Bala* v. *Baya* (1936) 60 Bom., 211; *Bindeshwari* v. *Har Narain* (1929) 4 Luck., 622 A.I.R. 1929 Oudh, 185.

(*w*) (1919) 46 I.A., 72, 81, 42 Mad., 523 *supra*.

impossible (*x*). The Judicial Committee in *Rangasami Gounden* v. *Nachiappa Gounden* (*y*) cited with approval the observation of Sir James Colville in *Raj Lukhee* v. *Gokool Chunder* that there should be such a concurrence of the members of the family as suffices to raise a presumption that the transaction was a fair one and one justified by Hindu law (*z*).

Consent of female.

Where the next reversioner is a female, as for instance, a daughter or a mother, her consent alone cannot be regarded as affording the slightest presumption that the alienation was a justifiable one (*a*), whether she has only a limited estate or an absolute estate as in Bombay (*b*). The case of the latter must be different as the reason for the rule itself is the limited nature of a woman's estate and the general dependence of women is no ground where they take absolutely

Evidence of consent.

§ 661. When a stringent equity arising out of an alleged consent by the reversioners is sought to be enforced against them, such consent must be established by positive evidence that upon an intelligent understanding of the nature of the dealings, they concurred in binding their interest; such consent will not be inferred from ambiguous acts or dubious oral testimony (*c*). The consent must have been obtained *bona fide*, that is to say, it must be a consent to an actual transfer, and not to a colourable one made for the purpose of defeating the rights of some other than the consenting party (*d*). It must be given with a full knowledge by the consenting parties of the effect of what they are doing. They must know that they are not merely witnessing a transfer by the widow of her own life-estate, but that they are giving validity to the destruction of their own future expectations, and this must be made out all the more clearly where a

(*x*) *Bajrangi* v. *Manokarnika* (1907) 35 I.A., 1, 30 All., 1 approving *Radha Shyam* v. *Joya Ram* (1890) 17 Cal., 896; *Sham Sundar* v. *Achhan Kunwar* (1896) 25 I.A., 183, 21 All., 71; *Vinayak* v. *Govind* (1901) 25 Bom., 129, *Debi Prasad* v. *Golap Bhagat* (1913) 40 Cal., 721 F.B.; *Bijoy Gopal* v. *Girindranath* (1914) 41 Cal., 793 P.C.

(*y*) (1919) 46 I.A., 72, 42 Mad., 523.

(*z*) (1869) 13 M.I.A., 209.

(*a*) *Muhammad Nuh* v. *Brij Bihari* (1924) 46 All., 656; *Chidambara* v. *Nallammal* (1909) 33 Mad., 410, *Ratna Chetti* v. *Narayanaswami* (1914) 26 M.L.J., 616.

(*b*) *Bepin Behari* v. *Durga Charan* (1908) 35 Cal., 1086 (daughter) followed in *Haridasi* v. *Bidhumukhi* (1922) 35 C.L.J., 66, 69 *per* Mookerjee J.; *Varjivan* v. *Ghelji* (1881) 5 Bom., 563 (daughter); *Pilu* v. *Babaji* (1909) 34 Bom., 165 (daughter); *Vinayak* v. *Govind* (1901) 25 Bom., 129 (sister); *Kurvateppa* v. *Nigayya* A.I.R. 1930 Bom., 299. But see *Mallik Saheb* v. *Mallik Arjunappa* (1914) 38 Bom., 224 where the other cases were not referred to.

(*c*) *Hari Kishen Bhagat* v. *Kashi Pershad Singh* (1915) 42 I.A., 64, 42 Cal., 876; *Shyam Peary* v. *The Eastern Mortgage and Agency Co., Ltd.*, (1917) 22 C.W.N., 226, 238.

(*d*) *Kolandaya Sholagan* v. *Vedamuthu* (1896) 19 Mad., 337.

pardanashin female is a party to the transaction (*e*). The inference of consent will be clear if the reversioner takes a leading part in effecting the transfer or participates in the benefits resulting from it so long as he is alive (*f*). Mere attestation is wholly insufficient to establish consent; for by itself it proves no more than that the signature of an executing party has been attached to a document in the presence of a witness. It does not involve the witness in any knowledge of the contents of the deed nor affect him with notice of its provisions. It could, at the best, be used for the purpose of cross examination in order to extract from the witness evidence to show that he was in fact aware of the character of the transaction effected by the document to which his attestation was affixed. By itself it would neither imply consent nor create an estoppel (*g*).

Subsequent consent.

In *Bajrangi* v *Manokarnika*, it was observed, "It is immaterial whether the concurrence of the reversioners is given at the time the alienation is made or whether the transaction is subsequently ratified" (*h*) This would plainly be so on the older view that consent validates an alienation. Even on the view taken in *Rangasami Gounden* v. *Nachiappa Gounden* (*i*) of the consent of reversioners as having only evidentiary value, a subsequent approval may perhaps be some evidence against the reversion, as nothing was said in the later case affecting that aspect, but its value must necessarily be much less.

Purchased consent.

§ 662. The fact that the reversioner gave his consent for a consideration or that he was benefited by the transaction will not apparently prevent his consent from being presumptive proof of legal necessity (*j*). On the view which was over-

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(*e*) *Jiwan Singh* v. *Misri Lal* (1896) 23 I A., 1, 18 All, 146; *Sham Sundar* v. *Achan Kunwar* (1899) 25 I.A., 183, 189, 21 All., 71, 80; *Tika Ram* v. *Deputy Commissioner of Bara-Banki* (1899) 26 I.A., 97, 26 Cal., 707, see also *Hari Kishen Bhagat* v. *Kashi Pershad Singh* (1915) 42 I A, 64, 42 Cal, 876.

(*f*) *Bijoy Gopal Mukerji* v. *Girindra Nath Mukerji* (1914) 41 Cal., 793 (P C.); *Hari Kishen Bhagat* v. *Kashi Pershad Singh, ubi sup.*

(*g*) *Banga Chundra* v. *Jagat Kishore* (1917) 43 I.A., 249, 255, 44 Cal., 186, (1915) 42 I.A., 64, 42 Cal., 876, *supra*, see also *Lakhpati* v. *Rambodh Singh* (1915) 37 All., 350; *Vinayak* v. *Govind* (1901) 25 Bom., 129, 130, *Thakur Prasad* v. *Mt. Dipa Kuer* (1931) 10 Pat., 352; *Har Mitra* v *Raghubar* (1928) 3 Luck., 645; *Pattayya* v. *Venkamma* (1915) 17 M.L.T, 393.

(*h*) (1908) 35 I A., 1, 30 All., 1.

(*i*) (1919) 46 I.A., 72, 42 Mad., 523.

(*j*) (1907) 35 I.A., 1, 30 All, 1 *supra; Ambika Prasad* v. *Chandramani* (1929) 8 Pat., 396, 410; *Babu Sing* v. *Rameshwar* (1932) 7 Luck., 360, A.I.R. 1932 Oudh, 90.

ruled in *Rangasami Gounden* v. *Nachiappa Gounden* (*k*) that consent renders an alienation valid, this would be correct. But on the truer view that it only raises a presumption that "the transaction was a fair one and one justified by Hindu law", the consent of the next reversioners, where it is purchased for a consideration, cannot be evidence of the propriety of the transaction as against the actual reversioner any more than a purchased consent will be evidence of the propriety of an adoption.

As the presumption raised by the consent of reversioners is a general one, once it is rebutted, the onus is upon the alienee to prove legal necessity for the particular items of consideration (*l*).

Surrender by a widow.

§ 663. It must be remembered that where an estate is held by a female, no one has a vested interest in the succession. Of several persons then living, one may be the next heir in the sense that, if he lives, he will take at her death in preference to anyone else then in existence. But his claim may pass away by his own death, or be defeated by the birth or adoption of one who would be nearer than himself. A Hindu reversioner has no right or interest *in praesenti* in the property which the female owner holds for life. Until it vests in him on her death, should he survive her, he has nothing to assign or relinquish, or even to transmit to his heirs. The rights of reversioners become concrete only on her demise. The reversioners are but expectant heirs with a *spes successionis* (*m*).

But it has been settled that a Hindu widow can renounce in favour of the nearest reversioner if there be only one or of all the reversioners nearest in degree if more than one at the moment; that is to say, she can, so to speak, by a voluntary act bring about her own civil death. The foundation of the doctrine is the text of Katyayana as explained by Jimutavahana (*n*).

(*k*) (1919) 46 I.A., 72, 42 Mad, 523.

(*l*) *Indarjit Singh* v. *Jaddu* (1933) 55 All., 157.

(*m*) *Bahadur Singh* v. *Mohar Singh* (1901) 29 I A., 1, 9, 24 All., 94; *Amrit Narayan* v. *Gaya Singh* (1917) 45 I.A., 35, 45 Cal., 590; *Rangasami Gounden* v. *Nachiappa Gounden* (1919) 46 I.A., 72.

(*n*) According to Mr. Justice Mookerjee, the theory of relinquishment finds support in Dayabhaga, XI, 1, 56-59 which is "comprehensive enough to include not merely the case of the death of the widow, but all cases where her right ceases". *Debi Prasad* v. *Golap Bhagat* (1913) 40 Cal., 721 F.B., 772; *Ram Krishna* v. *Kausalya Mani* (1935) 40 C.W.N., 208, 211 criticising the view of Kumaraswami Sastri, J., in *Vaidyanatha Sastri* v. *Savitri* (1918) 41 Mad., 75, 90 F.B.

Behari Lal v. *Madho Lal*

The leading case on the point is *Behari Lal* v. *Madho Lal* (*o*), where the Judicial Committee observed that "according to Hindu law, the widow can accelerate the estate of the heir by conveying absolutely and destroying her life-estate. It was essentially necessary to withdraw her own life-estate so that the whole estate should get vested at once in the grantee". The principle upon which the widow's power of surrender vests is the effacement of the widow—an effacement which in other circumstances is effected by actual or civil death—which opens the estate of the deceased husband to his next heirs at that date (*p*). "Now there cannot be a widow who is partly effaced and partly not so", and consequently there can be no partial surrender in law, in other words, no surrender of part only of the properties or of part only of the interest in all the properties. (*q*)

Principle extended to alienations of entire estate.

Since the surrender in favour of the nearest reversioners vests the estate in them, the doctrine has been extended to empowering the widow to convey with the consent of the nearest reversioner or reversioners the entirety of the estate. Accordingly an alienation by a widow of her husband's estate may be validated if it can be shown to be a surrender of her whole interest in the whole estate in favour of the nearest reversioner or reversioners at the time of the alienation. In such circumstances, the question of necessity does not fall to be considered. But the surrender must be a *bona fide* surrender, not a device to divide the estate with the reversioner (*r*).

No formal transfer necessary.

§ 664. No formal surrender or transfer is necessary (*s*). For the basis of the doctrine of surrender is the effacement of the widow's interest and not the *ex facie* transfer by which such effacement is brought about. The result is merely that the next heir of the husband steps into the suc-

(*o*) (1891) 19 I A, 30, 19 Cal, 236 approving *Nabokishore* v. *Harinath* (1884) 10 Cal., 1102 F B.

(*p*) (1919) 46 I.A, 72, 80, 42 Mad, 523 *supra*, (1913) 40 Cal, 721 F B. *supra*

(*q*) (1919) 46 I A., 72, 80, *supra*, (1913) 40 Cal, 721 F.B *supra*, *Marudamuthu* v *Srinivasa* (1898) 21 Mad, 128 F B

(*r*) *Rangasami Gounden* v. *Nachiappa Gounden* (1919) 46 I A., 72, 42 Mad, 523; *Mt. Bhagwat Koer* v. *Dhanukdhari Prasad* (1920) 46 I.A, 259, 47 Cal., 466; *Man Singh* v. *Nowluckbati* (1926) 53 I.A., 11, 22, 5 Pat., 190, *Ramayya* v. *Lakshmayya* A I.R. 1938 Mad., 513.

(*s*) *Nirmal Chandra* v. *Mohitosh Das* A.I R. 1936 Cal, 106, 40 C.W.N, 777, A.I.R. 1938 Mad, 513 *supra*, *Brojeshwaree* v. *Manoranjan* [1937] 1 Cal, 690 (where the grantee is already in possession, the acceptance of the deed of surrender is enough); *Kotireddi* v. *Subbareddi* A.I.R. 1925 Mad., 382.

cession in the widow's place (s^1). This relinquishment or abandonment of her rights may be effected by any process having the effect, provided there is a *bona fide* and total renunciation of the widow's right to hold the property (s). Accordingly in *Bhagwat Koer* v. *Dhanukdhari Prasad Singh*, where on the death of a Hindu, his widow accepted his nephew's title and received from him maintenance and where the documents between them were drawn up not on the footing of a surrender of an acknowledged right but upon an admission that the right did not exist, it was held by the Judicial Committee that there was in substance a complete self-effacement by the widow precluding her from asserting any claim to the estate (t).

Sureshwar v. *Maheshrani.*

In *Sureshwar Misser* v. *Maheshrani Misrain*, a Hindu died leaving an infant son, widow and daughters, providing by his will that on his son's death, his daughters should take his immovable property. On the son's death, the next reversioner sued the widow and the daughters to set aside the will and the parties entered into a compromise whereby the will was given up and the widow surrendered all rights of succession to the immovable property and the plaintiff who by the surrender became entitled as the next reversioner transferred half of it to the daughters. Both the reversioner and the daughters gave a small portion of the land to the widow for her life. It was held that the compromise was a *bona fide* surrender of the whole estate and not a device to divide it with the next reversioner (u). A reasonable provision by way of maintenance reserved to the widow or other female owner does not affect the validity of the surrender if in other respects unobjectionable (v).

(s^1) *Sitanna* v. *Viranna* (1934) 61 I.A., 200, 57 Mad., 749, 759.

(t) (1920) 46 I.A., 259, 270, 271, 47 Cal., 466.

(u) (1920) 47 I.A., 233, 48 Cal., 100; *Ram Nana* v. *Dhondi* (1923) 47 Bom., 678; *Sakharam Bala* v. *Thama* (1927) 51 Bom., 1019; *Shanti Kumar Pal* v. *Mukundalal* (1935) 62 Cal., 204; *Bhagwat Koer* v. *Dhanukdhari* (1919) 46 I.A., 259, 47 Cal., 466; *Hemchunder* v. *Sarnamayi* (1895) 22 Cal., 354; *Rangappa* v. *Kamti* (1908) 31 Mad., 366; *Pilu* v. *Balaji* (1910) 34 Bom., 165; *Moti* v. *Laldas* (1917) 4 Bom., 93; *Sham Rathi* v *Jaicha* (1917) 39 All., 520; *Thakur Prasad* v. *Mt. Dipa Kuer* (1931) 10 Pat., 352; *Brajeshwaree* v. *Manoranjan* [1937] Cal., 690.

(v) (1920) 47 I.A., 233, 48 Cal., 100; *Naru* v. *Tai* (1923) 47 Bom., 431; *Sitanna* v. *Viranna* (1934) 61 I.A., 200, 57 Mad., 749; *Ram Nana* v. *Dhondi* (1923) 47 Bom., 678 dissenting from *Adiveppa* v. *Tontappa* (1920) 44 Bom., 255; (1910) 46 I.A., 72, 42 Mad., 523 *supra*; *Ram Adhar Singh* v. *Ram Mausher Singh* (1923) 45 All., 610; *Angamuthu* v. *Varatharajulu* (1910) 42 Mad., 854 F.B.; *Gopalchandra* v. *Surendranath* A.I.R. 1925 Cal., 1004; *Abhodya Pada* v. *Ramkinkar* A.I.R. 1926 Cal., 228; *Ramkrishna* v. *Kausalya* A.I.R. 1935 Cal., 689,

The surrender to be valid must be to the nearest reversioner (*w*). It has been held that a surrender may, with the consent of the nearest reversioner, be made in favour of the reversioner next to him, if it is otherwise unobjectionable (*x*). The point was raised but has been left open by the Privy Council (*y*). It would involve the fiction of a simultaneous second surrender though it might be the logical result of the doctrine by which a widow can validly transfer the entirety of the estate with the consent of the next reversioner.

Surrender to female reversioner.

§ 665. In the recent decision, *Vytla Sitanna* v. *Marivada Veeranna*, the Judicial Committee held that a widow can validly relinquish in favour of the next female heir, even though the latter takes only a life estate and that the reservation of a few acres for the widow's own maintenance would not affect the validity of the surrender. Of course, the surrender in favour of the next female heir will not enlarge her estate under Hindu law; the female heir will take an absolute estate

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40 C W N, 208, *Gopal Das* v *Sri Thakurji* A I R. 1936 All., 422; *Anna* v. *Gojra* A I R 1928 Bom, 333, *Bhuta Singh* v. *Mangu* A I.R. 1930 Lah., 9, *Karuppan Goundan* v *Mudali Goundan* (1922) 43 M L J., 36; *Subbiah* v *Palury* (1908) 31 Mad, 446 In the following cases the surrender was held invalid *Man Singh* v *Nowlak Bhate* (1926) 53 I.A., 11, 5 Pat, 190 on appeal from (1923) 2 Pat, 607, *Kottayya* v. *Veerayya* A I R. 1925 Mad, 177, *Krishna* v *Subbanna* A I R. 1929 Mad, 611, *Govind Prasad* v. *Shivlinga* A I R 1931 Bom, 107, *Ram Ratan Pal* v *Gangotri* A I R. 1935 All, 73

(*w*) *Rangasami* v *Nachiappa* (1918) 46 I A, 72 42 Mad, 523; *Ramkrishna* v *Sri Kausalya* A I R. 1935 Cal, 689, 40 C W N, 208; *Jagwanti* v. *Udit Narain* A I R 1927 All, 587 (not even to his father); *Radharani* v *Brindarani* A I R 1936 Cal, 392, 63 C L J, 263 (may be to the karta on behalf of all the reversioners), *Ramayya* v. *Banamma* A I R 1936 Mad, 16, 42 M L W, 790 (even though a minor). In the following cases the surrender was held invalid as being to some only of the reversioners. *Mangayya* v *Shesagiri* (1924) 49 Bom., 187; *Dodbasappa* v *Basawaneppa* (1918) 42 Bom, 719, *Raghunandan* v. *Tulshi Singh* (1923) 46 All, 38, *Man Singh* v *Nowluckbati* (1926) 53 I.A, 11, 5 Pat., 190; A I R 1925 Mad, 177 *supra*, A I R. 1931 Bom., 107 *supra* If there are two or more co-widows the surrender must be by all of them. *Anna* v *Jaggu* A I R. 1925 Mad, 153; *Dulhin Parbati* v. *Baijnath* (1935) 14 Pat, 518 The surrender may be by one single act or by a number of successive acts *Sri Rajah Surya Rao* v. *Sri Rajah Suryanarayana* (1921) 41 M L J., 208, *Maru* v. *Hanso* (1926) 48 All, 485

(*x*) *Chinnaswami* v. *Appaswami* (1919) 42 Mad, 25, followed in *Mt Chito* v. *Jhunni Lal* A.I R 1930 All, 395; *Antu* v. *Yeshwant* A.I.R. 1932 Bom., 430. The case in 42 Mad., 25 was decided without reference to the decision in 46 I.A, 72.

(*y*) *Narayanaswami Ayyar* v. *Rama Ayyar* (1930) 57 I.A, 305, 53 Mad., 692.

or a limited estate according to the school of Hindu law by which she is governed (*z*).

The validity of a surrender made by a limited owner, if it was *bona fide* and not a device to divide the estate with the reversioner, cannot be attacked on the ground that the motives which influenced her were not religious or proper (*a*).

A gift or transfer to some only of the nearest reversioners without the consent of the rest will not be a valid surrender (*b*).

Where a widow makes a gift of the whole estate with the consent of the next reversioners it will come within the principle of *Nobokishore's* case (*c*) as explained in *Rangasami Gounden* v. *Nachiappa Gounden* (*d*); in other words, it will be a surrender to the next reversioner and an alienation by him to the third person (*e*).

Surrender and prior alienations.

§ 666. Is it open to a Hindu widow who has alienated a part of her husband's estate to make a valid surrender of what remains? There is a difference of opinion on this question. On the one hand the Madras High Court has held that if the prior alienation is for purposes binding on the reversion, the subsequent surrender is valid (*f*). On the other hand it has been held in a series of cases that where a widow alienates part of the estate without justifying necessity and afterwards surrenders the whole of what remains to the next reversioner, the latter is not entitled to challenge the

(*z*) (1934) 61 I.A., 200, 57 Mad., 749, approving *Sartaj* v. *Ranjas* (1924) 46 All., 59, *Bhupal Ram* v. *Lachma Kuar* (1889) 11 All., 253; *Narahari* v. *Tai* (1923) 47 Bom, 431 (widow surrendered to daughter and two years later, the daughter conveyed back to the widow absolutely—held that the widow took an absolute estate) The decision would be right only if the original surrender was perfectly *bona fide*.

(*a*) *Subbalakshmi* v. *Narayana Ayyar* (1935) 58 Mad., 150.

(*b*) *Khantani Singh* v. *Chet Ram* (1917) 39 All., 1; *Raghunandan* v. *Tulshi* (1924) 46 All., 39; *Bachu* v. *Mt. Dulhina* A.I.R. 1925 All., 8; *Prag Narain* v. *Mathura Prasad* A.I.R. 1924 All, 740; the gift must be of the entire estate to the immediate reversioner to amount to a surrender; *Gangadhar* v. *Prabhudha* (1932) 56 Bom., 410; *Mt Punni* v. *Mt. Sobhi* A I.R. 1937 Lah., 54; *Indra Narain v. Sarbosoia Dasi* A.I.R. 1925 Cal., 743; *Pilu* v. *Babaji* (1909) 34 Bom., 165.

(*c*) *Nobokishore* v. *Hari Nath* (1884) 10 Cal., 1102 F B.

(*d*) (1918) 46 I.A., 72, 42 Mad, 523.

(*e*) *Yeshwanta* v. *Antu* (1934) 58 Bom., 521, dissenting from *Tukaram* v. *Yesu* (1931) 55 Bom., 46; *Bala* v. *Baya* (1936) 60 Bom., 211.

(*f*) *Ramayya* v. *Bapanamma* [1937] Mad., 248.

alienation made by the widow until she dies (*g*). In other words the alienation is valid for her life and the alienee's possession cannot be disturbed during her life time. But the logical result of the theory of relinquishment is her self-effacement and letting in the next heir at once. As Mookerjee, J., pointed out, the reverter takes effect in all cases where the widow's right ceases; "in other words, the reversioners take the estate, not merely when the widow dies, but also when her title is extinguished, for instance, by renunciation, remarriage or the like" (*g*[1]). And her remarriage, as has been held, determines at once the interest of an alienee who would otherwise be entitled to retain it (§ 533). On surrender *bona fide* and valid in all respects, the reversioner's title is by succession like the title of a son adopted by the widow. The surrender operates as if it were the widow's civil death. It would seem therefore that when a widow makes a gift or an alienation which is in effect a gift and afterwards makes a surrender, the reversioners would be entitled to recover the property at once (*g*[2]). An equity in favour of an alienee for value may perhaps be recognised as an exception, though one who purchases a widow's estate must know it is liable to terminate on her remarriage, relinquishment, adoption of a son or her entrance into a religious order Where the alienation is for necessity, it will of course, not be affected by the surrender.

In every case therefore the surrender can only be of the estate that she has at the moment and not of that which she has validly parted with either for the period of her life or absolutely The view that where the alienation made by the widow was for purposes not binding on the estate, it would be a reservation of a benefit to the widow so as to make the surrender invalid is opposed to the line of authority above referred to as well as to principle (*g*[3]).

(*g*) *Gopal Das* v *Sri Thakurji* A I R 1936 All, 422, *Lachmi Chand* v. *Lachho* (1926) 49 All, 334, per Walmsley, J, in *Prafulla Kamini* v. *Bhabani Nath* (1925) 52 Cal, 1018, *Krishnavenamma* v. *Hanumantha Rao* A I R 1933 Mad, 860, *Sundarsiva* v *Vijyamma* (1925) 48 Mad., 933, *Subbamma* v. *Subramanyam* (1916) 39 Mad., 1035; *Ramayya* v. *Narayya* (1927) 52 M L J, 634, *Karuppia Pillai* v. *Irulayee* (1927) 52 M.L J., 195, *Basudeo Mandar* v *Baidyanath Mandar* A I R 1935 Pat, 175, *Jeka Dula* v *Bai Jivi* A I R 1938 Bom, 37, 39 Bom. L R, 1072; Rangnekar, J s view that a surrender is after all a kind of alienation is erroneous

(*g*[1]) *Debi Prasad* v *Golap Bhagat* (1913) 40 Cal., 721, 772 F.B., approved by Lord Dunedin in *Rangasuami* v. *Nachiappa* (1919) 46 I.A., 72, 42 Mad, 523.

(*g*[2]) *Ram Krishna* v *Kausalya Mani* A I.R. 1935 Cal., 689, 40 C.W.N, 208; see § 663, note (*n*).

(*g*[3]) [1937] Mad., 248, 256 *supra*, *Vijiaraghavacharlar* v *Ramanujacharlar* (1928) 55 M.L J., 859.

Where, however the prior alienation and the subsequent surrender are part of a scheme by which she divides up the inheritance for her own benefit, the case will of course be different. In *Sakaram Bala* v. *Thama*, where a widow made a gift in favour of her nephew of the entire estate and made another gift of the same in favour of her daughter and the reversioner and afterwards adopted a son, it was held, that the surrender was invalid and that the adopted son's claim prevailed as against that of the surrenderee (*h*). Where a widow makes a valid surrender of her husband's estate to the next reversioner, an adoption made by her subsequently does not destroy the effect of the surrender (*i*).

Estoppel of reversioner.

§ 667. No one can be estopped by his mere signature unless it can be established by independent evidence that to the signature was attached the express condition that it was intended to convey something more than a mere witnessing of the execution, and involved consent to the transaction. Nor is it enough that the attestation has induced a belief upon which the alienee has acted. It must be made out that the attestor knew that that belief would arise and signed with that intent (*j*). Where the alienee himself was fully aware that the alienation was without necessity, and had not been induced in consequence of any representation contained in the deed to alter his position in any respect, there would be no estoppel (*k*). The association of the reversioner in the execution of the deed may be better evidence of his consent, but is wholly futile to pass his reversionary interest which is merely a *spes successionis*. But if the elements of an estoppel are made out, he may be precluded from impeaching the transaction (*l*). The reversioners who consented to an alienation made by the widow or other limited owner, even though it was made without necessity are precluded from disputing its validity (*m*). In *Ramgowda Anna Gowda* v. *Bhau Saheb*,

(*h*) (1927) 51 Bom., 1019.

(*i*) *Rama Nana* v. *Dhondi Murari* (1923) 47 Bom., 678; *Antu* v. *Yeshwant* A.I.R. 1932 Bom., 430.

(*j*) *Pandurang* v. *Markandeya* (1922) 49 I.A., 16, 49 Cal., 334.

(*k*) *Gur Narayan* v. *Sheolal Singh* (1919) 46 I.A., 1, 46 Cal., 566.

(*l*) (1919) 46 I.A., 1, 46 Cal., 566 *supra*; *Bai Parvati* v. *Dayabhai Manchharam* (1920) 44 Bom, 488.

(*m*) *Jiwan Singh* v. *Misri Lal* (1896) 23 I.A., 1, 18 All., 146; *Rup Narain* v. *Gopal Das* (1909) 36 Cal., 780, 36 I.A., 103; *Basappa* v. *Fakirappa* (1922) 46 Bom., 292 explaining (1920) 44 Bom., 488; *Akkawa* v. *Sayad Khan Mittekhan* (1927) 51 Bom., 475 F.B.; *Fate Singh* v. *Thakur Rukmani* (1921) 45 All., 339 F.B.; *Ramakottayya* v. *Viraraghavayya* (1929) 52 Mad., 556 F.B.; *Indarjit Singh* v. *Jaddu* (1931) 55 All., 157; *Babu Singh* v. *Rameshwar Baksh* (1932) 7 Luck., 360; *Moti Singh* v. *Ghandarp Singh* (1926) 48 All., 63 (where an agreement by a reversioner with the widow during her lifetime concerning the devolution of the estate was held binding on the ground of estoppel).

the widow executed three deeds on the same day. By the first, she gave a property to her brother; by the second she sold half of another property to the next presumptive reversioner and by the third she sold the other half of that property to her son-in-law. The next presumptive reversioner had attested the deed in favour of her brother and the sale in favour of her son-in-law in such circumstances as would lead to the conclusion that all the three deeds formed part of one transaction. It was held by the Judicial Committee, that the reversioner who survived the widow, and consequently his legal representatives were precluded from disputing the two alienations in favour of the brother and the son-in-law (*n*).

Actual reversioner not estopped.

§ 668. The actual reversioner at the death of the widow is not precluded from questioning the alienation even when he happens to be the son or grandson of the consenting reversioner (*o*). The view that was taken in some of the cases that an eventual reversioner, if he happens to be the son of the reversioner who consented, claims through him is opposed both to principle and authority (*p*). The individual conduct of the reversioner himself may be such as to preclude him from asserting his title as reversioner (*q*) It is open to the actual reversioner to elect to abide by the alienation or to treat it as a nullity (*r*); where a reversioner after he becomes entitled to possession treats the alienation as good, he will be held to his election (*s*) In *Rangasami Gounden* v *Nachiappa Gounden*, the actual reversioner taking from the alienee a mortgage of the property was held not debarred from asserting his own title (*t*).

(*n*) (1927) 54 I A, 396, 52 Bom, 1.

(*o*) *Mt Binda Kuer* v *Lalita Prasad* A I R. 1936 P.C, 304 41 C.W N., 761, *Ramamurthy* v *Bhima Sankara Rao* (1938) 1 M L J, 296; *Ramesch Chandra* v *Sasi Bhusan* (1919) 30 C.L J, 56, *Velichetti Satyanarayana* v *Sajja Venkanna* (1933) 65 M L J, 282, *Ram Ratan Lal* v. *Gangotri Prasad* A I R 1935 All, 73, *Thakur Prasad* v *Mt. Dipa Kuer* (1931) 10 Pat, 352, but see *Mahadeo Prasad* v *Matra Prasad* (1922) 44 All, 44 In *Baburao* v. *Tukaram* A I.R 1931 Bom, 208, the plaintiffs were not reversioners but were stridhana heirs to their step-mother and were bound by her election.

(*p*) *Rangasami Gounden* v. *Nachiappa Gounden* (1915) 46 I A., 72, 42 Mad, 523.

(*q*) *Marudanayakam* v. *Subramaniam* A I R. 1935 Mad, 425, 68 M L J, 643, (1918) 46 I A, 72, 42 Mad, 523, 538 *supra* See *Mohammed Alikhan* v *Kanailal* A I R. 1935 Cal, 625, *Vellayammal* v. *Palaniyandi* (1933) 65 M L.J, 772.

(*r*) *Subbaraghava Rao* v. *Adinarayana Rao* 1932 M W N, 491.

(*s*) *Rangaswami* v. *Nachiappa* (1918) 46 I A, 72, 42 Mad., 523. *Kunja Behari* v. *Rasikalal Sen* A.I.R. 1935 Cal., 495, 39 C W.N., 474.

(*t*) (1918) 46 I.A., 72, 42 Mad., 523.

The reversioner whether male or female, consenting to or joining in an alienation by the widow or other limited owner, even before the reversion has fallen into possession, must be taken to elect to hold the transaction valid and cannot afterwards challenge it, and it is immaterial whether the consenting reversioner receives consideration or not and whether the alienation is for value or is in form or in substance a gift (t^1).

§ 668 A. The rules relating to surrender and the power of the widow to alienate with the consent of the next reversioner will equally apply to the widow of an undivided member who succeeds to his coparcenary interest under the Hindu Women's Rights to Property Act, 1937.

Widow's powers of compromise.

§ 669. The power of a widow or other limited owner to compromise claims by or against the estate represented by her was established in *Mohendra Nath* v. *Shamsunnessa* (*u*), which was approved by the Judicial Committee in *Ramsumran Prasad* v. *Shyam Kumari* (*v*). A compromise made *bona fide* for the benefit of the estate and not for the personal advantage of the limited owner will bind the reversioner quite as much as a decree on contest. A compromise in the nature of a family settlement or arrangement entered into by a widow of a claim by the reversioner where it is prudent and reasonable is binding on the estate (*w*). Whether the particular transaction is a relinquishment of a *spes successionis* by a reversioner or a *bona fide* settlement of disputed rights between the parties will

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(t^1) *Fate Singh* v. *Thakur Rukmani* (1921) 45 All., 339 F.B.; *Akkawa* v. *Sayad Khan* (1927) 51 Bom, 475 F.B.; *Ramakotayya* v. *Viraraghavayya* (1929) 52 Mad, 556 F.B.; *Barkhurdar* v. *Mt. Sat Bharai* (1934) 15 Lah., 563, 580; *Babu Singh* v. *Rameshwar* 7 Luck., 360, A.I R. 1932 Oudh, 90; *Baburao* v. *Tukaram* A.I R. 1931 Bom., 208.

(*u*) (1915) 21 C L J., 157.

(*v*) (1922) 49 I.A, 342, 1 Pat., 741, 748; *Mata Prasad* v. *Nageshar Sahai* (1925) 52 I A, 398, 47 All, 883, *Rama Gowda Anna Gowda* v. *Bhau Saheb* (1928) 54 I.A., 396, 402, 52 Bom., 1, 7; *Raoji* v. *Kunjalal* (1930) 57 I.A, 177, 54 Bom., 455, *Khunni Lal* v. *Gobind Krishna* (1911) 38 I.A, 87, 33 All, 356, *Thakur Prasad* v. *Mt. Dipa Kuar* (1931) 10 Pat., 352; *Bihari Lal* v. *Dand Hussain* (1913) 35 All., 250; *Himmat Bahadur* v. *Dhanpat Rai* (1916) 38 All., 338; *Kanhaiya Lal* v. *Kishori Lal* (1916) 38 All., 679; *Upendra Nath* v. *Gurupada* (1929) 34 C.W.N., 404; *Ravji Andu* v. *Ram Krishna* A.I.R. 1928 Bom., 14.

(*w*) *Mata Prasad* v. *Nageshar Sahai* (1925) 52 I.A., 398, 47 All., 883; (1911) 38 I.A., 87, 33 All., 356 *supra*, *Musammat Hiran* v. *Mt. Sohan Bibi* (1914) 18 C.W.N., 929 A.I.R. 1914 P.C, 44; *Upendra Nath* v. *Bindesri* (1915) 20 C.W.N., 210; *Sureshwar Misser* v. *Maheshrani* (1921) 47 I.A., 233, 48 Cal., 100; *Angamuthu* v. *Sinnapennammal* (1938) M.W.N., 44.

depend upon the substance of the transaction and not upon the form given to it by the parties (*x*).

Where the reversioner had no belief that he had any valid claim, any compromise by the limited owner by which he obtains a part of the estate will not be binding upon the actual reversioners; for in that case it will be an alienation pure and simple without necessity (*y*). A compromise of disputed claims does not amount to an alienation. It is based on the antecedent title of the parties which it acknowledges and defines (*z*). A family arrangement or settlement must be one concluded with the object of settling *bona fide* disputes arising out of conflicting claims to property which were either existing at the time or were likely to arise in the future (*a*).

A person claiming to be a reversioner who has induced the widow to enter into a compromise and has taken a benefit under it is precluded from questioning it (*b*). Of course it is not open to the widow and the reversioners acting together to convert the widow's estate from a qualified into an absolute one (*c*) nor *a fortiori* to the widows of two divided

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(*x*) *Arunachalathammal* v *Esakki Ammal* (1934) 67 M.L.J, 463, *Kamaraju* v. *Venkatalakshmipati* (1924) 49 M L J, 296

(*y*) *Obala Kondama Naicker* v *Kandasami* (1924) 51 I A, 145, 47 Mad, 181, *Anup Narain Singh* v *Mahabir Prasad Singh* (1918) 3 Pat L.J, 83, *Baijnath Rai* v *Mangla Prasad* (1926) 5 Pat, 350, See *Gunjeshwar Kunwar* v *Durga Prasad Singh* (1918) 44 I A, 229, 45 Cal, 17.

(*z*) *Rani Mewa Kunwar* v *Rani Hulas Kunwar* (1875) 1 I A, 157, 166, *Khunni Lal* v *Gobind Krishna* (1911) 38 I A, 87, 102-103, 33 All, 356, *Bihari Lal* v *Dand Husain* (1913) 35 All, 250; *Himmat Bahadur* v *Dhanpat Rai* (1916) 38 All, 335, *Kanhaiya Lal* v. *Keshore Lal* (1916) 38 All, 679, *Sureshwar* v. *Maheshrani* (1921) 47 I A, 233, 48 Cal., 100.

(*a*) *Basant Kumar* v *Ramshankar* (1932) 59 Cal, 859 (there must be either a dispute or at least an apprehension of a dispute), *Rajpali Kunwar* v. *Sarju Rai* (1936) 58 All, 1041 F B, *Pokar Singh* v. *Dulari Kunwar* (1930) 52 All, 716 (the existence of a family dispute is not essential to the validity of a family arrangement), *Joges Chandra* v. *Prasanna Kunwar* A I R 1932 Cal, 664, *Madan Lal* v. *Dewan Chand* A.I R 1938 Lah., 163, dissenting from 58 All, 1041 F.B. *supra*

(*b*) *Kanhai Lal* v *Brij Lal* (1918) 45 I.A., 118, 123, 40 All, 487; *Hardei* v. *Bhagwan Singh* (1919) 24 C W.N, 105 P.C, *Ram Gouda* v. *Bhau Saheb* (1927) 54 I A, 396, 52 Bom, 1, *Kanti Chandra Mukerji* v *Al-i-Nabi* (1911) 33 All., 414, *Nasir-ul-Haq* v. *Faiyaz ul-Rahman* (1911) 33 All, 457, *Barati Lal* v. *Salik Ram* (1915) 38 All, 107; *Chahlu* v *Parmal* (1919) 41 All., 611; *Olati Pulliah Chetti* v. *Varadarajulu* (1908) 31 Mad., 474. In *Bahadur Singh* v. *Ram Bahadur* (1923) 45 All, 277, the sons were held bound because they ratified the arrangement after their father's death and took benefit under it.

(*c*) *Thakur Prasad* v. *Mt Dipa Kuar* (1931) 10 Pat., 352; *Nagappa* v. *Naranappa* (1925) 48 M.L.J., 461.

sons acting together (*d*). The powers of co-widows or co-heiresses have already been discussed (*e*).

Representation of the estate.

§ 670. A widow or other limited owner during her life-time represents the whole inheritance and a decision in a suit by or against the widow as representing the estate is binding on the reversionary heir. As was observed in the *Shivagunga* case, "the whole estate would for the time be vested in her, absolutely for some purposes, though in some respects for a qualified interest; and until her death it could not be ascertained who would be entitled to succeed. . . It is obvious that there would be the greatest possible inconvenience in holding that the succeeding heirs were not bound by a decree fairly and properly obtained against the widow" (*f*). In *Risal Singh* v. *Balwant Singh*, the principle of law to be applied in such cases was re-stated: "Where the estate of a deceased Hindu has vested in a female heir, a decree fairly and properly obtained against her in regard to the estate is, in the absence of fraud or collusion, binding on the reversionary heir" (*g*). The rule of *res judicata* therefore applies, even if sec. 11 of the Code of Civil Procedure with its explanation vi, is not strictly applicable (*h*).

Res judicata.

The principle of *res judicata* laid down in the *Shivagunga* case (*i*) is not limited to decrees in suits contested to the end (*j*). It is therefore competent to the widow to enter into

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(*d*) *Chimanlal* v. *Nairatlal* A.I.R. 1935 Bom., 131.

(*e*) *Ante* §§ 531, 535.

(*f*) *Katama Nachiar* v. *Raja of Shivagunga* (1863) 9 M.I.A., 539, 564, "Unless it could be shown that there had not been a fair trial of the right in that suit, or in other words, unless that decree could have been successfully impeached on some special ground, the reversioners are bound by such a decree." *Nagendra* v. *Kaminee* (1867) 11 M.I.A., 241; *Pertab Narain* v. *Trilokinath* (1884) 11 I.A., 197, 207, 11 Cal., 186, 197; *Hari Nath* v. *Mothurmohun* (1894) 20 I.A., 183, 21 Cal., 8, *Parbati* v. *Baijnath* A.I.R. 1936 Pat., 200; *Rani Bhubaneshwari* v. *Secretary of State* A.I.R. 1937 Pat., 374, *Madivalappa* v. *Subbappa* [1937] Bom, 906.

(*g*) (1918) 45 I.A., 168, 178, 40 All, 593, 603 followed in *Vaithialinga Mudaliar* v. *Srirangath Anni* (1925) 52 I.A., 322, 327, 48 Mad., 883 and in *Munni Bibi* v. *Tirloki Nath* (1932) 58 I.A., 158, 167, 53 All. 103, 112-113.

(*h*) (1918) 45 I.A., 168, 178, 40 All., 593 *supra* affg. 37 All., 496 F.B.

(*i*) *Ganga Narain* v. *Indra Narain* (1917) 25 C.L.J., 391; *Sarju Prasad* v. *Mangal Singh* (1925) 47 All., 490.

(*j*) Per Mookerjee, J., in *Mohendra Nath* v. *Shamsunnessa* (1914) 21 C.L.J., 157, 163 citing *Khunni Lal* v. *Gobind* (1911) 38 I.A., 87, 33 All., 356 and *Hiran Bibi* v. *Sohan Bibi* (1914) 18 C.W.N., 929 P.C.; *Ramsumran Prasad* v. *Shyam Kumari* (1922) 49 I.A., 342, 1 Pat., 741. The contrary view in *Ram Sarup* v. *Ram Dei* (1907) 29 All., 239, 241, *Mahadevi* v. *Baldeo* (1908) 30 All., 75 and in *Rajlakshmi* v. *Katyayani* (1911) 38 Cal., 639, 672 is not good law.

a compromise in the course of the suit *bona fide* in the interest of the estate and not for her personal advantage and a decree passed on such compromise is binding upon the reversioners (*k*). She is not bound at her peril to pursue the litigation to the ultimate Court of appeal (*l*). So also a decree passed on an award will bind the reversioners (*m*). But where the obligation sought to be enforced against the estate is one of her own creation, any compromise by her would stand on the same footing as her original alienation or contract (*m*[1]).

Personal suits do not bind estate.

§ 671. In order that the decree may have the effect of *res judicata*, the suit in which the decree was made should have been in respect of the estate represented by her (*n*). This distinction was pointed out in *Jugal Kishore* v *Jotindra Mohun*: "If the suit is simply for a personal claim against the widow, then merely the widow's qualified estate is sold, and the reversionary interest is not bound by it (*o*). If, on the other hand, the suit is against the widow in respect of the estate, or for a cause which is not a mere personal cause of action against the widow, then the whole estate passes" (*p*).

Where she sues or is sued as representing the estate, no difficulty can arise and the decision will be binding upon the reversion even though the female heir was personally estopped from denying the material facts, as for instance the validity of an adoption made by her, provided the merits were tried and the trial was fair and honest (*q*). Where the decision

(*k*) (1922) 49 I A, 342, 1 Pat, 741 *supra*, *Mata Prasad* v. *Nageshar Sahai* (1925) 52 I A, 398, 47 All, 883, *Subbammal* v. *Avudaiyammal* (1907) 30 Mad, 3, *Bhogaraju* v *Addeppalli* (1912) 35 Mad, 560. Mukerji, J's unqualified dictum in *Nirman* v *Fateh Bahadur* (1930) 52 All 178 is erroneous, Niamat ullah, J, differs.

(*l*) (1914) 21 C L J, 157, 163, 19 C W N, 1280, 1285 *supra*, (1922) 49 I A., 342, 346 1 Pat, 741, 746 *supra*

(*m*) *Shib Deo* v *Ram Prasad* (1924) 46 All, 637 (award), *Rama* v. *Daji* (1919) 43 Bom, 249, (1907) 30 Mad, 3 *supra* (consent decree), *Ghelabai* v *Bai Javer* (1913) 37 Bom, 172 (withdrawal of appeal), *Gur Nanak* v *Jai Narain* (1912) 34 All, 385 (*ex parte* decree); *Sarju Prasad* v *Mangal* (1925) 47 All, 490 (*ex parte* decree)

(*m*[1]) *Tirupatiraju* v *Venkayya* (1922) 45 Mad, 504 F B, *Meenambal* v *Aburubammal* (1930) 53 Mad 750, 760

(*n*) *Deiji* v *Sambhu* (1900) 24 Bom, 135, *Veerabadra Aiyar* v. *Marudaga Nachiar* (1911) 34 Mad 188, *Jhari* v *Bijai* (1923) 45 All, 613, *Pramatha Nath* v *Bhuban Mohan* (1922) 49 Cal, 45; *Nagayya* v *Karuppayee* A I R 1930 Mad, 344, *Rajagopalan* v *Ramamurthy* (1923) 18, M L W, 491, *Bhupendra Nath* v *Bhuan Chandra* (1936) 41 C W N, 392

(*o*) See *Veerasami* v *Polavarapu Nayudamma* A I R 1925 Mad, 1270, *Maharadhiraj Kameswar* v. *Beni Madho Singh* (1932) 11 Pat, 430.

(*p*) (1884) 11 I A, 66, 10 Cal, 985, 991

(*q*) *Risal Singh* v *Balwant Singh* (1918) 45 I A, 168, 179, 40 All, 593; (1923) 18 M L.W, 491 *supra*

itself was given on a ground personal to herself, it will be otherwise (*r*). A decree against the widow in respect of her husband's debts would not be a mere personal decree, but would bind the reversionary estate (*s*). But where a decree is passed against the widow personally, for a debt which was incurred for necessity, it does not bind the reversioners (*t*). Cases may occur where the widow litigates in assertion of an absolute right inconsistent with her representative character (*u*) or enters into compromises which are not fair and *bona fide*, but are designed to secure a personal benefit for herself (*v*). In all such cases the decrees would not be binding on the reversion. Decrees.

An adverse decree against a female limited owner on the ground that her right to recover possession was barred by limitation has been held to bind the reversionary heirs though their suit to recover possession on her death would not have been barred, if she had not sued. In that case the reversioner sued for possession of the estate and the defendant pleaded that the daughter of the last male holder had sued him ineffectually on the same title. The plaintiff alleged that under the Limitation law (Act of 1871, art. 142, Act of 1877, art. 141) his right to sue accrued on the death of the female heir. The Judicial Committee set aside this contention. "The words, 'entitled to the possession of immovable property' refer to the then existing law. Under that law the plaintiff being bound by the decree against Sampurna would not be entitled to bring a suit for possession. The intention of the Law of Limitation is, not to give a right where there is not one, but to interpose

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(*r*) *Risal Singh* v. *Balwant Singh* (1918) 45 I.A., 168, 40 All., 593; *Amrit Narayan* v *Gaya Singh* (1918) 45 I A, 35, 45 Cal, 590; (1923) 18 M.L.W, 491 *supra*, *Somasundaram* v *Vaithilinga* (1917) 40 Mad, 846, 860; *Bai Kanku* v. *Bai Jadav* (1919) 43 Bom., 869.

(*s*) *Barada Prasad* v. *Krishna Chandra* (1934) 38 C.W.N., 33.

(*t*) *Jugul Kishore* v *Jotindro* (1884) 11 I.A., 66, 73, 10 Cal., 985, *Lalit Mohun Pal* v. *Dayamoyi Roy* A.I.R. 1927 P.C., 41, 45 C.L J., 404 affg., A.I R. 1925 Cal., 401; *Giribala Dassi* v. *Srinath Chandra* (1908) 12 C.W.N., 769; *Trilochan Hazra* v. *Bakkeswar* (1912) 15 C I.J., 423; *Rameswara Mondal* v. *Probabati Debi* (1913) 19 C.W N., 313; *Chandra Singh* v. *Gobinda Das* A.I.R. 1937 Cal., 280; *Veerabadra* v. *Marudaga* (1911) 34 Mad., 188; *Sheikh Ghasit Mian* v. *Thakur Panchanan* (1936) 15 Pat, 798; *Nagendrabala* v. *Panchanan* (1933) 60 Cal., 1236; *Vasant Rao* v. *Behari Lal* A.I.R. 1938 Nag., 225 (which reviews all the cases and fully discusses the point).

(*u*) *Ramabin Santu* v. *Dajibin Naru* (1919) 43 Bom., 249; *Janak* v. *Babu* (1917) 2 Pat. L.J., 370.

(*v*) *Ramabin Santu* v. *Dajibin Naru*, ubi sup.; *Tirupatiraju* v. *Venkayya* (1922) 45 Mad., 504 F.B.

a bar after a certain period to a suit to enforce an existing right" (*w*).

Effect of execution for debt of female.

§ 672. A sale in execution of a decree against a female heir is merely an involuntary alienation, and will be judged of by the above principles. Where the suit is founded upon a purely personal debt or contract of her own, the decree can only be against her own person and property, and a sale in execution will only convey her own interest in the property (*x*). But even though the foundation of the decree be a liability which might bind the reversioners, that alone is not sufficient. The suit must be so framed as to show that it is not merely a personal demand upon the female in possession, but that it is intended to bind the entire estate, and the interests of all those who come after her (*y*). The question whether under the sale of the right, title and interest of the widow in execution of a decree, the whole interest or inheritance in the family estate does or does not pass, depends on the nature of the suit in which the execution of the decree takes place If the suit is in respect of a personal claim against the widow, then the widow's limited estate only is sold (*z*). One view is that where a decree is based on a widow's contract which does not give a charge on the husband's estate, if the foundation for the decree be a debt of a proper character, the decree-holder would be entitled to have the entire estate sold, and if in fact the entire estate was sold and bought by the purchaser, his title would prevail against the reversioners (*a*). But the sounder view is that though the original debt was for a necessary purpose and the creditor might have recovered his debt from the estate had he chosen to do so, in order to make the estate liable, he ought to have framed his suit in a proper manner (*b*).

(*w*) *Harinath* v. *Mohunt Mothoor Mohun* (1894) 20 I A, 183, 21 Cal, 8, *Vaithilinga Mudaliar* v. *Srirangath Anni* (1925) 52 I.A., 322, 335, 48 Mad, 883, *Ramdutt* v. *E. D. Sasson* (1929) 56 I A., 128, 56 Cal, 1048.

(*x*) *Jugal Kishore* v. *Jotendro Mohun* (1884) 11 I.A., 66, 10 Cal., 985, *Narana Maiya* v *Vasteva* (1894) 17 Mad, 208, *Broja Lal* v. *Jiban Krishnan* (1899) 26 Cal, 285.

(*y*) See cases cited in note (*t*) *supra*, *Parathnath* v. *Rameshwar* A I.R. 1938 All, 491

(*z*) (1884) 11 I A, 66, 10 Cal, 985 *supra*.

(*a*) (1911) 34 Mad., 188 *supra*.

(*b*) *Lalit Mohun Pal* v. *Dayamoyee Devi* A I R 1927 P C, 41, affg. A.I.R. 1925 Cal, 401, *Sheik Ghasit Mian* v. *Thakur Panchanan* (1936) 15 Pat, 798, 809, *Rameswar Mondal* v. *Provabati Debi* (1913) 19 C W N., 313, 320. A decree obtained against a Hindu widow for her husband's debt is binding on the son who is not a party to the suit, *Ishan Chunder Mitter* v. *Buksh Ali* (1872) 14 M.I A. 605; *Chaturbujadoss* v. *Rajamanicka* (1931) 54 Mad., 212; *Vasant Rao* v. *Behari Lal* A.I.R. 1938 Nag., 225.

Execution for debt of last male holder.

Of course the case would be different where the decree against her under which the sale was held was for a debt contracted by her husband.

Limitation.

§ 673. Where the widow or other holder of a woman's estate is dispossessed by virtue of any alienation or other act of hers, her alienation or act being effectual for her own life is not adverse to the reversioner till her death, and does not require him to bring a suit till then (*c*). Where she is dispossessed, or prevented from taking possession, by the hostile act of a third party, it was held under Act XIV of 1859 that if her suit was barred by time, that of the reversioner would also be barred (*d*). When, however, the Acts of 1871 and 1877 came into force, Courts held that the law had been changed, and that the statute in every case began to run against the reversioner from the death of the last female heir. The point at last came for decision before the Privy Council, and the decisions of the Courts in India were affirmed (*e*). It is accordingly settled that the statute can never begin to run against a reversioner in consequence of any possession or dispossession of a female, so long as she holds as heir of the last full owner. If she holds under a claim of title hostile to the rightful heir, her possession is adverse from the time it begins and the reversionary heirs who would be entitled after the death of the rightful heir as well as the rightful heir herself, will, on the expiry of twelve years, be barred (*f*). The case would be different if the female taking possession claimed only the limited estate of a Hindu

(*c*) *Pursut Koer* v. *Pasut Roy* (1882) 8 Cal., 442; *Roy Radha Kissan* v. *Nauratan Lall* (1907) 6 C.L.J., 490, *Venkataramanayya* v. *Dejappa* (1918) 34 M.L.J., 319, 321.

(*d*) *Nobinchunder* v. *Guru Persad* 9 W.R., 505, F.B., B.L.R. Sup. Vol., 1008; (1925) 52 I.A., 322, 332, 333, 48 Mad., 883, *supra*; *Rumayya* v. *Lakshmayya* A.I.R. 1938 Mad., 513.

(*e*) *Runchordas* v. *Parvatibai* (1899) 26 I A, 71, 23 Bom., 725; *Jamman* v *Tiloki* (1903) 25 All., 435; *Bijoy Gopal* v. *Krishna* (1907) 34 I.A., 87, 34 Cal., 329; *Vaithialinga* v. *Srirangath Anni* (1925) 52 I.A., 322, 48 Mad., 883, *Jaggo Bai* v. *Utsava Bai* (1929) 56 I A., 267, 51 All., 439, *Bankey Lall* v. *Raghunath* (1929) 51 All., 188, F.B.; *Shambu Prasad* v. *Mahadeo Prasad* (1933) 55 All, 554; *Shankarbhai* v *Bai Shiv* (1930) 54 Bom., 837; *Bai Manchha* v. *Tribhovan* A I.R. 1932 Bom., 434; *Abinashchandra Ghose* v. *Narahari Methar* (1930) 57 Cal., 289, dissenting from *Aurabina Nath Tagore* v. *Manorama Debi* (1928) 55 Cal., 903.

(*f*) *Mt. Lachan Kunwar* v. *Anant Singh* (1895) 22 I.A., 25, 22 Cal, 445; *Mahabir Pershad* v *Adhikani Koer* (1896) 23 Cal., 942 (P.C.); *Sham Koer* v. *Dah Koer* (1902) 29 I.A., 139, 29 Cal., 664; *Ganga* v. *Kanhai* (1919) 41 All., 154; *Subbi* v. *Ramakrishnabhatta* (1880) 4 Bom., 69; *Kalicharan* v. *Piari* (1924) 46 All., 769; *Rikhdeo* v. *Sukdeo* (1927) 49 All., 713; *Mahajan* v. *Mst. Parbo* (1930) 11 Lah., 424.

woman (*g*). The reversioner who succeeds to the estate or his legal representative has, from the death of the widow, twelve years under article 141 of the Limitation Act, 1908, within which to sue for recovery of immovable property and six years under article 120 to sue for recovery of movable property (*h*).

§ 674. While it is open to a reversioner to wait till the death of the widow to challenge her acts, for instance, any adoption or any alienation made by her, he can pursue his remedies against her acts even during her lifetime (*i*).

Persons entitled to sue.

Under the Hindu law, the death of the female owner opens the inheritance to the reversioners, and the one most nearly related at the time to the last full owner becomes entitled to possession. In her lifetime, however, the reversionary right is a mere possibility or *spes successionis*

Suits by Reversioners.

But this possibility is common to them all, for it cannot be predicated who would be the nearest reversioner at the time of her death. The law, however, permits the institution of suits in the lifetime of the female owner for a declaration that an adoption made by her is not valid, or an alienation effected by her is not binding against the inheritance (*j*) As a general rule such suits must be brought by the presumptive reversioner, that is to say, by the person who would succeed if the widow were to die at that moment (*k*). Such a suit may however be brought by a more distant reversioner if those nearer in succession are in collusion with the widow, or have precluded themselves from interfering If the nearest reversionary heir refuses, without sufficient cause, to institute proceedings, or if he has precluded himself by his own act or conduct from suing, or has colluded with the widow, or concurred in the act alleged to be wrongful, the next presumable reversioner would be entitled to sue. In such a case, the Court must exercise a judicial discretion in determining whether the remote reversioner is entitled to sue,

(*g*) *Lajwanti* v *Safa Chand* (1924) 51 I A, 171, 5 Lah, 192: *Vengamma* v *Chelamayya* (1913) 36 Mad, 484 See *ante* § 616

(*h*) *Runchordas* v *Parvatibai* (1899) 26 I A, 71, 23 Bom, 725; *Pramatha Nath* v. *Bhoobun Mohan* (1922) 49 Cal, 45

(*i*) As regards the period of limitation applicable for declaratory suits challenging an adoption, see *ante* § 220

(*j*) *Venkatanarayana Pillai* v *Subbammal* (1915) 42 I A, 125. 128-129, 38 Mad, 406, 410-411, *Janaki Ammal* v *Narayanasami Ayyar* (1916) 43 I A, 207, 39 Mad, 634, *Saudagar Singh* v *Pardip Narayan* (1917) 45 I A, 21, 45 Cal, 510

(*k*) *Rani Anund Koer* v *Court of Wards* (1881) 8 I A, 14, 6 Cal, 764 cited in (1915) 42 I A, 125, 130, 38 Mad, 406 *supra*, *Saudagar Singh* v *Pardip Narayan Singh* (1917) 45 I A, 21, 45 Cal, 510; *Raghavalu* v. *Kausalya* A I.R 1937 Mad, 607, *Javitri* v *Gendan Singh* (1927) 49 All, 779, *Rama Row* v. *Kuttiya Goundan* (1916) 40 Mad., 654

and would probably require the nearer reversioner to be made a party to the suit (*l*).

Female reversioners.

Where the nearest reversioner is a minor, there is nothing to prevent him from suing through a next friend (*m*). In Calcutta, Madras, Allahabad and Patna, it has been held that where the nearest reversioner is a female and would only be entitled to a limited interest, the reversioner next to her is competent to sue (*n*). It is open to the Court either to dismiss the suit brought by a remoter reversioner, when nearer reversioners are in existence and no exceptional circumstances are made out, or in a proper case to require the nearer reversioner to be made a party and allow the suit to proceed on terms (*o*).

Suit is representative.

§ 675. A suit by the presumptive reversioner to set aside an alienation or an adoption or in respect of any other act of the widow, injurious to the reversion, is brought in a representative capacity and on behalf of all the reversioners. The act complained of is to their common detriment just as the relief sought is to their common benefit. The right of the reversioner to sue is based on the danger to the inheritance, to remove a common apprehended injury to

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(*l*) (1881) 8 I A., 14, 6 Cal, 764, 772-773; (1915) 42 I.A., 125, 38 Mad, 406, *Lakshmi* v *Anantharama* [1937] Mad., 948 F.B.; *Raj Lukhee* v. *Gokool* (1870) 13 M I.A, 209, 224, *Kooer Goolab* v. *Rao Kurun* (1871) 14 M.I A., 176; *Rao Kurun* v. *Nawab Mahomed, ibid.*, 187, 193, *Jhandu* v *Tariff* (1915) 37 All, 45 P.C.; *Gauri* v. *Gurshai* (1880) 2 All, 41, *Raghunath* v *Thakuris* (1882) 4 All, 16, *Adi Deo* v. *Dukharam* (1883) 5 All, 532, *Balgobind* v. *Ramkumar* (1884) 6 All, 431, *Madari* v. *Malki* (1884) 6 All., 428; *Jhula* v. *Kanta Prasad* (1887) 9 All, 441, *Manmatha* v. *Rohilli* (1905) 27 All., 406; *Meghu Rai* v. *Ram Khelavan* (1913) 35 All, 326; *Gumanan* v. *Jahangira* (1918) 40 All, 518, *Ghisiawan* v. *Mt. Raj Kunwari* (1921) 43 All., 534; *Sita Saran* v. *Jagat* (1927) 49 All., 815; *Bandhan Singh* v. *Mt Daulata Kuar* A I R 1933 All., 152; *Ram Tawakal* v. *Mt. Dulari* A.I.R. 1934 All., 469; *Chulhan* v. *Mt. Akli* A I.R. 1934 Pat., 324; *Viranwali* v. *Kundan Lal* (1928) 9 Lah., 106; *Gokulananda* v. *Iswarchotrai* (1936) 15 Pat., 379. Where the nearest reversioner is from poverty unable to sue, the reversioner next to him is entitled to sue, *Mata Prasad* v. *Nageshar Sahai* (1925) 52 I.A., 398, 47 All., 883, *Shankar* v. *Raghoba* A.I.R. 1938 Nag, 97.

(*m*) *Kali Charam* v. *Bageshra* (1925) 47 All., 929.

(*n*) *Kandasami* v. *Akkammal* (1890) 13 Mad, 195, *Raghupati* v. *Tirumalai* (1892) 15 Mad., 422; *Chidambara Reddiar* v. *Nallammal* (1910) 33 Mad., 410; *Abinash* v. *Harinath* (1905) 32 Cal., 62; *Balgobind* v. *Ramkumar* (1884) 6 All., 431; *Raja Dei* v. *Umed Singh* (1912) 34 All., 207; *Lakhpati* v. *Rambodh Singh* (1915) 37 All., 350; *Deoki* v. *Jwala Prasad* (1928) 50 All., 678, *Ramyad* v. *Rambihara* (1919) 4 Pat. L.J., 734; but see *Madari* v. *Malki* (1884) 6 All., 428 and *Ishwar Narain* v. *Janki* (1893) 15 All., 132; *Mussamat Viranwali* v. *Kundan Lal* (1927) 9 Lah., 106.

(*o*) *Lakshmi* v. *Anantarama* [1937] Mad., 948 F.B.

the interests of all the reversioners, presumptive and contingent alike. On the death, therefore, of the presumptive reversioner the next presumptive reversioner is entitled to continue the action instituted by the former (*p*). The contingent reversioners may also be joined as plaintiffs in the presumptive reversioner's suit (*q*).

Decree for or against presumptive reversioner.

As the result of a suit brought by a reversioner, whether favourable or adverse, affects the reversioners as a body, it has been held that any issue which is finally determined in such a suit is *res judicata* under explanation VI to section 11 of the Code of Civil Procedure, 1908, in any subsequent suit by another reversioner. It is immaterial that the plaintiff in the second suit does not claim through the plaintiff in the first (*r*). Any decision given in a suit instituted by a reversioner that an adoption or an alienation is invalid will, of course, enure for the benefit of the actual reversioner after the widow's death as against the person setting up the adoption or alienation (*s*).

§ 676. During the lifetime of the limited owner, a reversioner is not entitled to sue for a declaration that he is the next reversioner. Though he has the right as next reversioner to sue on behalf of the reversioners for the protection of the estate, and his status as a reversioner may be denied and put in issue, a declaration that he is the nearest reversioner cannot be made. Such a declaration would necessarily be premature during the widow's lifetime and might be futile (*t*).

(*p*) *Venkatanarayana Pillai* v. *Subbammal* (1915) 42 I A, 125, 129, 38 Mad., 406, 411.

(*q*) *Har Lal* v. *Hari Singh* A I R 1931 All., 630, *Rameshwar* v. *Mt Ganpathi Devi* A I R 1936 Lah, 652, see *Thakur Prasad* v. *Mst. Dipa Kuer* (1930) 10 Pat., 352.

(*r*) (1915) 42 I A., 125, 38 Mad, 406 *supra*, *Kesho Prasad Singh* v *Sheo Pragash Ojha* (1924) 51 I A., 381, 46 All, 831 affg (1922) 44 All, 19, *Mata Prasad* v *Nageshar Sahai* (1925) 52 I A, 398, 47 All, 833, *Bansidhar* v. *Dulhatia* (1925) 47 All, 505, *Khari Muhammad* v *Umar Din* (1924) 5 Lah, 421, *Thakar Singh* v *Mst. Uttam Kaur* (1929) 10 Lah., 613, *Punnamma* v. *Perrazu* (1906) 29 Mad, 390 F B.; *Kesho Prasad* v *Sheo Pargash Ojha* (1922) 44 All, 19 F B., *Pramatha Nath* v *Bhuban Mohan* (1922) 49 Cal, 45.

(*s*) *Narain Das* v *Waryam Singh* A.I R. 1928 Lah, 545

(*t*) *Janaki Ammal* v. *Narayanaswami* (1916) 43 I A., 207, 39 Mad, 634, 637 (where the reversioner's title was put in dispute), *Katama Nachiar* v. *Dorasingha* (1875) 2 I A., 169, 15 B L R, 83, *Thakurain Jaipal Kunwar* v. *Bhaiya Indar* (1904) 31 I A, 67, 70, 26 All, 238; *Sheo Parsan* v. *Ramnandan* (1916) 43 I A., 91, 43 Cal, 694; *Saudagar* v. *Pardip Narayan* (1918) 45 I.A, 21, 45 Cal., 510, *Rama Rao* v. *Raja of Pittapur* (1919) 42 Mad, 219; *Madan Mohun* v. *Thakur Sree Natai Gour* (1933) 37 C.W.N., 801; *Lalu* v. *Fazal Din* (1923) 4 Lah., 106; see *Desu Reddiar* v. *Srinivasa Reddi* (1936) 59 Mad., 1052.

§ 677. An action against the female owner in possession is only maintainable in respect of such acts of hers as are injurious to the reversioners. They are of two classes: *first*, acts which diminish the value of the estate; *secondly*, acts which endanger the title of those next in succession.

To restrain waste.

Waste by heiress in possession.

FIRST:—Under this head come all acts which answer to the description of waste, that is, an improper destruction or deterioration of the substance of the property. The right of the reversioners to bring a suit to restrain waste by the female owner was established for the first time, by an elaborate judgment of Sir Lawrence Peel, C.J., in 1851 (*u*). What will amount to waste has never been fully defined. Illustration (m) to sec. 54 of the Specific Relief Act refers to the destruction of property committed by any Hindu widow without any sufficient justifying cause. The female heir is, for all purposes of beneficial enjoyment, full and complete owner. She would have a full right to cut timber, open mines and the like, provided she did so for the purpose of enjoying the estate, and not of injuring the reversion. To entitle the reversioner to sue, she must appear not merely to be using, but to be abusing, her estate; specific acts of waste, or of mismanagement, or other misconduct, must be alleged and proved. Unless this is established, the female heir can neither be prevented from getting the property into her possession, nor from retaining it in her hands, nor compelled to give security for it, nor can any directions be given her as to the mode in which she is to use or invest it (*v*). But where such a case is made out, the heiress will be restrained from the act complained of. In a very gross case, she may even be deprived of the management of the estate, and a receiver appointed, not upon the ground that her act operates as any forfeiture (*w*), but only upon the ground that she cannot be trusted to deal with the estate in a manner consistent with her limited interest in it (*x*). In such a case the next heirs

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(*u*) *Hurrydoss* v. *Rungunmoney* Sev. 657; per Sir Barnes Peacock C.J., in *Nobin Chunder* v. *Ishu Chunder* 9 W R, 509.

(*v*) *Hurrydoss* v. *Upoornah* (1856) 6 M.I.A., 433; *Bindoo* v. *Bolie* 1 W.R, 125, *Grose* v. *Amirtamayi* (1869) 4 B.L.R. (O.C J.), 1. 12 W.R. (A.O.J.), 13. As to mining, see *Subba Reddi* v. *Chengalamma* (1899) 22 Mad, 126.

(*w*) *Per curiam*, *Rao Kurun* v. *Nawab Mahomed* 14 M.I.A, 198, 10 B L.R., 1; *Katamma Nachiar* v. *Doraisingha* (1875) 2 I.A., 168, 191; *Janaki Ammal* v. *Narayanaswami* (1916) 43 I.A., 207, 39 Mad., 634; *Mata Prasad* v. *Nageshar Sahai* (1925) 52 I.A., 398, 410, 47 All., 883; *Renka* v. *Bholanath* (1915) 37 All., 177.

(*x*) *Venkamma* v. *Narasimham* (1921) 44 Mad., 984, following *Radha Mohun Dhar* v. *Ram Das Dey* (1869) 3 B.L.R., 362; *Shankarbhai* v. *Bai Shiv* (1930) 54 Bom., 837.

may be appointed as receivers, when they appear to be the fittest persons to manage for the benefit of the estate; and the Court will ordinarily, except in very exceptional cases, direct the whole proceeds to be paid over to her and not merely an allowance for her maintenance (*y*)

A widow is under a clear duty to abstain from wasting the corpus of her husband's estate, movable and immovable. If she has made away with the movable corpus of the husband's estate, she can be ordered to replace it if she is in a position to do so, allowing her, of course, to enjoy the income of the fund replaced. And transferees from the widow, without consideration, of jewels or other movable corpus of the estate of the last male owner can be ordered to replace any part of it that can be traced to their hands (*z*). In one case the widow had given up the estate to a third party, under threat of legal proceedings, and refused to have anything to do with the assets. It was held that the reversioners might sue the widow and the third party to have the possession restored to proper custody, and that a manager should be appointed to collect, account for, and pay into court, the assets, to be held for the ultimate benefit of the heirs who should be entitled to succeed at the death of the widow (*a*).

Abandonment of right.

Of course the reversioners will be equally entitled to restrain the unlawful acts of persons holding under the female heiress (*b*). But the mere execution and registration of a deed as between strangers without any ulterior act directed against the widow in possession or without any injury to the reversion gives no right of action against them to the reversioner, either for a declaration of title or otherwise (*c*)

Declaratory suits.

§ 678 SECOND:—During the life of the limited owner, the reversioners can sue to remove that which would be a bar to his title when it vested in possession The commonest suits which are brought by reversioners are suits for a declaration that an alienation or surrender made by the

(*y*) *Jamna Prasad* v *Mt Durgadei* A I R. 1933 All, 138, (1921) 44 Mad, 984 *supra*, *Maharani* v *Nunda Lal* 1 B L R (A C J), 27, 10 W R, 73, *Shama Soonduree* v *Jumoona* 24 W R, 86

(*z*) (1921) 44 Mad, 984 *supra*, following *Sinclair* v *Brougham* (1914) A C, 398, (1930) 54 Bom, 837 *supra*

(*a*) *Radha Mohun* v *Ram Das* (1869) 3 B L R (A C J), 362, see *Joymooruth* v. *Buldeo* 21 W R, 444 *Venkanna* v *Narasimhan* (1921) 44 Mad, 984, *Shankar Bai* v *Bai Shii* (1930) 54 Bom, 837, 847.

(*b*) *Govindmani* v. *Shamlal* B L R Sup. Vol 48, *Kamavadhini* v. *Joysa* (1866) 3 M H C, 116, (1921) 44 Mad, 984 *supra*, see also *Sinclair* v *Brougham* (1914) A C 398

(*c*) *Suraj Bansi* v. *Mahipat* 16 W.R, 18.

limited owner is invalid, or that an adoption, which is set up, is invalid or never in fact took place (*d*). The next reversioner can either institute such a declaratory suit or wait till the widow's death and sue for the recovery of property (*e*). A reversioner is also entitled to sue for a declaration as to the limited nature of the widow's interest in certain property to which she asserts an absolute title under the will of another person (*f*). He can also sue for a declaration that a will giving the widow an authority to adopt was never in fact executed (*g*). It has also been held that in exceptional circumstances a reversioner can sue to impugn a transaction by the last male holder during the widow's lifetime, as for instance where she refuses to sue to set aside her husband's invalid sale colluding with the alienee to enable him to acquire title by adverse possession (g^1).

Specific Relief Act.

§ 679. The Specific Relief Act (I of 1877), sec. 42 provides that "any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may, in its discretion, make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief. Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so". Illustrations (e) and (f) to the section, which expressly mention suits by reversioners for declaratory reliefs in connection with adoptions and alienations by widows show that the section is intended to reproduce the previous law.

§ 679A. A reversioner's suit during the life of the female owner for a declaration that an alienation made by her of

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(*d*) *Golab Singh* v. *Kurun Singh* (1871) 14 M.I.A., 176; *Jumoona* v. *Bamasoondera* (1876) 3 I.A., 72, 1 Cal., 289; *Saudagar Singh* v. *Pardip Singh* (1918) 45 I.A., 21, 45 Cal., 510; *Muthukumarasami* v. *Hari Narayana* (1927) 53 M.L.J., 601.

(*e*) *Bijoy Gopal Mukerji* v. *Krishna Mahishi* (1907) 34 I.A, 87, 34 Cal., 329; *Raghubir Singh* v. *Jethu Mahton* (1923) 2 Pat., 171.

(*f*) *Thakurain* v. *Bhaiya Inder* (1904) 31 I.A., 67, 26 All., 238; *Umrao Kunwar* v. *Badri* (1915) 37 All., 422, *Ganga* v. *Kanhai Lal* (1919) 41 All., 154, *Deoki* v. *Jawala Prasad* (1928) 50 All, 678. See 1 All., 688, where a nuncupative will was set up. *Surayya* v. *Subbamma* (1920) 43 Mad., 4 overruled by the Full Bench in *Pudiava* v. *Pavanasa* (1922) 45 Mad., 949 F B. on another point, *Das Mal* v. *Ram Chand* (1923) 4 Lah., 116.

(*g*) *Padmanabhudu* v. *Buchamma* (1918) 35 M.L.J., 144, *Surayya* v. *Annapurnamma* (1919) 42 Mad., 699, *Muthukumarasami* v. *Harinarayana* (1927) 53 M.L.J., 601.

(g^1) *Shankarbhai* v. *Bai Shiv* (1930) 54 Bom., 837, 858.

immovable property is void "except for her life or until her marriage" has to be brought within twelve years from the date of the alienation (art. 125 of the Limitation Act, 1908). Article 120 providing six years will apply in respect of other suits brought by the reversioners, for instance, to restrain waste (*h*). According to the Madras High Court, the suit to set aside an alienation is a representative one on behalf of all the reversioners and all of them have but a single cause of action which arises when the alienation is made (*h*[1]). This view has been doubted by the Calcutta High Court (*i*). A reversioner who was not in existence at the time of the alienation can, it has been held, sue within six years from the time when his right to sue accrues (*j*) Where a surrender by a female owner is attacked as invalid, it will be an alienation and a suit for a declaration of its invalidity, so far as immovable property is concerned, will be governed by article 125 (*k*) Where the surrender is valid, the reversioner who is entitled to possession, will have twelve years or six years, according as the property alienated by the widow which he seeks to recover is immovable or movable, under article 144 or article 120. Article 141 will not apply to a suit before the female owner dies

Equities on setting aside her acts

§ 680 Where a purchaser from a Hindu widow acts in good faith and after due enquiry, and pays a fair price for the property sold, so that the sale itself is justified by legal necessity, he is under no obligation to inquire into the application of the money paid by him and is, therefore, not bound to make repayment of

(*h*) *Venkanna* v *Narasimham* 44 Mad, 981

(*h*[1]) *Varamma* v. *Gopaladasayya* (1918) 41 Mad., 659 F B, following *Venkatanarayana* v *Subbammal* (1915) 38 Mad., 406 P C, and *Janaki* v. *Narayanasami* (1916) 39 Mad, 634 P C and overruling *Govinda* v *Thayammal* (1905) 28 Mad, 57, *Veerayya* v *Gangamma* (1913) 36 Mad, 570, and *Narayana* v *Rama* (1915) 38 Mad, 396, *Kamakshi* v *Poochammal* A I R 1925 Mad, 567, *Venkatasubbayya* v *Subramanyam* A.I R 1925 Mad, 911, *Neelakanta* v. *Chinna Ammal* (1927) 52 M L J, 13, *Rajagopala* v *Ramanuja* (1936) M W N, 339, 44 M L.W, 208, *Mt Jagrani* v *Gaya* A I R 1933 All, 856 (Art 120 applied), *Chiragh Din* v. *Abdulla* (1925) 6 Lah, 405, *Mt Nandan* v *Wazira* (1927) 8 Lah, 215 (Art 125 applied), *Mt. Widyavati* v. *Mt Rahmat Bi* A I R 1937 Lah, 760 (Art 125 applied); *Kanhya Lal* v *Mt Hira Bibi* (1935) 15 Pat, 151 (Art 120 applied), *Damar Mahton* v. *Jagdip* A.I R 1936 Pat., 535 (Art 120 applied), *Baldeo Das* v *Raghunandan Das* A I R 1937 Pat, 105

(*i*) *Das Ram Chowdhury* v *Tirtha Nath Das* (1924) 51 Cal., 101

(*j*) *Sital Raut* v *Adalat Raut* A I R. 1935 Pat, 256.

(*k*) *Kanshi Ram* v. *Mt Chet Kaur* (1929) 10 Lah, 237, following *Sheo Singh* v. *Jeoni* (1897) 19 All., 524 (Art. 125 applied).

such part of the price as is not proved to have been applied for purposes of necessity (§ 367) (*l*). Where, owing to the alienee's knowledge or defective inquiry or other circumstances, the sale is not justified by necessity but part of the consideration is advanced by him for a binding purpose, then the reversioner is entitled to have the alienation set aside on his paying the amount (*m*). In *Shanti Kumar Pal* v. *Mukund Lal Mandal*, the Calcutta High Court held that a deed of surrender was, as such invalid but treating it as a sale based in part on legal necessity, set it aside on the condition that the reversioners paid the purchaser that portion of the price which was justified by necessity (*n*). As was observed in *Felaram Roy* v. *Bagalanand Banerjee*, it would manifestly be impossible and possibly prejudicial to the interest of the estate, if the widow were held to be bound in every instance to sell property for payment of a debt due from her husband for exactly the sum due to the creditor (*o*) and the Courts will have to see in each case whether, having regard to all the circumstances, the alienation was a proper one (*p*).

Ordinarily, the proper decree of the court is to set aside the sale, if it was not justified and not to make an order for payment by the reversioner in the absence of equities or special circumstances such as those above mentioned (*q*).

The absence of an offer by a reversioner in his plaint to pay such amount as may be binding on him is no ground for refusing the declaration as to the invalidity of the alienation and the court will make a charge for such part of the amount as is justified by necessity (*r*).

(*l*) *Suraj Bhan Singh* v. *Sah Chain Sukh* (1928) 32 C.W.N., 117 P.C., *Medai Dalavoi Thirumalaiyappa* v. *Nainar Tevan* (1922) 27 C.W.N., 365 P.C.; *Balkrishna* v. *Hira Lal* (1919) 41 All., 338; *Sri Krishn Das* v. *Nathu Ram* (1927) 54 I.A., 79, 49 All., 149, *Niamat Rai* v. *Din Dyal* (1927) 54 I.A., 211, 8 Lah., 597; *Ram Sunder* v. *Lachhmi Narain* (1929) 51 All., 430 P.C.; *Buta Mal* v. *Gopal Singh* (1930) 11 Lah., 164.

(*m*) See *Nagappa Chettiar* v. *Brahadambal* (1936) 62 I.A., 70, 58 Mad., 350.

(*n*) (1935) 62 Cal., 204 relying on *Deputy Commr. of Kheri* v. *Khangar Singh* (1906) 34 I.A., 72, 29 All., 331, *Jagannadham* v. *Vighneswarudu* (1932) 55 Mad., 216; but see *Ram Asre Singh* v. *Ambica Lal* A.I.R. 1929 Pat. 216; *Jagannath* v. *Damodar* A.I R. 1932 All., 37.

(*o*) (1910) 14 C.W.N., 895.

(*p*) *Naman Lal* v. *Har Bhagwan* (1921) 2 Lah., 357; *Krishna* v. *Hira Lal* (1919) 41 All., 338.

(*q*) *Mt. Alodhan Kuer* v. *Naurangi Singh* A.I.R. 1938 Pat., 194.

(*r*) *Paparayudu* v. *Rattamma* (1914) 37 Mad., 295; *Arunachela Gounden* v. *Kuppanadha* (1918) 14 M.L.T., 391. See *ante* § 403.

Improvements by alienee

In *Narayanaswami Ayyar* v *Rama Ayyar*, the Judicial Committee held that where a gift is made by a Hindu widow to a stranger and the donee sells the property, and the purchaser makes improvements believing in good faith that he is the owner, he is entitled, on the alienation being set aside, to the alternative rights mentioned in section 51 of the Transfer of Property Act, 1882, that is to say, to the value of the improvements effected by him (*s*). Where a Hindu widow sells property without legal necessity and the purchaser causes permanent improvements to be made whereby the *jama* of the property is increased, the increased rent that is properly attributable to the improvements should be set off against any mesne profits claimed against him. In other words, the reversioner would be bound to pay the purchaser the amount by which the value of the property has been enhanced by improvements effected by him (*t*) The Bombay High Court has held that the position of a mortgagee from a widow who improved the property with her consent cannot be distinguished from that of a purchaser, so as to prevent an equity from arising in favour of the mortgagee (*u*). But it has been held by the Allahabad High Court that a mortgagee from a limited owner is not entitled to claim the value of any improvements effected by him as section 51 applies only to a transferee believing in good faith that he is absolutely entitled to the property (*v*)

The question whether a purchaser is entitled to compensation for money spent upon the properties purchased by him cannot arise till the death of the limited owner (*w*).

(*s*) (1930) 57 I A, 305, 53 Mad, 692

(*t*) *Kidar Nath* v *Mathu Mal* (1913) 40 Cal, 555 P C, *Bhagwat Dayal* v *Ram Ratan* A I R 1922 P C, 91, 20 C W.N., 257. See also *Someshvar* v *Someshvar* (1923) 50 Bom, 1, *Gangadhur* v. *Rachappa* A I R 1929 Bom, 246, but see *Suleman Saheb* v *Perichevla* A I R 1925 Mad, 670, 21 M L W, 115

(*u*) *Shidappa* v *Pandurang Vasudev* (1923) 47 Bom, 692, distinguishing *Vrijbhukandas* v. *Dayaram* (1907) 32 Bom, 32, but see *Ramappa* v *Yellappa* (1928) 52 Bom, 307

(*v*) *Hans Raj* v *Musammat Somni* (1922) 44 All, 665, 667 distinguishing A I R 1922 P C, 91 *supra*, *Rajrup Kunwar* v. *Gopi* (1925) 47 All, 430 (case of improvement effected by a lessee under a permanent lease from a Hindu widow), *Raj Kishore Das* v *Jaint Singh* (1914) 36 All, 394-5 (lease)

(*w*) *Lala Rup Narain* v *Gopal Devi* (1909) 36 I A, 103, 36 Cal., 780, 798.

CHAPTER XVIII.

MAINTENANCE

All members entitled.

§ 681. The importance and extent of the right of maintenance necessarily arises from the theory of an undivided family. The head of such a family is bound to maintain its members, their wives and their children, to perform their ceremonies and to defray the expenses of their marriages (*a*); in other words, those who would be entitled to share in the bulk of the property are entitled to have all their necessary expenses paid out of its income (*b*). But the right of maintenance goes farther than this, and includes persons who by reason of personal disqualification are not allowed to inherit, such as the idiot, the madman and the rest (*c*). Such persons are excluded from inheritance and a share on partition but are given, in lieu thereof, maintenance (*d*). While their male issue, if not disqualified, are entitled to inherit, the wives and daughters of disqualified persons are, till marriage, entitled to be maintained (*e*).

Loss of caste.

Misbehaviour, or ex-communication from caste on the ground of misbehaviour, does not of itself disentitle the offender to maintenance (*e*[1]).

(*a*) Manu, IX, 108, Nārada, XIII, 26-28, 33, *Vaikuntam* v. *Kallapiran* (1900) 23 Mad., 512 and (1903) 26 Mad., 497, *Sundrabhai* v *Shivnaram* (1908) 32 Bom, 81, *Kameswara Sastri* v *Veeracharlu* (1914) 34 Mad, 422, *Bhagwan Singh* v *Kewal Kaur* (1927) 8 Lah., 360.

(*b*) This passage is cited with approval in *Rama Rao* v. *Raja of Pittapur* (1918) 45 I.A, 148, 153, 41 Mad, 778, 784.

(*c*) (1918) 45 I.A, 148, 153, 154, 41 Mad., 778, 784 *supra*. As to disqualified persons, see Chapter XV.

(*d*) (1918) 45 I.A., 148, 153, 41 Mad., 778, 784, *Vellayappa Chetty* v. *Natarajan* (1931) 58 I.A., 402, 55 Mad, 1.

(*e*) Manu, IX, 108, Narada, XIII, 26-28, 33, Yajn., II, 140, 142; Vishnu, XV, 32-34, Mit., II, x, 12 15, Dayabhaga, V, 10, 11; D.K S., III, 7-17; V. May, IV, xi, 1-9, *Rama Rao* v. *Raja of Pittapur* (1918) 45 I.A., 148, 153, 41 Mad, 778; *Ram Soonder Roy* v. *Ram Sahye Bhugat* (1882) 8 Cal, 919; *Natarajan* v *Muthiah Chettiar* A.I R. 1926 Mad., 261, 22 M.L.W. 650; *Yeshvantrao* v. *Kashibai* (1888) 12 Bom., 26, 28.

(*e*[1]) *Putanvitil Teyan* v. *Putanvitil Raghavan* (1881) 4 Mad., 171; *R.* v. *Marimuthu* (1881) 4 Mad, 243. See § 692.

Illegitimate son

§ 682. Illegitimate sons, when not entitled as heirs, are to be maintained (*f*) and maintenance for their lives may be secured by a charge on the family estate (*g*). For instance, the illegitimate son of a Hindu belonging to one of the twice-born classes by a permanent concubine (*dasi*) is entitled to maintenance as well out of the joint family property as from the separate property of his putative father (*h*). The illegitimate son of a Sudra born to a permanent concubine (*dasi*), where his father leaves no separate property is entitled to maintenance out of the joint family property held by him and his coparceners (*i*). The illegitimate son of a Hindu born to a Hindu woman, even if he be the offspring of adulterous intercourse or of a woman not kept as a permanent concubine has been held entitled to maintenance as against his putative father during his lifetime and afterwards out of his separate and joint property (*j*). The right of the illegitimate son to maintenance is purely personal and does not descend to the

(*f*) Mitakshara I, xii, 3, *Muttusamy* v *Venkatasubha* (Ettiyapuram (zamindari) (1865) 2 Mad H C., 293, affd (1868) 12 M I A, 203, *Chuoturya* v *Sahub Purhulad* (1857) 7 M I A, 18, *Rahi* v *Govind* (1875) 1 Bom, 97, *Viraramuthi* v *Singaravelu* (1877) 1 Mad, 306, *Kuppa* v *Singaravelu* (1885) 8 Mad, 325, *Hargobind* v *Dharam* (1884) 6 All, 329, *Subramania Mudali* v *Valu* (1911) 34 Mad, 68. The Hindu law right only exists in case of sons who were born Hindus. The illegitimate son of a Hindu by a Christian mother cannot claim to be maintained, *Lingappa* v *Esudasen* (1904) 27 Mad, 13. As to the statutory obligation to maintain a wife and children, legitimate or illegitimate, see Criminal Procedure Code, 1898, § 488, *Kallu* v *Kauselia* (1904) 26 All, 326 It ceases on the death of the father, *Lingappa* v *Esudasen* (1904) 27 Mad, 13, *Sitaram* v *Ganpat* A.I.R. 1923 Bom, 384 Maintenance granted for the illegitimate child may be rightly and properly spent for the maintaining of the joint home of the infant and its mother, and no account will be ordered so long as the infant is properly maintained, *Bomwetsch* v. *Bomwetsch* (1908) 35 Cal., 381.

(*g*) *Ananthaya* v. *Vishnu* (1894) 17 Mad, 160, *Gopalasami* v. *Arunachelam* (1904) 27 Mad, 32, *Subramania* v *Valu* (1911) 34 Mad, 68

(*h*) *Chuoturya* v *Purhlad* (1857) 7 M I A, 18; *Roshan Singh* v. *Balwant Singh* (1900) 27 I.A, 51, 22 All, 191, *Ananthayya* v *Vishnu* (1894) 17 Mad, 160, *Vellaiyappa* v *Natarajan* (1932) 58 I A., 402, 408, 55 Mad, 1

(*i*) *Vellaiyappachetty* v. *Natarajan* (1931) 58 I A, 402, 55 Mad., 1 affirming (1927) 50 Mad., 340.

(*j*) (1857) 7 M.I A, 18 *supra*; *Parichat* v. *Zalim Singh* (1878) 4 I.A, 159, 3 Cal., 214, *Muttuswamy* v. *Vencateswara* (1868) 12 M I A, 203, *Rahi* v *Govind* (1875) 1 Bom, 97, *Viraramuthi* v. *Singaravelu* (1877) 1 Mad, 306, *Subramania* v. *Velu* (1911) 34 Mad, 68, *Ghana* v *Gereli* (1905) 32 Cal, 479, *Kuppa* v. *Singaravelu* (1885) 8 Mad, 325, *Hargobind* v. *Dharam Singh* (1884) 6 All., 329, *Chamava* v. *Iraya* A.I.R. 1931 Bom., 492, 33 Bom. L.R, 1082.

legitimate son of the illegitimate son (*k*). Nor does it extend, apparently, to illegitimate daughters (*l*).

The right of an illegitimate son under the Dayabhaga law to maintenance would appear to cease on his majority (*m*); under the Mitakshara law, he is entitled to maintenance for life (*n*).

The quantum of maintenance to which the illegitimate son of a Sudra is entitled is fixed with reference to the income of the estate, the status of the putative father and the mode of life to which he was accustomed during his father's lifetime (*o*).

Concubine.

§ 683 A concubine who has been kept by a Hindu continuously upto the time of his death is entitled to maintenance from the property whether ancestral or acquired, of her deceased paramour (*p*). She however loses her right for incontinence just like a widow (*q*). In *Bai Nagubai* v. *Bai Monghibai,* the Privy Council held that the right to maintenance is limited to one who among Hindus is properly called *avaruddhastri* (*r*). Neither a casual nor an adulterous connection entitles a woman to maintenance. Nor can a claim for maintenance be made by a discarded concubine against her paramour or against his property after his death (*s*). To entitle her to maintenance, it is not necessary that the concubine should have lived in her paramour's house with

(*k*) *Balwant Singh* v *Roshan* (1896) 18 All, 253 affd in *Roshan* v *Balwant* (1900) 27 I.A. 51, 22 All., 191.

(*l*) *Parvati* v. *Ganpatrao* (1894) 18 Bom, 177, 183, (1932) 58 I.A, 402, 55 Mad., 1 *supra,* affg. (1927) 50 Mad, 340.

(*m*) *Nilmoney Singh* v. *Baneshur* (1879) 4 Cal., 91.

(*n*) *Hargobind* v. *Dharam Singh* (1884) 6 All., 329; *Kuppa* v. *Singaravelu* (1885) 8 Mad, 325.

(*o*) *Rathinasabapathi* v *Gopala* (1929) 56 M.L.J., 673 dissenting from *Gopalasami* v. *Arunachalam* (1904) 27 Mad., 32, 36.

(*p*) Mit, II, 1, 27-28, Daya Bh., XI, 1, 48, V. May., IV, VIII, 5, *Panchapagesa Odayar* v. *Kanaka Ammal* (1917) 33 M.L.J., 455, *Vrandravandas* v *Yamunabai* (1875) 12 B H C, 229; *Dayavati* v. *Kesarbai* A I.R 1934 Bom, 66, 36 Bom L.R., 61; *Ningareddi* v. *Lakshmawa* (1902) 26 Bom., 163.

(*q*) *Yashvant Rao* v. *Kashibai* (1888) 12 Bom., 26.

(*r*) (1926) 53 I.A, 153, 50 Bom., 604 reversing (1923) 47 Bom., 401, "an avaruddhastri is a woman prohibited by the master from intercourse with other men, with an injunction to stay at home, with the object of avoiding any lapse of service". As to what her maintenance should cover, see *Charandas* v. *Nagubai* A.I.R. 1929 Bom., 452.

(*s*) *Ramanarasu* v. *Buchamma* (1900) 23 Mad., 282; *Sikki* v. *Vencatasamy* (1875) 8 M H.C.R., 144; *Khemkar* v. *Umiashankar* (1873) 10 Bom. H.C., 381, *Ningareddi* v. *Lakshmawa* (1902) 26 Bom., 163.

his family (*t*). In *Anandilal* v. *Chandrabai*, it was held that a kept mistress, whose husband is alive, is not an *avaruddhastri* entitled to maintenance on the death of her paramour (*u*). Another condition of maintenance is imposed in *Rama Raja Thavar* v. *Papammal* (*v*) that she must have borne illegitimate children to her paramour; and reliance is placed upon *Khemkar* v. *Umiashankar* (*w*) and Strange's Hindu Law (*x*). No such condition is imposed by the texts whose only requirement is that she should be an *avaruddhastri*. A barren concubine is entitled to maintenance just as much as a barren widow.

Aged parents and minor son.

§ 684. The maintenance of a wife (*y*), aged parents (*z*) and a minor son (*a*) is a matter of personal obligation arising from the very existence of relation and quite independent of the possession of any property, ancestral or acquired (*b*). A text of Manu cited in the Mitakshara and the Parasara-madhaviya says: "It is declared by Manu that the aged mother and father, the chaste wife and an infant child must be maintained even by doing a hundred misdeeds" (*c*). So the

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(*t*) (1926) 53 I A, 153, 50 Bom, 604, *Charondas* v *Nagubai* A I R 1929 Bom, 452, *Dayavati* v *Kesarbai* A I R 1934 Bom, 66, 36 Bom L R, 61.

(*u*) (1924) 48 Bom, 203 explaining *Khemkar* v *Umiashankar* (1873) 10 Bom. H C, 381.

(*v*) (1925) 48 Mad, 805.

(*w*) (1873) 10 Bom H C, 381.

(*x*) 1 Stra H.L. 174. The Mitakshara's comment on Yajn, II, 290 deals with *avaruddhastris* (Setlur's edn, 1104-1110). Mit, II, 1, 27-28 do not impose any such condition. Neither Westropp, C J, nor Sir Thomas Strange meant that a concubine was entitled to maintenance only if she had borne children. They probably meant that in that case her having been a concubine was easily established.

(*y*) *Jayanti Subbiah* v *Alamelu* (1904) 27 Mad, 45, *Savitribai* v *Laxmibai* (1878) 2 Bom, 573 F.B., *Narbadabai* v *Mahadeo* (1881) 5 Bom, 99, *Appibai* v *Khimji Cooverji* (1936) 60 Bom, 455.

(*z*) *Narbadabai* v *Mahadeo* (1881) 5 Bom., 99, as to mother-in-law, see *Bai Kanku* v *Bai Jadav* (1884) 8 Bom, 15, *Subbarayana* v *Subbakka* (1885) 8 Mad, 236, *Bai Daya* v *Natha Govindlal* (1885) 9 Bom, 279 (step-mother), *Kedar Nath* v *Hemangini* (1886) 13 Cal, 336, *Ghanaraj* v *Mt Tapibai* A I R 1933 Nag, 57.

(*a*) *Premchand* v *Hulashchand* (1869) 4 B L R, App, 23, 12 W R, 494, *Himmat* v *Ganpat* (1875) 12 Bom H C, 94, *Ammakannu* v *Appu* (1888) 11 Mad, 91, *Bhoopati Nath Chakravarti* v *Basanta Kumaree* (1936) 63 Cal, 1098, *Jawahar Singh* v *Pardeman Singh* (1933) 14 Lah, 399.

(*b*) (1904) 27 Mad, 45 *supra*, (1936) 60 Bom, 455 *supra*.

(*c*) The text is not found in Dr Buhler's edition (S B E, Vol. XXV) but is cited in Mit. on Yajn, II, 175 (Setlur, 819). The last clause is only an *arthavada* to show the importance of the duty. Ghose H L, I, 322, see Manu, VIII, 389 with Medhatithi's comment on it, *Savitribai* v *Laxmibai* (1878) 2 Bom., 573, *Commr of Income-tax* v. *Lakshmipathi Saheba* (1935) 14 Pat, 313, 316, *Bhoopathi Nath* v. *Basanta Kumari* (1936) 63 Cal., 1098, 1110.

Mitakshara lays down that "where there may be no property but what has been self-acquired, the only persons whose maintenance out of such property is imperative are aged parents, wife and minor children" (*d*).

Son

§ 685. While the obligation to maintain a minor son is personal and independent of the possession of any property, the obligation to maintain a grown-up son rests upon the latter being a co-sharer in the property of which his father is the manager (*e*). A son who can sue for partition cannot sue for maintenance but where he cannot sue for partition, he is entitled to sue for maintenance (*f*).

Daughter

§ 686. A sister is entitled to maintenance until her marriage, and to have her marriage expenses defrayed (*g*). After marriage, her maintenance is a charge upon her husband during his life, and after his death, upon her husband's family. If they are unable to support her and the widowed daughter returns to live with her father or brother, there is a moral and social, but not a legal obligation (*h*).

Wife to be maintained by husband.

§ 687. The maintenance of a wife by her husband is, of course, a matter of personal obligation, which attaches from the moment of marriage (*i*). Where the wife is immature, custom requires that she should reside with her parents, who

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(*d*) Mit. on Subtraction of Gift, cited Stra Man, 209, *Rama Rao* v. *Rajah of Pittapur* (1918) 45 I.A., 148, 154, 41 Mad., 778, *Amma Kannu* v. *Appu* (1880) 11 Mad, 91, *Narinjan* v. *Gurmukh* A.I.R. 1937 Lah., 76 (no obligation to maintain one's step-brothers).

(*e*) *Rama Rao* v. *Rajah of Pittapur* (1918) 45 I A., 148, 41 Mad., 778; *Maharajah of Jeypore* v. *Vikramadeo Garu* (1919) 37 M.L J., 188; *Kalu* v. *Kashibai* (1883) 7 Bom., 127; *Chanvirgauda* v. *District Magistrate, Dharwar* (1927) 51 Bom, 120, *Himmat* v. *Ganpat* (1875) 12 Bom H C., 94, *Ramchandra* v *Sakharam* (1878) 2 Bom., 346, 350-1; *Premchand* v. *Hulashchand* (1869) 4 B L.R., App., 23, 12 W.R., 494. See as to grandson, *Mon Mohinee* v. *Baluck* (1871) 8 B.L.R., 22, 15 W.R, 498; *Ram Das* v. *Lachman Das* A.I.R 1936 Lah., 853; *Bhupati Nath* v. *Basanta Kumari* (1936) 63 Cal, 1098.

(*f*) *Bhupal* v. *Tavanappa* (1922) 46 Bom., 435; (1878) 2 Bom., 346 *supra*, (1875) 12 Bom. H.C., 94 *supra*.

(*g*) *Bai Mangal* v. *Bai Rukhmini* (1899) 23 Bom., 291; *Tulsha* v. *Gopal* (1884) 6 All., 632, *Ram Labhaya* v. *Nihal Devi* A.I R. 1931 Lah., 127, see also *Narinjan* v *Gurmukh* A I.R. 1937 Lah, 76

(*h*) (1899) 23 Bom., 291 *supra*, *Mokhoda* v. *Nundo Lal* (1900) 27 Cal., 555 affd. (1901) 28 Cal., 278 *supra*, but see *Venkatarazu* v. *Kotayya* (1912) 23 M.L.J, 223, 233, per Sadasiva Ayyar, J.

(*i*) *Jayanti Subbiah* v. *Alamelu Mangamma* (1904) 27 Mad., 45; *Narbadabai* v. *Mahadeo* (1881) 5 Bom., 99; *Appibai* v. *Khimji* (1936) 60 Bom., 455; *Venkatapathi* v. *Puttamma* (1936) 71 M.L.J., 499; *Rattamma* v. *Seshachalam* A.I.R. 1927 Mad., 502; *Srinath Das* v. *Booboot Chunder* (1910) 11 C.L.J., 580; *Indirabai* v. *Makarand* A.I.R. 1931 Nag., 197; *Lachhmi* v. *Mohan Lal* A.I.R. 1934 Lah., 444.

maintain her as a matter of affection only; they can, at their option, demand her maintenance from her husband, and he is bound to pay for it (*j*). And, conversely, her husband is alone liable No other member of the family, whether joint or separate, can properly be made a party to the suit, unless, perhaps, in cases where he has abandoned her, and his property is in the possession of some other relation (*k*).

Bound to reside with him.

§ 688 As soon as the wife is mature, her home is necessarily in her husband's house (*l*) He is bound to maintain her in it while she is willing to reside with him, and to perform her duties. If she quits him of her own accord, either without cause, or on account of such ordinary quarrels as are incidental to married life in general, she can set up no claim to a separate maintenance (*m*). Where the husband keeps a concubine in the house (*n*) or treats her with cruelty so as to endanger her personal safety, she is entitled to live apart and claim separate maintenance (*o*). Cruelty and abandonment are not the only grounds on which separate maintenance could be allowed to a wife Separate maintenance can also be awarded when the husband for reasons of his own chooses to put the wife away from him or the wife lives away from her husband for justifiable reasons (*p*). The grounds which will be available to a wife

(*j*) *Ramien* v *Coondummal* Mad. Dec of 1858, 154

(*k*) *Ramabai* v *Trimbak* (1872) 9 Bom H C., 283

(*l*) *Dadaji* v *Rukmabai* (1886) 10 Bom., 301, *Sitanath* v *Haimabatty* 21 W R., 377, *Arumuga* v *Viraraghava* (1901) 24 Mad., 255, *Tekait* v *Basanta* (1901) 28 Cal., 751, *Kondal Roya* v *Ranganayaki* (1923) 46 Mad., 791, 801, *Ut Baron Dei* v *Ram Sewak Lal* A I R. 1937 Oudh, 623 See *ante* § 133

(*m*) *Bommadevara Naganna* v *Bommadevara Raja* (1928) 55 M L J., 242, A I R 1928 P C., 187, *Kallyaneesuree* v *Dwarkanath* 6 W R., 116, *Sidlingappa* v *Sidava* (1878) 2 Bom., 634, *Surampalli Bangaramma* v *Surampalli* (1908) 31 Mad., 338, 24 W R., 377 *supra*, § 134

(*n*) *Lalla Govind* v *Dowlat* 14 W R., 451, 6 B L R., 85, *Dular Kuari* v *Dwarka Nath* (1905) 32 Cal., 234, 239 In a case under § 488 of the Criminal Procedure Code, it was held that the wife could not refuse to live with her husband and claim separate maintenance if he kept a concubine as it was not adultery. *Queen Empress* v *Mannath Achari* (1894) 17 Mad., 260. The view expressed in 32 Cal., 234, 239 is to be preferred The decision in 17 Mad., 260 turned on the special provisions of § 488, Cr P C.

(*o*) *Matangini* v *Jogendra* (1892) 19 Cal., 84, *Babu Ram* v *Kokla* (1924) 46 All, 210

(*p*) *Nitye* v *Soondaree* 9 W R., 475 (denial of maintenance); *Sidlingappa* v. *Sidava* (1878) 2 Bom., 634, *Sitabai* v. *Ramachandra* (1910) 12 Bom. L R., 373 (abandonment), *Shinnappayya* v *Rajamma* (1922) 45 Mad., 812 (leprosy), *Sitanath* v *Haimabatty* 24 W R., 377 (unkindness—not good reason); *Viraswami* v *Appaswami* (1863) 1 M.H C., 375 (second wife—not good cause), *Rajlucky* v. *Bhootnath* (1900) 4 C.W.N., 488 (quarrels—not good reason), *Venkatapathi* v.

to defeat a suit for restitution of conjugal rights would also entitle her to live apart from her husband and claim separate maintenance (p^1).

The circumstance of a man taking another wife, even without any justifying cause (p^2) does not by itself entitle her to leave his home, so long as her husband is willing to keep her there (q). A wife who leaves her home for purposes of adultery, and persists in following a vicious course of life, cannot claim to be maintained, or to be taken back (r).

A wife living apart from her husband for no improper purpose may, at any time, return and claim to be maintained. Her right is not forfeited but only suspended during the time she commits a breach of duty by living apart and is revived when at his death such duty ceases to exist (s). When a wife leaves her husband's home by his consent, he is, of course, bound to receive her again when she is desirous to return, and if he refuses to do so, she will be entitled to maintenance just as if he had turned her out (t). A wife, who is unlawfully excluded from her own home, or refused proper maintenance in it, has the same right to pledge her husband's credit, as a wife in England. But the onus lies heavily on those who deal with her to establish that she is in such a position (u). A husband who has abandoned Hinduism is still bound to maintain his Hindu wife (v).

For a lawful purpose.

Puttamma (1936) 71 M.L.J., 499; *Dular Koer* v. *Dwarka Nath Misser* (1907) 34 Cal., 971; *Mt. Lajwanti* v. *Bakshi Ram* A.I.R. 1934 Lah., 110; *Ude Singh* v. *Mst. Daulat Kuer* (1935) 16 Lah., 892.

(p^1) *Venkatapathi* v. *Puttamma* (1936) 71 M.L.J., 499; *Ude Singh* v. *Daulat Kuer* (1935) 16 Lah., 892 (abandonment); *Appibai* v. *Khimji Cooverji* (1936) 60 Bom., 455 (desertion); *Bommadevara Naganna* v. *Bommadevara Rajya* (1928) 55 M.L.J., 242 P.C., A.I.R. 1928 P.C. 187 (if wife lives apart without justifying reason, she cannot get maintenance); *Bahuria Saraswati Kuer* v. *Bahuria Sheoratan* (1933) 12 Pat., 869.

(p^2) See as to these, Manu, IX, 77-82.

(q) Manu, IX, 83, *Viraswami* v. *Appaswami* (1863) 1 Mad. H.C., 375; *Rajah Row Bochee* v. *Vencata Neeladry* 1 Mad. Dec., 366; see *Dular Kuari* v. *Dwarka Nath Misser* (1907) 34 Cal., 971; *Mt. Lajwanti* v. *Bakshi Ram* A.I.R. 1935 Lah., 110; *Ude Singh* v. *Daulat Kuer* (1935) 16 Lah., 892. See *ante* § 134

(r) 2 W. MacN., 109; *Ilata* v. *Narayana* (1863) 1 Mad. H.C., 372; *Debi Saran Shukul* v. *Daulata Shuklain* (1917) 39 All., 234; *Subbayya* v. *Bhavane* (1914) 24 I.C., 390; *Kandasami* v. *Murugammal* (1896) 19 Mad., 6.

(s) *Surampalli Bangaramma* v. *Surampalli Brambaze* (1908) 31 Mad., 338.

(t) *Nitye* v. *Soondaree* 9 W.R., 475.

(u) *Viraswami* v. *Appaswami* (1863) 1 M.H.C., 375.

(v) *Mansha* v. *Jiwan* (1884) 6 All., 617.

Widow.

Act XVIII of 1937.

§ 689. The widows of the members of the family are entitled to maintenance (*w*). Now, under the Hindu Women's Rights to Property Act (XVIII of 1937), the widows of deceased coparceners in a Mitakshara family are entitled to their husbands' interests. Their rights to maintenance under the Hindu law are not in terms taken away by the new Act, but that must be the necessary consequence, for they were allowed maintenance only because they were excluded from inheritance and a share on partition. So also, the widow of a person governed by the Dayabhaga law becomes entitled to succeed to his property even in the presence of male issue for the share of a son So too, in a Mitakshara family, where a man dies intestate leaving separate property, his widow is similarly entitled to the share of a son along with the male issue. The widowed daughter-in-law and the widowed granddaughter-in-law are also entitled to inherit in certain shares even though there be male issue The result of the new Act will therefore be that the law as to maintenance of the widows of coparceners or of divided members, whether under the Mitakshara or under the Dayabhaga, will in course of time become obsolete As the Hindu Women's Rights to Property Act is not retrospective, this branch of the law will continue to govern the rights to maintenance of widows of coparceners and of divided members which were vested in them before the Act came into force The law as it stood before the Act has therefore to be stated

§ 690 While a widow is entitled to maintenance from her son even if he is not in possession of ancestral property in her character as mother (*x*), a similar right against her

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(*w*) Provided they are chaste and so long as they lead a virtuous life *Lakshmi Chand* v *Anandi* (1935) 62 I A, 250, 57 All, 672, *Ramanath* v *Rajonimoni* (1890) 17 Cal, 674, "Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lords But if they behave otherwise, the brethren may resume that allowance" (Narada, XIII, § 26) This text is said by Jimutavahana to apply to women actually espoused and who have not the rank of wives, but another passage of Narada (cited Smritichandrika, XI, 1, § 34) is open to no such objection "Whichever wife *(patni)* becomes a widow and continues virtuous, she is entitled to be provided with food and raiment" See, too, Smritichandrika, XI, 1, § 47, *Sinthayee* v *Thanakapudayen* (1868) 4 Mad. H.C., 185, *Kery Kolitany* v *Monceram* 13 B L R., 1, 72, 88 F.B., on appeal, (1880) 7 I A, 115, 5 Cal, 776.

(*x*) *Subbarayana* v. *Subbakka* (1885) 8 Mad., 236.

father-in-law is not admitted (*y*). The Smritichandrika expressly states that the obligation to maintain the widow is dependent on taking the property of the deceased (*z*).

She is entitled to be maintained where her husband's separate property is taken by his male issue (*a*). Where, at the time of his death, he was a coparcener she is entitled to maintenance as against those who take her husband's share by survivorship (*b*). Where there is no such property she has no claim to maintenance against her father-in-law or brother-in-law out of their separate property; but the father-in-law is under a moral liability to maintain his son's widow out of his own separate property. When his sons or in their default, his widow, daughter or daughter's son, succeed to his estate, his moral liability as transmitted to them on his death becomes in their persons a legal liability. The measure of that liability is restricted to the amount of the estate to which they have succeeded. This rule obtains both under the Mitakshara and the Dayabhaga law (*c*).

(*y*) *Ammakannu* v. *Appu* (1888) 11 Mad., 91, *Meenakshi* v. *Rama Aiyar* (1914) 37 Mad., 396, *Ramabhai* v. *Trimbak* (1872) 9 Bom. H.C., 283, *Subbarayalu* v. *Kamalavalli Thayarammal* (1912) 35 Mad, 147, *Gangabai* v. *Sitaram* (1876) 1 All, 170, *Janki* v. *Nand Ram* (1889) 11 All., 194 F.B, *Kamini Dassee* v *Chandra Pode* (1890) 17 Cal., 373, *Devi Prasad* v *Gunwanti Koer* (1895) 22 Cal., 410; *Khetramani* v. *Kashinath* (1869) 2 B.L.R. (A C.J.), 15, 10 W.R., 89 (F.B.), *Savitribai* v *Luximibai* (1878) 2 Bom., 573 (husband's paternal uncle), *Apaji* v *Gangabai*, *ib.*, 632 (husband's brother); *Kalu* v *Kashibai* (1883) 7 Bom, 127; *Adhibai* v. *Cursondas* (1887) 11 Bom., 199; *Yamunabai* v. *Manubai* (1889) 23 Bom, 608; *Siddesury* v *Janardan* (1907) 29 Cal, 557, 570, *Bai Daya* v *Natha* (1885) 9 Bom., 279 (step-son)

(*z*) Smriti Chandrika, XI, 1, 34 "In order to maintain the widow, the elder brother or of any of the other abovementioned must have taken the property of the deceased, the duty of maintaining the widow being dependent on taking the property." It is immaterial whether the property is movable or real. *Kamini Dassee* v. *Chandra Pode* (1890) 17 Cal, 373.

(*a*) *Narbadabai* v. *Mahadeo* (1881) 5 Bom., 99, *Bhagabati* v. *Kanailal* (1871) 8 B.L.R., 225; *Brinda* v. *Radhica* (1885) 11 Cal., 492.

(*b*) *Adhibai* v. *Cursandas* (1887) 11 Bom., 199; *Devi Prasad* v. *Gunwanti* (1895) 22 Cal., 410; *Becha* v. *Mothina* (1901) 23 All., 86; *Jayanti Subbiah* v. *Alamelu* (1904) 27 Mad., 45.

(*c*) *Rajani Kanta Pal* v *Sajani Sundar Dassya* (1934) 61 I.A., 29, 61 Cal., 221, *Janki* v. *Nandram* (1889) 11 All, 194 F.B., (1887) 11 Bom, 199 *supra*, (1888) 11 Mad, 91 *supra*; (1890) 17 Cal., 373 *supra*; (1899) 23 Bom., 608 *supra*, *Siddesury* v. *Janardun* (1902) 29 Cal., 557; (1899) 22 Mad., 305 *supra*; (1914) 37 Mad., 396 *supra*; *Jai Nand* v. *Paran Dei* A.I.R. 1929 Oudh, 251, 4 Luck., 491 F.B.; *Gopal Chandra* v. *Kadambini Dasi* A.I.R. 1924 Cal., 364; *Laximibai* v. *Sambha* A.I.R. 1932 Nag., 11.

Where the father-in-law disposes of his property by will, the Madras High Court has held that she is entitled to the same right (*d*). But in Bombay it is held that the daughter-in-law has no right to maintenance from a person to whom her father-in-law has bequeathed the whole of his self-acquired property (*e*).

Widow not bound to reside with husband's family.

Widow residing apart.

§ 691. The same reasons which require a wife to remain under her husband's roof do not apply where she has become a widow. No doubt the family house of her husband's relations is a proper, but not necessarily the most proper, place for her continued residence (*f*). At all events it is settled by decisions of the highest tribunal that "all that is required of her is, that she is not to leave her husband's house for improper or unchaste purposes, and she is entitled to retain her maintenance, unless she is guilty of unchastity, or other disreputable practices after she leaves that residence" (*g*). The Judicial Committee laid down in *Ekradeshwari Bahuasin* v. *Homeshwar* that a Hindu widow who has left the residence of her deceased husband, not for unchaste purposes, and resides with her father is entitled to maintenance as well as to arrears of maintenance from the date of her leaving her husband's residence although she does not prove that she has incurred debts in maintaining herself and gives no reasons for the change of residence (*h*). A widow cannot claim a separate maintenance where the family property is so small as not to admit reasonably of the allotment to her of such a maintenance (*i*). But this is not a rule of Hindu law, but merely a

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(*d*) *Rangammal* v *Echammal* (1899) 22 Mad., 305, *Jeot Ram Chaudhuri* v. *Mt. Lanj* A.I.R. 1929 All, 751, see also *Indubala Dasi* v. *Penchumani Das* (1914) 19 C.W.N, 1169

(*e*) *Bai Parvati* v. *Tarwadi* (1901) 25 Bom, 263, *Bhagirathibai* v. *Dwarkabai* A I.R 1933 Bom, 135 (gift); in the former case, the devisee got all the property and was therefore the legal representative and would be legally bound to maintain the widow. Compare section 128 of the Transfer of Property Act.

(*f*) Dig., II, 123.

(*g*) *Pirthee Singh* v. *Rani Raj Kooer* (1873) 12 B.L.R., 238 P.C., I A Supp., 202, 20 W.R., 21, where most of the previous cases are cited; *Visalatchi* v. *Annasami* (1870) 5 Mad. H.C., 150; *Kasturbai* v. *Shivajiram* (1879) 3 Bom., 372 dissenting from *Rango Vinayak* v. *Yamunabai* (1879) 3 Bom., 44, *Narayan Rao* v. *Rakhmabai* (1879) 6 I.A, 114, 3 Bom, 415; *Gokibai* v *Lakhmidas* (1890) 14 Bom., 490; *Siddessury* v. *Janardan* (1902) 29 Cal., 557; *Girianna* v. *Honamma* (1891) 15 Bom., 236, *Parwatibai* v. *Chatru Limbaji* (1912) 36 Bom., 131.

(*h*) (1929) 56 I.A., 182, 8 Pat., 840; *Har Partab Singh* v. *Thakurain Raghuraj* A.I.R. 1933 Oudh, 550, *Pachayammal* v. *Paramasiva* 1937 M.W.N., 785.

(*i*) *Godavaribai* v. *Sagunabai* (1898) 22 Bom., 52, *Ramchandra* v. *Sagunabai* (1880) 4 Bom., 261; (1878) 2 Bom., 573 *supra;* (1879) 3 Bom., 372 *supra.*

rule of equity and discretion depending upon each case (*j*). If the husband by his will made it a condition that his widow should reside in his family house, the direction would be binding (*k*). Where a widow elects to live with her husband's family, she must accept such arrangements for her residence as they make for her (*l*). But where she insists on a separate maintenance she cannot also claim a right to live in the family house.

§ 692. Unchastity on the part of a Hindu widow disentitles her to maintenance and as maintenance is a recurring right, a right to it is conditional upon her leading a life of chastity (*m*). She forfeits her right by her unchaste conduct even though it is secured by a decree or agreement (*n*), but not where it rests upon an independent consideration, as for instance, a compromise of her claim to property (*o*). In *Lakshmi Chand* v. *Anandi*, the Judicial Committee observed that "the right of a Hindu widow to maintenance is conditional upon her leading a life of chastity and she loses that right if she becomes unchaste" (*p*). The view taken by Chandavarkar, J., in *Parami* v *Mahadevi* that a wife living an unchaste life is entitled to some maintenance (*q*), cannot be regarded as correct. But there can be no doubt that if she repents, returns to purity and performs expiatory rights, she will be entitled to maintenance (*q*). Accordingly the

Unchastity.

(*j*) *Veggamma* v *Kalyanamma* 41 Mys. H.C., 90

(*k*) *Pirthee Singh* v *Rani Raj Kooer* (1874) 12 B L R., 247, 20 W.R., 21, *Mulji Baishankar* v. *Bai Ujam* (1889) 13 Bom., 218; *Girianna* v. *Honamma* (1891) 15 Bom., 236, *Tin Cowri* v. *Krishna Bhabini* (1893) 20 Cal., 15.

(*l*) *Mohun Geer* v *Mt Totoa* 4 N.-W.P., 153.

(*m*) *Lakshmi Chand* v *Anandi* (1935) 62 I A., 250, 255, 57 All., 672, *Muttammal* v. *Kamakshy Ammal* (1865) 2 M.H.C., 337; *Kandasami* v. *Murugammal* (1896) 19 Mad, 6, *Debi Saran Shukul* v. *Daulata Shuklain* (1917) 39 All., 234 following *Subbayya* v. *Bhavani* (1914) 24 I.C., 390; *Honama* v. *Timmanna Bhat* (1877) 1 Bom., 559, 560, *Nagalakshmamma* v. *Viswanatha Sastri* (1912) 23 M.L.J., 289, Nar., XII, 91, Yajn., I, 70, Viramit., Setlur, II, 405, *Pirthee Singh* v. *Raj Koer* (1873) I.A. Supp. Vol., 203, 12 B.L.R, 278, *Monuram Kolita* v *Kerry Kolitani* (1880) 7 I A., 115, 5 Cal, 776, *Valu* v. *Ganga* (1883) 7 Bom, 84; *Vishnu* v. *Manjamma* (1885) 9 Bom., 108, *Ramanath* v. *Rajanimoni* (1890) 17 Cal., 674, 679. See note (*w*) to § 689.

(*n*) *Nagamma* v. *Virabadra* (1894) 17 Mad., 392, *Daulta Kuari* v. *Meghu* (1893) 15 All., 382; *Maharana Ranmal Sangji* v. *Kundan* (1902) 26 Bom., 707, *Kisanji* v. *Lukshmi* A.I.R. 1931 Bom., 286.

(*o*) *Bhup Singh* v. *Lachman* (1904) 26 All., 321; *Shiv Lal* v. *Bai Sankli* A.I.R. 1931 Bom., 297.

(*p*) (1935) 62 I.A., 250, 255, 57 All., 672.

(*q*) (1910) 34 Bom., 278; *Bommayya Hegade* v. *Jalayakshi* (1914) 27 M.L.J., 305; *Ram Kumar Dube* v *Bhagwanta* (1934) 56 All., 392; *Mt. Shibbi* v. *Jodh Singh* (1933) 14 Lah., 759; *Haji Saboo Siddick* v. *Ayeshabai* (1903) 30 I.A., 127; 27 Bom., 485 *Bhikubai* v. *Hariba* (1925) 49 Bom., 459. Where an unchaste woman conceives as a result of adultery, no maintenance is allowed, Yajn., I, 72; Vas., XXI, 10.

Madras, Bombay and Allahabad High Courts have held that a Hindu widow who after living an immoral life reforms her ways is entitled to starving maintenance (*r*)

All heirs bound.

§ 693. A female heir is under exactly the same obligation to maintain dependent members of the family as a male heir. The obligation extends even to the King when he takes the estate by escheat or by forfeiture (*s*).

Remarriage.

§ 694. A widow who remarries has no right to maintenance out of her first husband's estate. All the Courts are agreed that this is the rule where she cannot remarry except under the provisions of the Hindu Widows' Remarriage Act (XV of 1856). But where independently of the Act, she can remarry in accordance with the custom of the caste, there is a difference of opinion as to whether or not she loses her right of maintenance Most of the High Courts have held that her remarriage disentitles her to maintenance from the estate or family of her first husband (*t*). The Allahabad High Court and the Chief Court of Oudh take a contrary view (*u*). The true view would appear to be that it is not a question of forfeiture at all, but that under Hindu law a woman is entitled to maintenance only so long as she is a widow. On her remarriage, she becomes entitled to maintenance as against her new husband and when she becomes a widow she will be entitled to maintenance in the new family. In Hindu law a woman cannot at the same time be the widow of one and the wife of another Her former status as widow is merged in or destroyed by her new status as wife.

Quantum of maintenance.

§ 695 As to the quantum of maintenance, the first question would be, What would be the fair wants of a person in the position and rank of life of the claimant? The wealth of the family would be a proper element in determining this question A member of a family who had been brought up in affluence would naturally have more numerous and more expensive wants than one who had been brought up

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(*r*) *Satyabhama* v *Kesavacharya* (1916) 39 Mad., 658, (1925) 49 Bom., 459 *supra;* (1934) 56 All, 392 *supra*

(*s*) Nar., XIII, 52, *Golab Koonwur* v. *Collector of Benares* (1847) 4 M.I.A. 246

(*t*) *Murugayee* v *Viramakali* (1877) 1 Mad., 226, *Rasul* v. *Ram Surun* (1895) 22 Cal, 589, *Vithu* v *Govinda* (1898) 22 Bom., 321 F B, *Suraj* v. *Attar* (1922) 1 Pat, 706, *Santala* v. *Badaswari* (1923) 50 Cal., 727. See *ante* § 533.

(*u*) *Gajadhar* v. *Kausilla* (1909) 31 All., 161, *Mula* v. *Partab* (1910) 32 All., 489, *Mangat* v *Bhairo* (1927) 49 All., 203; *Bhola Umar* v *Kaunsilla* (1933) 55 All., 24 F.B.; *Ram Lall* v *Mt Jawala* A.I.R. 1928 Oudh, 338, 3 Luck., 610, *Gajadhar* v. *Mt. Sukdei* A.I.R. 1931 Oudh, 107, 5 Luck., 689.

in poverty. The extent of the property would be material in deciding whether these wants could be provided for, consistently with justice to the other members (*v*). The extent of the property is not, however, a criterion of the sufficiency of the maintenance, in the sense that any ratio exists between one and the other. Otherwise, as the Judicial Committee remarked (*w*), "a son not provided for might compel a frugal father, who had acquired large means by his own exertions, to allow a larger maintenance than he himself was satisfied to live upon, and than children living as part of his family must be content with." Each case must be determined upon its own facts. As regards widows, since they are only entitled to be maintained by persons who hold assets over which their deceased husbands had a claim, the High Court of Bombay has ruled that it follows as a corollary, "that the widow is not, at the utmost, entitled to a larger portion of the annual produce of the family property than the annual proceeds of the share to which her husband would have been entitled on partition were he now living" (*x*). In a recent case, the Privy Council pointed out: "Maintenance depends upon a gathering together of all the facts of the situation, the amount of free estate, the past life of the married parties and the families, a survey of the conditions and necessities and rights of the members, on a reasonable view of change of circumstances possibly required in the future, regard being, of course, had to the scale and the mode of living, and to the age, habits, wants and class of life of the parties. In short, it is out of a great category of circumstances, small in themselves, that a safe and reasonable induction is to be made by a Court of law in arriving at a fixed sum" (*y*).

The rate of maintenance should be such as will enable the widow to live consistently with her position as a widow in something like the same degree of comfort and with the

(*v*) *Baisni* v. *Rup Singh* (1890) 12 All., 558; *Devi Pershad* v. *Gunwanti* (1895) 22 Cal., 410; *Mahesh Partab* v. *Dirgpal* (1899) 21 All., 232.

(*w*) *Tagore* v. *Tagore* (1871) 9 B.L.R., 413, L.A. Supp. Vol., 47, 82; *Nittokissoree* v. *Jogendro* (1878) 5 I.A., 55; *Mahesh* v. *Dirgpal* (1899) 21 All., 232, 234.

(*x*) *Madhavrav* v. *Gangabai* (1878) 2 Bom., 639; *Adibai* v. *Cursandas* (1887) 11 Bom., 199; *Jayanti Subbiah* v. *Alamelu* (1904) 27 Mad., 45; where the wife is forsaken, she is entitled to one-third of her husband's property; *Ramabhai* v. *Trimbak* (1872) 9 Bom. H.C., 283. As to when the estate is heavily indebted, see *Savitri Thakurain* v. *Mrs. F. A. Savi* (1933) 12 Pat., 359.

(*y*) *Ekradheshwari* v. *Homeshwar* (1929) 56 I.A., 182, 8 Pat., 840; *Sobhanadramma* v. *Narasimhaswami* (1934) 57 Mad., 1003, 1007.

same reasonable luxury as she had in her husband's life. Allowance however must be made for the circumstance that the past mode of life of the widow was either on a penurious scale or an extravagant scale, having regard to the husband's total income (*z*).

The observations which were made in cases relating to widows generally apply with necessary modifications also to a wife and to other claimants to maintenance such as disqualified heirs (*a*).

Where widow has property

§ 696. In calculating the amount of maintenance to be awarded to a female, her own stridhana is not to be taken into account, if it is of an unproductive character, such as clothes and jewels. For she has a right to retain these, and also to be supported, if necessary, by her husband's family. But if her property produces an income, this is to be taken into consideration (*b*). This principle applies as well to any one entitled to maintenance. It has been held that the fact that a Hindu widow is able to maintain herself out of other property is no ground for not giving her some maintenance out of her husband's property (*c*), and that the right to maintenance is an absolute one (*d*). In another case, it was held that where a widow is, or ought to have been, in possession of her husband's separate property

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(*z*) *Rajanikanta Pal* v. *Sajani Sundari Dassee* (1934) 61 I.A., 29, 61 Cal., 221, follg. (1929) 56 I.A, 182, 8 Pat., 840 *supra*, *Dalal Kunwar* v *Ambika* (1903) 25 All., 266; *Sundarji* v. *Dahibai* (1905) 29 Bom., 316, *Appibai* v. *Khimji* (1936) 60 Bom., 455. Where the amount of maintenance has been settled by the Indian Courts, it is not the practice of the Judicial Committee to interfere with that amount on appeal *Kachi Kalyani* v. *Kachi Yuva* (1905) 32 I.A, 265, 28 Mad, 508, 512 (the *Udayarpalayam* case); (1929) 56 I A., 182, 8 Pat., 840 *supra*.

(*a*) *Sobhanadramma* v. *Narasimhaswami* (1934) 57 Mad., 1003; *Appibai* v. *Khimji Cooverji* (1936) 60 Bom, 455.

(*b*) *Shib Dayee* v. *Doorga Pershad* (1872) 4 N-W.P, 63, *Chandrobhagabai* v. *Kashinath* (1866) 2 Bom H C, 323; *Savitribai* v. *Laximibai* (1878) 2 Bom., 573, 584. A mere right of action to recover property under a will is not a legitimate ground for reducing maintenance, *Gokibai* v. *Lakmidas* (1890) 14 Bom., 490; *Shyama Bhai* v. *Purushottamdoss* A.I.R. 1925 Mad., 645, *Gurushiddappa* v. *Parwatewwa* [1937] Bom, 113 (where it was suggested that if the ornaments were of great value, it should be taken into account), *Hari Partab Singh* v. *Raghuraj Kuar* A.I R. 1933 Oudh, 550.

(*c*) *Lingayya* v. *Kanakamma* (1915) 38 Mad., 153.

(*d*) *Lingayya* v. *Kanakamma* (1915) 38 Mad, 153; dissenting from *Ramawati Koer* v *Manjhari Koer* (1906) 4 C.L.J, 74; *Kodanda Rama Reddi* v *Chenchamma* (1930) 59 M L J., 531, a precarious payment by a brother cannot be considered *Saraswati* v. *Sheoratan Kuer* (1933) 12 Pat, 869, 875, *Gokibai* v. *Lakmidas* (1890) 14 Bom., 490.

or the joint family property sufficient for her maintenance, she has no cause of action, while she is in possession thereof or till she exhausts those resources, to sue for maintenance (*e*). A member of the family, who has once received a sufficient allotment for maintenance, and who has dissipated it, cannot bring a suit either for a money allowance, or for subsistence out of the family property (*f*). On the other hand, an allowance fixed in reference to a particular state of the family property may be diminished by order of the Court if the assets are afterwards reduced (*g*), provided the reduction has not arisen from the act of the person liable for maintenance (*h*). And, on the same principle, the allowance might be raised, if the property increased, or a change of circumstances justified the demand (*i*).

A contract by a person entitled to maintenance to receive a fixed maintenance per annum and not to claim any increase in future, even though circumstances change, is valid (*j*).

§ 697. Arrears of maintenance used to be refused and were held to be within the discretion of the Court. It is now settled that in order to recover arrears of maintenance, it is not necessary to prove a demand and refusal (*k*). The right to maintenance is a recurring right and non-payment of maintenance *prima facie* constitutes proof of wrongful withholding. Unless adequate grounds are shown for inferring that the person entitled has waived or abandoned the

Arrears.

(*e*) *Dattaraya Waman* v. *Rukhmabai* (1909) 33 Bom., 50; *Srinivasa Aiyar* v. *Ammani* (1931) 61 M.L.J., 381.

(*f*) *Savitribai* v. *Luximibai* (1878) 2 Bom., 578.

(*g*) *Rukabai* v. *Gandabai* (1878) 1 All., 594.

(*h*) *Vijaya* v. *Sripathi* (1885) 8 Mad., 94; *Gopikabai* v. *Dattaraya* (1900) 24 Bom., 386; *Sheo Mangal* v. *Bodhi Kuar* A.I.R. 1936 Oudh, 60; *Sundari* v. *Venkatarama* (1934) 66 M.L.J., 680, A.I.R. 1934 Mad, 384 (improvement of widow's financial position, no ground for reducing rate fixed).

(*i*) *Sreeram Bhuttacharjee* v. *Puddomodkee* 9 W.R., 152; *Sidlingappa* v. *Sidava* (1878) 2 Bom., 624, 630 F.B.; *Bangarammal* v. *Vijayamachi* (1899) 22 Mad., 175. The right of a widow to maintenance is one accruing from time to time according to her wants and exigencies; *Rangubai* v. *Subaji Ramachandra* (1912) 36 Bom., 383; *Mt. Bhagwanti* v. *Mani Ram Shah* A.I.R. 1935 Lah., 543.

(*j*) *Mohieswara* v. *Durgamba* (1924) 47 Mad., 308; *Purshottam Das* v. *Rukmini* A.I.R. 1937 Bom., 358; *Nanjamma* v. *Visvanathiah* 42 Mys. H.C.R., 699.

(*k*) *Yeralagadde* v. *Yeralagadde* (1901) 27 I.A., 151, 24 Mad., 147; *Ekhradheswari* v. *Homeshwar* (1929) 56 I.A., 182, 8 Pat., 840; *Subramania* v. *Muthammal* (1911) 21 M.L.J., 482.

claim to maintenance, the person bound to pay maintenance cannot escape liability (*l*).

While the right to arrears of maintenance is a legal right the Court has a discretion to award them at a lower rate than future maintenance (*m*). Maintenance has been held to accrue from day to day and to be apportionable (*n*).

It is open to the Court to insert a provision in the decree giving liberty to either party to apply in execution proceedings for increase or reduction of the rate of maintenance on account of a change of circumstances (*o*).

§ 698. There are several texts which prohibit the gift of property to such an extent as to deprive a man's family of the means of subsistence (*p*).

(*l*) *Yeralagadda* v *Yeralagadda* (1901) 27 I A., 151, 24 Mad, 147 (the younger brothers of the holder of an impartible estate wrongly claimed it to be partible in their suit for partition in which they succeeded only as to the partible properties. Notwithstanding the fact that they instituted and persisted in their wrong suit and did not claim their maintenance as it fell due, they were held entitled to arrears of maintenance for twelve years); *Rungathayee* v. *Munuswamichetty* (1911) 21 M.L.J., 706, *Pushpavalli Thayarammal* v. *Raghvaiahchetty* (1914) 15 M L.T, 95, *Panchaksharachetty* v. *Pattammal* A.I.R. 1927 Mad., 865, *Srinivasa Ayyar* v. *Lakshmiammal* A.I.R. 1928 Mad., 216, 54 M.L J., 530, *Sobhanadramma* v *Narasimhaswami* (1934) 57 Mad., 1003, *Ramarayudu* v. *Sitalakshmamma* A.I.R. 1937 Mad., 915, *Mt. Sham Devi* v. *Mohanlal* (1934) 15 Lah., 591; *Sarasvati* v. *Sheo Ratan* (1934) 12 Pat., 869 (no interest allowed on arrears); *Ram Labhaya* v. *Nihat Devi* A I.R. 1931 Lah., 127 (daughter-in-law).

(*m*) (1929) 56 I.A., 182, 8 Pat., 840; *Raghubans Kunwar* v. *Bhagwant* (1899) 21 All., 183, *Sidlingappa* v. *Sidava* (1878) 2 Bom, 624 F.B., *Panchakshara* v. *Pattammal* A.I.R 1927 Mad., 865; *Venkataratnamma* v. *Seetaratnam* A.I.R. 1932 Mad., 408; *Gurushidappa* v. *Parwatewa* [1937] Bom., 113, *Ramarayudu* v. *Sitalakshmamma* A.I R. 1937 Mad, 915. The dicta in *Karbasappa* v. *Kallava* (1919) 43 Bom., 66, *Lakshmamma* v. *Venkatasubbiah* (1924) 48 M.L.J., 266 and in *Mt. Jamwati* v. *Maharani* A.I.R. 1931 All., 227 that there is a discretion to award or not arrears of maintenance are no longer correct. The Privy Council has said "In the Board's opinion, such arrears, if they truly exist, fall within the range of the *widow's right* to maintenance" 56 I.A., 182, 188, 8 Pat, 840. See also *Sobhanadramma* v. *Narasimhaswami* (1934) 57 Mad, 1003, 1009-12; *Venkatapathi* v. *Puttamma* (1936) 71 M.L.J., 499; [1937] Bom., 113, 127 *supra.*

(*n*) *Rangappayya* v. *Shiva* (1934) 57 Mad, 250.

(*o*) *Ranmal Sangji* v. *Bai Shri Kundan Kunvar* (1902) 26 Bom., 707; *Gurushidappa* v. *Parwatewwa* [1937] Bom., 113, 127; *Sivanandammal* v. *Narasinga* (1937) M.W.N., 1228.

(*p*) Brihaspati says. "A man may give what remains after the food and clothing of his family; the giver of more (who leaves his family naked and unfed) may taste honey at first, but shall afterwards find it poison. If what is acquired by marriage, what has descended from an ancestor, or what has been gained by valour, be given with the assent of the wife, or the coheirs, or of the king, the gift is valid."

§ 699. It was settled that the claim even of a widow for maintenance is not a charge upon the estate as bound it in the hands of a *bona fide* purchaser for value without notice of the claim. Before the amendment in 1929 of section 39 of the Transfer of Property Act (IV of 1882), as the decisions stood, the purchaser must have had notice, not merely of the existence of a right to maintenance—that is, of the existence of persons who did or might require to be maintained—but of the existence of a charge actually created and binding the estate or of the transferor's intention to defeat the right to maintenance (*q*). Of course if the transfer was gratuitous. the transferee took the property subject to the right to maintenance. How far a charge.

A decree actually settling the amount of maintenance, and making it a charge upon the property, was held to be valid even after the death of the person against whom the decree was obtained (*r*); but not, apparently, a merely personal decree against the holder of the property (*s*). So, if the property was bequeathed by will, and the widow's maintenance was fixed and charged by it upon the estate (*t*); or, if by an agreement between the widow and the holder of the estate, her maintenance was settled and

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(Brih., XV, 3). Katyayana declares what may and may not be given. "Except his whole estate and his dwelling-house, what remains after the food and clothing of his family, a man may give away, whatever it be (whether fixed or movable); otherwise it may not be given". Vyasa says: (D. Bh., I, 45) "They who are born and they who are yet unbegotten, and they who are actually in the womb, all require the means of support, and the dissipation of their hereditary maintenance is censured". So a passage ascribed to Manu, (D. Bh., II, 23-24) declares: "The support of persons who should be maintained is the approved means of attaining heaven. But hell is the man's portion if they suffer Therefore let a master of a family carefully maintain them". This Jimutavahana explains by saying: "The problem is not against a donation or other transfer of a small part not incompatible with the support of the family".

(*q*) *Lakshman* v. *Satyabhamabai* (1878) 2 Bom., 424; *Soorja Koer* v. *Natha Baksh* (1885) 11 Cal., 102; *Jayanti* v. *Alamelu* (1904) 27 Mad., 45; *Behari Lalji* v. *Bai Rajbai* (1899) 23 Bom., 342; *Ram Kunwar* v. *Ram Dei* (1900) 22 All., 326; *Bharatpur State* v. *Gopal* (1902) 24 All., 160; *Mohini Debi* v. *Purna Sashi* (1931) 36 C.W.N., 153; *Somasundaram* v. *Unnamalai* (1920) 43 Mad., 800

(*r*) *Subbanna Bhatta* v. *Subbanna* (1907) 30 Mad., 324.

(*s*) Per West, J, *Lakshman* v. *Satyabhamabai* (1878) 2 Bom., 494, 524, *Adhiranee* v. *Shona Malee* (1876) 1 Cal., 365, *Saminatha* v. *Rangathammal* (1889) 12 Mad., 285; *Kuloda* v. *Jageshar* (1900) 27 Cal., 194; *Bhagirathi* v. *Anantha Charia* (1894) 17 Mad., 268; *Muttia* v. *Virammal* (1887) 10 Mad., 283; *Minakshi* v. *Chinnappa* (1901) 24 Mad, 689.

(*t*) *Prosonno* v. *Barbosa* 6 W.R., 253.

made payable out of it (*u*), or if she was in possession of specific property for the purpose of her maintenance (*v*), a purchaser taking with notice of the charge would be bound to satisfy it. And the charge, where it exists, is a charge upon every part of the property, and may be made the ground of a suit against anyone who holds any part of it (*w*). Even express notice at an execution sale under the decree that a widow had a claim for maintenance upon the estate, was held not to affect the rights of the purchaser (*x*).

Where a widow had sued for maintenance and had named specific items of property in order to enable the court to determine the amount she was entitled to, but had made no claim for a charge on the property, though such a charge was in fact created by the decree, the charge was held not to attract the doctrine of *lis pendens* as against a mortgage made pending suit (*y*). But where the suit is to get the maintenance made a charge upon immovable property, any transfer made during the pendency of the suit, not effected for the purpose of paying off any debt entitled to priority over the claim for maintenance will be affected by the *lis pendens* created by the suit (*z*). So too, a transfer during the pendency of a partition suit by one of the parties to it, when a claim to have the maintenance of a person charged upon the property is made in that suit, will be subject to the doctrine of *lis pendens* (*a*).

Lis Pendens.

(*u*) *Lakshman* v *Saraswatibai* (1875) 12 Bom H C, 69, 75; *Abadi* v *Asam* (1880) 2 All, 162

(*v*) *Rachava* v *Shivayogapa* (1894) 18 Bom, 679, *Imam* v *Balamma* (1889) 12 Mad, 334, *Ram Kumar* v. *Amarnath* (1932) 54 All., 472.

(*w*) *Ramchandra* v *Savitribai* (1867) 4 Bom H C (A C J), 73, *Nistarini* v *Makhanlal* 9 B.L R, 27, (1875) 12 Bom H C, 69, 73, if the holder of part of the property pays the whole maintenance, his remedy is by a suit for contribution, (1867) 4 Bom H C. (A.C J.), 73.

(*x*) *Soorjakoer* v *Natha Baksh* (1885) 11 Cal, 102

(*y*) *Manika Gramani* v *Ellappa Chetty* (1896) 19 Mad, 271

(*z*) *Dose Thimmanabhatta* v *Krishna Tantri* (1906) 29 Mad, 508, *Radha Madhub* v *Manohur Mukerji* (1888) 15 Cal, 756 P C; *Razayet Hossein* v *Doolichand* (1879) 4 Cal, 402, 409, *Jogendra* v. *Fulkumari* (1900) 27 Cal, 77, *Krishna Pattar* v *Alamelu Ammal* (1914) 16 M L T, 551, 25 I C, 759, *Rattamma* v *Seshachalam* (1927) 52 M L J., 520 (where the case of a wife was distinguished from that of a widow), *Official Receiver, Cuddapah* v *Subbamma* A I R 1927 Mad, 403 (wife), *Seetharamanujacharyulu* v. *Venkatasubbamma* (1931) 54 Mad, 132 (applies to Court sales).

(*a*) *Jogendra* v *Fulkumari Dassi* (1900) 27 Cal, 77; *Amrita Lal Mitter* v *Manick Lal Mullick* (1900) 27 Cal, 551 (mother), *Jogobandhu Pal* v *Rajendra Nath* (1921) 34 C.L J., 29; but see *Baldeodas Bajoria* v *Sarojini Dasi* (1930) 57 Cal, 597, (where the facts were different); *Mohini Debi* v. *Purna Sastri Gupta* A.I.R. 1932 Cal., 451, 36 C.W.N., 153.

In the absence of a specific charge, the claim to maintenance could prevail only where the vendor was acting in fraud of the widow's claim to maintenance and the purchaser bought with notice, not merely of her claim but of the vendor's fraudulent intention (*b*). If the transfer was of all the family property or of all the property that was available for the payment of maintenance and if the purchaser was aware of the circumstances of the family, the transfer was subject to the widow's right to maintenance (*c*).

Fraud.

§ 700. Section 39 of the Transfer of Property Act as it stood before its amendment by Act XX of 1929, was substantially to the same effect, but the above mentioned distinctions have been swept away by the amendment. Section 39, as amended, runs thus: "When a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immovable property, and such property is transferred, the right may be enforced against the transferee, if he has notice thereof or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands". Where the Act is in force (*d*), a transferee for value with notice of the right to maintenance takes it subject to the claim for maintenance (*e*); so also where the transfer is gratuitous. But the right cannot be enforced either against one who first obtained a transfer for consideration without notice of the right or against one who obtained a transfer for value without notice either from an original transferee for value who had notice or from a

Section 39 of the T. P. Act.

(*b*) *Lakshman* v. *Satyabhamabai* (1878) 2 Bom., 494, 524; *Kalpagathachi* v. *Ganapathi* (1881) 3 Mad., 184; *Mahalakshmamma* v. *Venkataratnamma* (1883) 6 Mad., 83; *Ramkunwar* v. *Ram Dai* (1900) 22 All., 326; *Bhartpur State* v. *Gopal Dei* (1902) 24 All., 160; *Sham Lal* v. *Bannu* (1882) 4 All., 296; *Behari Lalji* v. *Bai Rajbai* (1899) 23 Bom., 342; *Venkatammal* v. *Andyappa* (1883) 6 Mad., 130; *Kaveriammal* v. *Subba Ayyar* A.I.R. 1934 Mad., 734.

(*c*) *Becha* v. *Mothina* (1900) 23 All., 86; *Bhagat Ram* v. *Mt. Sahib Devi* (1922) 3 Lah., 55; *Abu Mohomed Barkat Ali* v. *Saraswati Dasi* (1926) 43 C.L.J., 604, A.I.R. 1926 Cal., 1068.

(*d*) The Act is not in force in the Punjab, the North-West Frontier Provinces and the Scheduled Districts of Bombay.

(*e*) Where a transferee is liable, he ceases to be so when the property passes out of his hands; *Dharamchand* v. *Janki* (1883) 5 All., 389. It has been held in several cases that where a charge is created for maintenance by act of parties or by operation of law, it is binding on a transferee for value, whether he has notice of it or not: *Kuloda Prasad* v. *Jageshur* (1900) 27 Cal., 194; *Prosonno* v. *Barbosa* (1866) 6 W.R., 253; *Somasundaram* v. *Unnamalai* (1920) 43 Mad., 800 dissenting from *Sham Lal* v. *Banna* (1882) 4 All., 296 F.B. and *Gur Dayal* v. *Kaunsilla* (1883) 5 All., 367; *Bharatpur State* v. *Gopal* (1901) 24 All, 160; *Mohini Debi* v. *Purna Sashi Gupta* A.I.R. 1932 Cal., 451; *Ramkunwar* v. *Amar Nath* (1932) 54 All., 472.

gratuitous transferee. No doubt the recent amendment to section 100 of the Transfer of the Property Act expressly provides: "Save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge" (*f*). This distinction between a mortgage and charge is immaterial in the context, for under sec 39 of the Act, notice of the right to maintenance is sufficient to enable the person entitled to enforce it against the transferee, whether he had notice or not of a charge created by agreement or decree therefor. Section 100 itself saves the special provision in section 39.

§ 701. Where a Hindu disposes of his entire property by gift or by will, without making any provision for his widow, the donee or legatee must hold the property subject to the claim (*g*) The reason is that the right of a widow to her maintenance arises by marriage, and that of a daughter by birth; it exists during the life of the father, and continues after his death.

Priority of debts.

§ 702. Debts contracted by a Hindu take precedence over the maintenance of his wife or widow or infant child as a charge upon the estate (*h*). Similarly the debts contracted by the manager of a joint family from out of which a person is entitled to be maintained take precedence provided the debts

(*f*) In *Mt. Maina* v. *Ahsan Hussein Bohri* (1938) 19 N L J., 254, a charge effected by a decree has been held not to require notice See *Tayabali* v *Lilabai* A I R 1934 Sind, 14

(*g*) Section 128 of the Transfer of Property Act Rule 1 of Schedule III to the Succession Act, 1925 *Jamna* v *Machila* (1879) 2 All, 315 (donee), *Becha* v *Mothini* (1901) 23 All, 86, *Ramanadan* v. *Rangammal* (1889) 12 Mad., 260, 268, F.B , *Narbadabai* v *Mahades* (1881) 5 Bom, 99 (donee); *Promotha Nath Roy* v *Nagandrabala* (1908) 12 C W N, 808, *Kamakshi Ammal* v. *Krishnammal* A.I.R 1938 Mad, 340, 1938 M.W N, 64

(*h*) *Jayanti Subbiah* v *Alamelu Mangamma* (1904) 27 Mad., 45 (widow); *Somasundaramchetty* v *Unnamalai* (1920) 43 Mad, 800 (where her maintenance was charged on the property prior to its sale); *Jamna Bhai Ammal* v *Balakrishna Tawker* (1927) 53 M.L.J, 176 (charge must be fixed and declared); *Sowbagiammal* v. *Manika* (1917) 33 M.L J., 601 See *Johurra Bibi* v. *Sri Gopal* (1876) 1 Cal., 470; *Sundar Singh* v *Ram Nath* (1926) 7 Lah, 12 (wife and child); *Jawahar Singh* v. *Pardemun Singh* (1933) 14 Lah, 399 (wife and child); *Mt. Champa* v *Official Receiver, Karachi* (1934) 15 Lah., 9; *Adhiranee* v. *Shonamali* (1876) 1 Cal, 365 (widow), *Gur Daval* v. *Kaunsila* (1883) 5 All, 367 (widow); *Jamiat Rai* v. *Mt Malan* (1932) 13 Lah., 41 (widow).

are binding on the family (*i*). Therefore, a purchaser of property sold to discharge debts has a better title than a widow who seeks to charge the estate with her maintenance (*j*). In *Somasundaram Chetty* v. *Unnamalai*, it was held that a charge on joint family properties created by a decree for maintenance payable to the widow of a member of a joint Hindu family takes precedence over the right of a subsequent purchaser of the same properties in execution of a money decree binding on the family (*k*). Where a widow was allotted for her maintenance a part of the family properties of which she was placed in exclusive possession, her husband's creditor who obtains a decree against his sons alone is not entitled to proceed against the property in her hands in execution (*l*).

Widow's claim on family house.

§ 703. It has been laid down that there is a distinction between the right of a widow to continue to live in the ancestral family house, and her right over other parts of the property. Accordingly, where a man died leaving a widow and a son, and the latter immediately on his coming of age sold the family house, and the purchaser proceeded to evict the widow, the High Court of Bengal dismissed his suit. Peacock, C.J., held that the text of Katyayana was restrictive, and not merely directory, and that the son could not turn his father's widow out of the family dwelling-house himself, or authorise a purchaser to do so, at all events until he had provided for her some other suitable residence (*m*). And the same has been held in Allahabad, where the son of the survivor of two brothers sold the dwelling-house, in part of which the widow of his uncle was living. The Court held that she could not be ousted by the purchaser of her nephew's rights (*n*). In similar cases in Madras and Bombay it was

(*i*) *Lakshman* v. *Satyabhamabai* (1877) 2 Bom., 494; *Johurra* v. *Sri Gopal* (1876) 1 Cal., 470; *Ramanadha* v. *Rangammal* (1889) 12 Mad., 260, *Mt Champa* v. *Official Receiver, Karachi* (1934) 15 Lah., 9 (business debts)

(*j*) *Natchiarammal* v. *Gopalakrishna* (1878) 2 Mad., 126, *Adhiranee* v. *Shona Malee* (1876) 1 Cal., 365; *Johurra* v. *Sri Gopal* (1876) 1 Cal., 470, *Lakshman* v. *Satyabhama* (1877) 2 Bom., 494; *Sham Lal* v. *Banna* (1882) 4 All., 296; *Gur Dayal* v. *Kaunsila* (1883) 5 All., 367; *Ramanadan* v. *Rangammal* (1889) 12 Mad., 260, *Mt. Tara* v. *Sarup* (1929) 10 Lah., 706.

(*k*) (1920) 43 Mad., 800.

(*l*) *Suryanarayana Rao Naidu* v. *Balasubramania* (1920) 43 Mad., 635.

(*m*) *Mangala* v. *Dinanath* (1869) 4 B.L.R. (O.C.J.), 72, 12 W.R. (O.C.J.), 32; followed *Bai Devkore* v. *Sanmukhram* (1889) 13 Bom., 101.

(*n*) *Gauri* v. *Chandramani* (1896) 1 All., 262; *Talemand* v. *Rukmina* (1880) 3 All., 353; *Bhikham* v. *Pura* (1900) 2 All., 141.

held that the sale must be made subject to the widow's right of residence (*o*), unless the sale was made for a debt binding upon the family, and therefore upon the widow (*p*).

It is now settled that a private sale by the surviving male coparcener which is not for family necessity or an execution sale held for a decree debt not arising out of a family necessity, will not entitle the purchaser to oust the widows of deceased coparceners including a widowed mother as the latter are entitled to reside in the family house till at any rate other adequate provision is made for their residence (*q*).

The position of unmarried girls of the family, who are not related to the surviving male coparcener as direct descendants from him, but as sisters or cousins, is the same; with this difference that they are entitled to maintenance and residence only until marriage, while the widows of coparceners have the right until death or remarriage. But the wife and unmarried daughters of the debtor cannot, it would seem, resist the claim of the purchaser in Court auction for possession. Where even the undivided sons of a debtor cannot attack a sale for the father's debt, much less can unmarried daughters and the wife question the validity of his debts (*r*). But the mother, the widows of coparceners and their unmarried sisters are under no such obligation with respect to the debt of the last surviving male owner which was not for necessity. The question whether a private sale of a man's family dwelling-house without necessity, can deprive his wife and unmarried daughters of their right of residence has not yet been settled (*s*).

§ 704. A right to future maintenance in whatsoever manner arising, secured or determined, cannot now be

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(*o*) *Venkatammal* v. *Andyappa* (1883) 6 Mad., 130, *Dalsukhram* v. *Lallubai* (1883) 7 Bom, 282 But see *Jayanti Subbiah* v. *Alamelu Mangamma* (1904) 27 Mad, 45

(*p*) *Ramanaden* v *Rangammal* (1889) 12 Mad, 260; *Manilal* v. *Baitara* (1893) 17 Bom., 398. But see *Somasundaram Chetty* v. *Unnamalai Ammal* (1920) 43 Mad., 800, *Jamiatrai* v. *Mt. Malan* (1932) 13 Lah., 41, *Bayyapparaju* v *Lakshmamma* A.I.R. 1937 Mad, 193.

(*q*) *Ramanadhan* v *Rangammal* (1889) 12 Mad, 260; *Suryanarayana Rao Naidu* v. *Balasubramania Mudali* (1920) 43 Mad., 635.

(*r*) *Manilal* v *Bai Tara* (1893) 17 Bom., 398, *Jayanti Subbiah* v. *Alamelu* (1904) 27 Mad., 45, *Ramzan* v *Ram Daiya* (1918) 40 All., 96; *Gangabi* v. *Janki* (1921) 45 Bom., 337, (1920) 43 Mad., 635 *supra*.

(*s*) (1920) 43 Mad., 635, 639-640 *supra*.

transferred (*t*), nor can it be attached in execution of a decree (*u*).

§ 705. A Hindu widow or other person entitled to maintenance can sue to have it secured and be made a specific charge on the joint family property (*v*). A widow's right to maintenance is enforceable against the whole family and not only against the branch to which her husband belonged which took by survivorship his undivided share (*w*). Where the widow of a coparcener sues for maintenance after a partition, she cannot enforce her right against any of the surviving coparceners, except those who have taken her husband's share (*x*).

(*t*) The Transfer of Property Act, Section 6 (*dd*); as to the construction of the older clause (*d*), see *Narbadabai* v. *Mahadeo* (1881) 5 Bom., 99, 103; *Rani Annapurni* v. *Swaminatha* (1911) 34 Mad., 7 (where maintenance was fixed by decree, it was held transferable; *Thimanyanim* v. *Venkatappa* A.I.R. 1928 Mad., 713 F.B.; but see *Asad Ali* v. *Haidar Ali* (1911) 38 Cal., 13 (future maintenance cannot be transferred unless it has become already due); *Raja of Ramnad* v. *Chidambaram* (1938) 42 C.W.N., 565 P.C.

(*u*) The Civil Procedure Code, section 60 (1) (*n*) *Haridas* v *Baroda Kishore* (1900) 27 Cal, 38; *Palikandy Mammad* v. *Krishnan Nair* (1917) 40 Mad, 302

(*v*) *Jayanti Subbiah* v. *Alamelu Mangamma* (1902) 27 Mad., 45; *Mahalakshmamma* v. *Venkataratnamma* (1883) 6 Mad., 83; *Ramarayudu* v. *Sitalakshmamma* A.I.R. 1937 Mad., 915.

(*w*) *Subbarayulu* v. *Kamalavalli Thayaramma* (1912) 35 Mad., 147, *Rangappaya Aithala* v. *Shiva Aithala* (1933) 65 M.L.J., 410.

(*x*) *Jayanti Narasimhan* v. *Venkatasubbamma* (1932) 55 Mad., 752.

CHAPTER XIX.

IMPARTIBLE ESTATES.

Impartible property may be joint.

§ 706. Liability to partition is one of the commonest incidents of joint family property, but it must not be supposed that joint property and partible property are mutually convertible terms. If it were so, an impartible estate could never be joint property. The reverse however is the case. Such estates as without being one's own separate or self-acquired properties are indivisible, are those which by a special law or custom descend to one member of the family (generally to the eldest) to the exclusion of the other members.

The commonest instances of this class are the ancient zamindaris or estates which originally were either in the nature of a Raj or principality or were feudatory estates held on military service tenure such as the palayams of South India or were royal grants of revenue for services, such as Jaghirs or Saranjams in Bombay (*a*). So also are impartible those properties which under special family custom or by an express sanad or grant from the Crown are descendible to a single heir (*b*).

Cannot be created by agreement.

Of course, families holding partible properties cannot constitute them into an impartible estate for the purpose of

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(*a*) As to *palayams*, see *Naraganti* v *Vengama Naidu* (1861) 9 M.I.A., 66, *Naraganti* v. *Venkatachalapati* (1882) 4 Mad, 250: "A *polliam* is in the nature of a Raj, it may belong to an undivided family, but it is not the subject of partition, it can be held by only one member of the family at a time, who is styled the *polligar*, the other members of the family being entitled to a maintenance or allowance out of the estate", 9 M.I.A., 66, 86; the *Ramnad* case (1901) 24 Mad, 613, 623 *sqq*, the *Udayarpalayam* case (1901) 24 Mad, 562, *Appayasami* v *Midnapore Zamindari Company* (1921) 48 I A, 100, 44 Mad, 575 See *Venkata Jagannadham* v. *Veerabhadrayya* (1921) 44 Mad., 643, 653 P.C. As to Jaghirs and Saranjams, see *Ramchandra* v *Venkatrao* (1882) 6 Bom, 598, *Narayan* v *Vasudeo* (1891) 15 Bom, 247, *Madhavrav* v. *Atmaram* (1891) 15 Bom, 519, *Dattatraya* v *Mahadaji* (1892) 16 Bom, 528, *Raghoji Rao* v. *Lakshman Rao* (1912) 39 I.A., 202, 36 Bom., 639. As to *Babuana* grants, see *Lalliteswar* v *Bhabeswar Singh* (1908) 35 Cal., 823.

(*b*) *Baijnath Prasad* v *Tej Bali* (1921) 48 I A., 195, 43 All, 228; *Chowdri Chintaman* v. *Nawlukho* (1875) 2 I A., 263, 1 Cal., 153; *Yarlagaddu Mallikarjuna* v. *Yarlagadda Durga* (1890) 17 I.A., 134, 13 Mad., 406, *Thakur Nitopal Singh* v. *Jai Singh* (1897) 23 I.A., 147, 19 All, 1, *Gurududhwaja* v *Saparandhwaja* (1891) 27 I.A., 238, 23 All., 37, *Martand Rao* v *Malhar Rao* (1928) 55 I A., 45, 55 Cal., 403.

succession (*c*). Nor is it possible to establish in modern times families holding impartible estates except by statute or Crown grant (*d*).

Another case in which property is *prima facie* impartible, is where it is allotted by the State to a person in consideration of the discharge of particular duties or as remuneration for an office, even though the duties of office may become hereditary in a particular family. An instance of the sort is to be found in the case of lands held under ghatwali tenure in Beerbhoom, which are hereditary but impartible (*e*). So in Madras, where the office of karnam or village accountant, has become hereditary, the land attached to the office is not liable to division (*f*). In Bombay, however, there are numerous revenue and village offices, such as *deshmuk*, *despandya desai*, and *patel*, remunerated by lands originally granted by the State. These lands have, in many cases, come to be considered as purely private property of the family holding the office, though burdened with the duty of defraying its expenses. In such cases, there is no presumption that they are impartible; and a local or family usage to the contrary has to be made out (*g*). Instances.

So, an estate which has been allotted by Government to a man of rank for the maintenance of his rank is indivisible,

(*c*) *Vinayak Waman Joshi* v. *Gopal Hari Joshi* (1903) 30 I.A., 77, 27 Bom., 353; *Adrishappa* v. *Gurushidappa* (1880) 7 I.A., 162, 4 Bom., 494; *Pirojshah* v. *Manibhai* (1912) 36 Bom., 53; *Palaniammal* v. *Muthuvenkatachela* (1925) 52 I.A., 83, 48 Mad., 254; *Rajendra* v. *Rani Raghubans* (1918) 45 I.A., 134, 40 All., 470.

(*d*) (1925) 52 I.A., 83, 89 *supra* affirming 33 M.L.J., 759. The Crown Grants Act (XV of 1895). The Oudh Estates Act (I of 1869). *Achal Ram* v. *Udoi Partab* (1883) 11 I.A., 51, 10 Cal., 511; *Narindar* v. *Achal Ram* (1893) 20 I.A., 77, 20 Cal., 649; *Debi Baksh* v. *Chandrabhan Singh* (1919) 37 I.A., 174, 32 All., 599. Some partible estates have been made impartible in the hands of stranger auction purchasers by the Madras Legislature.

(*e*) *Lelanund* v. *Government of Bengal* (1856) 6 M.I.A., 101, 125, 1 W.R., P.C. 20; *Nilmoni* v. *Bakranath* (1881) 9 I.A., 104, 9 Cal., 187; *Satya Narayan Singh* v. *Satya Niranjan* (1924) 51 I.A., 37, 3 Pat., 183; *Durga Prasad* v. *Brajanath* (1912) 39 Cal., 696 (Digwari tenure).

(*f*) *Venkata Jagannadha* v. *Veerabhadraya* (1921) 48 I.A., 244, 44 Mad., 643. The Madras Hereditary Village Offices Act (III of 1895), sec. 10 (3).

(*g*) *Adrishappa* v. *Gurushidappa* (1880) 7 I.A., 162, 4 Bom., 494 (where on a partition, a portion is set aside for the discharge of duties, the rest becomes partible); *Vinayak Waman* v. *Gopal Hari* (1903) 30 I.A., 77, 27 Bom., 353; *Ramrao* v. *Yeshvantrao* (1886) 10 Bom., 327; *Gopalrav* v. *Trimbakrav*, *ib.*, 598; *Gopal Hari* v. *Ramakant* (1897) 21 Bom., 458. *Mahadevappa* v. *Kashirao* A.I.R. 1923 Bom., 467; *Sahebgouda* v. *Basangouda* A.I.R. 1931 Bom., 378, 33 Bom. L.R., 580; *Bapurao* v. *Krishtappa* A.I.R. 1935 Bom., 380, 37 Bom. L.R., 599. The Bombay Hereditary Offices Act (II of 1874), sec. 36.

as otherwise the purpose of the grant would be frustrated (*h*). But where it is allotted for the maintenance of the family, then it is divisible among the direct descendants of the family, as the object is to benefit all equally, not to maintain a special degree of state for one (*i*).

The discontinuance of services attached to a military or other service tenure does not by itself alter the nature of the estate, and render it partible (*j*).

Onus.

§ 707. Any one who alleges that an estate is impartible and descendible to a single heir must prove that it is so either by its nature or by special custom, either territorial or of the family. The special custom must be ancient and invariable, and established by clear and unambiguous evidence (*k*). The Madras Impartible Estates Act, 1904, gives a long schedule of estates which it declares to be impartible.

Its incidents: impartibility and primogeniture.

Neither a confiscation by Government, nor sale for arrears of revenue, of an impartible Raj, *palayam*, or tenure, where there is a restoration or re-grant of the estate to the original owner or to another member of the family necessarily involves the creation of a new tenure: the customary incidents of impartibility and primogeniture attached to the family tenure will continue (*l*). But where the grant is not to the original owner but to another member of the family and there is an intention to change the tenant while continuing it in the family, the impartible estate will no longer be the ancestral property of the family but will be

(*h*) See *Kumara Tirumalai Naik* v. *Bangaru Tirumalai* (1898) 21 Mad., 310.

(*i*) *Visvanadha* v. *Bungaroo* Mad Dec. of 1851, 87, 94, 95, *Booloka* v. *Comarasawmy* Mad. Dec of 1858, 74, *Bodhrao* v. *Nursing Rao* (1856) 6 M.I.A., 426, *Panchanadayan* v. *Nilakandayan* (1884) 7 Mad., 191; *Vaidyanatha* v *Yogambal* (1927) 50 Mad., 241. See Indian Pensions Act (XXIII of 1871).

(*j*) *Appayasami* v. *Midnapore Zamindari Co.* (1921) 48 I.A., 100, 44 Mad., 575, *Radhabai* v. *Anant Rao* (1885) 9 Bom., 198, *Ramrao* v. *Yashwantrao* (1886) 10 Bom., 327, *Narayana* v *Chengalamma* (1887) 10 Mad., 1, the *Udayarpalayam* case (1901) 24 Mad., 562, 604-5.

(*k*) *Ramalakshmi Ammal* v. *Sivanantha* (1872) 14 M.I.A., 570; see also *Birendranath* v *Mirtunjai Singh* A I R 1934 P C , 100, 66 M L J , 504 (Chandrapur Padampur Zamin) and *Mangal Singh* v *Mt. Sidhau Kunwar* (1935) 68 M.L J., 448 P.C , where it was held that the custom of impartibility was not made out. *Mallikarjuna* v *Durga* (1890) 17 I.A., 134, 13 Mad., 406 See *ante* §§ 36, 39.

(*l*) The *Hunsapore* case, *Baboo Beer Pertab Sahee* v *Rajendra Pertab Sahee* (1867) 12 M.I.A., 1, (1928) 55 I A , 45, 55 Cal., 403 *supra*, *Sri Raja Venkata Appa Row* v. *Sri Rajah Rangayya Appa Row* (1905) 29 Mad , 437, *Muhammad Afzal Khan* v. *Ghulam Kasim Khan* (1903) 30 I A , 190, 30 Cal., 843, *Har Govind Singh* v. *Collector of Etah* [1937] All., 292.

the self-acquired or separate estate of the grantee, the other incidents remaining unaffected (*m*). As was said in *Muttu Vadugunadha* v. *Dorai Singha*, a mode of acquisition which constitutes an impartible estate the self-acquisition of a member of an undivided family, and thereby subjects it to rules of devolution and of disposition, different from those applicable to ancestral property, does not thereby destroy its character of impartibility (*n*). The granting of a permanent settlement sanad under the Regulations does not affect the character of estate. The *Nuzvid* case (*o*) has been explained by the Privy Council as a case of creation of an estate which could not be identified with an estate or title prior to the sanad granting it (*p*). In the *Udayarpalayam* case, Lord MacNaghten observed that it must be taken to be settled that the acceptance of a sanad in a common form, under Regulation XXV of 1802 (Madras) does not of itself and apart from other circumstances avail to alter the succession to a hereditary estate (*q*). In *Baijnath Prasad Singh* v. *Tej Bali Prasad Singh* where an ancient family which had been dispossessed of its Raj had its family possessions restored to it, it was held that the estate was ancestral property and not self-acquired (*r*).

§ 708. It is now settled that the fact that an estate is impartible does not make it the separate or exclusive property of the holder: where the property is ancestral and the holder has succeeded to it, it will be part of the joint estate of the undivided family (*s*).

Impartible estate joint property.

As a result of the decisions of the Judicial Committee in *Rani Sartaj Kuari* v. *Deoraj Kuari* and *the first and second Pittapur* cases, it was supposed that an impartible estate was

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(*m*) (1867) 12 M.I.A., 1 *supra; Katama Nachiar* v. *Rajah of Shivagunga* (1863) 9 M.I.A., 539.

(*n*) (1881) 8 I.A., 99, 3 Mad., 290, *Katama Nachiar* v. *Rajah of Shivagunga* (1863) 9 M.I.A., 539; *Ram Nandan* v. *Janki Koer* (1902) 29 I.A., 178, 29 Cal., 828; *Hargovind* v. *Collector of Etah* [1937] All., 292.

(*o*) *Rajah Venkata Narasimha* v. *Rajah Narayya* (1879) 7 I.A., 38, 2 Mad., 128.

(*p*) (1881) 8 I.A., 99, 112 *supra*, 3 Mad., 290; see (1903) 30 I.A., 190, 30 Cal., 843 *supra*.

(*q*) (1905) 32 I.A., 261, 28 Mad., 508, 515 affg. (1901) 24 Mad., 562, 605-7.

(*r*) (1921) 48 I.A., 195, 200, 43 All., 228.

(*s*) *Shibaprasad Singh* v. *Prayag Kumari Debee* (1932) 59 I.A., 331, 59 Cal., 1399, *Ratan Singh* v. *Tanain Singh* A.I.R. 1936 Nag., 80 (custom of impartibility not negatived by notional division).

in no sense joint family property (*t*). But the decisions of the Privy Council in *Baijnath Prasad Singh* v. *Tej Bali Prasad Singh* (*u*), *Konammal* v. *Annadana* (*v*), *Shibaprasad Singh* v. *Prayag Kumari Debee* (*w*) and *Collector of Gorakpur* v. *Ram Sunder Mal* (*x*), have now established that an ancestral impartible estate is joint family property notwithstanding the fact that there is neither a right to partition nor a right to restrain any alienation. The custom of impartibility undoubtedly affects the ordinary incidents of joint family property. But as was laid down in the *Tipperah* case, the general law, except to the extent to which it is superseded by custom, still regulates all beyond it (*y*). Sir Dinshah Mulla delivering the judgment of the Judicial Committee in *Shibaprasad Singh* v. *Prayag Kumari Debee* restated the law on the subject fully: "Impartibility is essentially a creature of custom. In the case of ordinary joint family property, the members of the family have. (1) the right of partition, (2) the right to restrain alienations by the head of the family except for necessity; (3) the right of maintenance; and (4) the right of survivorship. The first of these rights cannot exist in the case of an impartible estate, though ancestral, from the very nature of the estate. The second is incompatible with the custom of impartibility, as laid down in *Sartaj Kuari's* case (*z*) and the *first Pittapur* case (*a*), and so also the third, as held in the *second Pittapur* case (*b*). To this extent the general law of the Mitakshara has been superseded by custom, and the impartible estate, though ancestral, is clothed with the incidents of self-acquired and separate property. But the right of survivorship is not inconsistent with the custom of impartibility. This right, therefore, still remains, and this is what was held in *Baijnath's* case (*c*). To this extent the estate still retains its character of joint family property,

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(*t*) *Rani Sartaj Kuari* v. *Deoraj Kuari* (1888) 15 I.A., 51, 10 All., 272, *the first Pittapur* case, *Venkata Surya* v. *Court of Wards* (1899) 26 I.A., 83, 22 Mad., 383, *the second Pittapur* case, *Rama Rao* v. *Rajah of Pittapur* (1918) 45 I.A., 148, 41 Mad., 778.

(*u*) (1921) 48 I.A., 195, 43 All., 228.

(*v*) (1928) 55 I.A., 114, 51 Mad., 189

(*w*) (1932) 59 I.A., 331, 59 Cal., 1399.

(*x*) (1934) 61 I.A., 286, 56 All., 468.

(*y*) The *Tipperah* case, *Neelkisto* v. *Beerchunder* (1869) 12 M.I.A., 523.

(*z*) (1888) 15 I.A., 51, 10 All., 272

(*a*) (1899) 26 I.A., 83, 22 Mad., 383.

(*b*) (1918) 45 I.A., 148, 41 Mad., 778.

(*c*) (1921) 48 I.A., 195, 43 All., 228.

and its devolution is governed by the general Mitakshara law applicable to such property. Though the other rights which a coparcener acquires by birth in joint family property no longer exist, the birth-right of the senior member to take by survivorship still remains. Nor is this right a mere *spes successionis* similar to that of a reversioner succeeding on the death of a Hindu widow to her husband's estate. It is a right which is capable of being renounced and surrendered" (*d*). Survivorship.

Again on a review of the authorities, in the very recent case of *Collector of Gorakpur* v. *Ram Sundar Mal*, Lord Blanesburgh observed (*e*): "(1) The decisions of the Board in *Sartaj Kuari* v. *Deoraj Kuari* (*f*) and the first *Pittapur* case (*g*) appeared to be destructive of the doctrine that an impartible zamindari could be in any sense joint family property. (2) This view apparently implied in these cases was definitely negatived by Lord Dunedin when delivering the judgment of the Board in 1921, in *Baijnath Prasad Singh's* case (*h*). (3) One result is at length clearly shown to be that there is now no reason why the earlier judgments of the Board should not be followed, such as, for instance, the *Challapalli* case (*i*), which regarded their right to maintenance, however limited, out of an impartible estate as being based upon the joint ownership of the junior members of the family with the result that these members holding zamindari lands for maintenance could still be considered as joint in estate with the zamindar in possession". Maintenance based on joint ownership.

Following these decisions, the Madras High Court has held, in *Sellappa* v. *Suppan* that the right of survivorship is founded on co-ownership (*j*), dissenting from its former decision in *Ramasami Naik* v.

(*d*) (1932) 59 I A., 331, 345, 59 Cal., 1399, 1413. The dictum that the right to maintenance is incompatible with the custom of impartibility is no longer correct after the decision in *Collector of Gorakhpur* v. *Ram Sundar Mal* (1934) 61 I.A., 286, 56 All., 468. See *Naraganti* v. *Venkatachelavati* (1882) 4 Mad., 250, 266 approved in the *Udayarpalayam* case (1905) 32 I.A., 261, 28 Mad., 508 and by Lord Dunedin in *Baijnath Prasad Singh* v. *Tejbali Prasad Singh* (1921) 48 I.A , 195, 43 All., 228; *Sri Krishnayya Rao* v. *Raja of Pittapur* (1933) 60 I.A., 336, 351, 57 Mad., 1, *Krishan Kishore* v. *Commr. of I. T.* (1933) 14 Lah., 255, 264.

(*e*) (1934) 61 I.A., 286, 301-302, 56 All., 468, 485.

(*f*) (1888) 15 I.A., 51, 10 All., 272.

(*g*) (1899) 26 I.A., 83, 22 Mad., 383.

(*h*) (1921) 48 I.A., 195, 43 All , 228.

(*i*) (1900) 27 I.A., 151, 24 Mad., 147.

(*j*) [1937] Mad., 906. A successor taking by survivorship does not require a succession certificate to execute decree obtained by his predecessor: *Ram Ranbijaya* v. *Parmatmanand* A.I.R. 1933 Pat., 390.

Ramasami Chetty (*k*) that the junior member has no right of co-ownership but only a *spes successionis*.

Right of alienation.

§ 709. Until the decision of the Privy Council in *Rani Sartaj Kuari* v. *Deoraj Kuari* (*l*), it was settled that the holder of an ancestral impartible estate could not alien or encumber it beyond his own life, so as to bind the coparceners, except for purposes beneficial to the family and not merely to himself (*m*), for as most of the estates were granted on military tenure, no one of the successive tenants could deal with the land so as to deprive the next holder of the source from which his duties might be discharged (*n*). Prior to that decision there had been decisions in the High Court of Bengal denying the joint family character of an impartible estate (*o*).

***Sartaj Kuari's* case.**

In 1888, however, a decision was given by the Privy Council, in a case governed by the Mitakshara law, which struck at the root of all previous rulings (*p*). In that case, the holder of an impartible estate had made a gift of several villages to his junior wife and his son questioned the validity of the alienation Sir Richard Couch, delivering the judgment of the Judicial Committee observed: "The property in the paternal or ancestral estate acquired by birth under the Mitakshara law is, in their Lordship's opinion, so connected with the right to a partition, that it does not exist where there is no right to it". This decision was followed in the first *Pittapur* case where the right of the last holder to alienate by will was upheld (*q*). It is now settled that the holder of an impartible estate can alienate it by gift *inter vivos* or

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(*k*) (1907) 30 Mad, 255

(*l*) (1888) 15 I A, 51, 10 All, 272

(*m*) *Beresford* v. *Ramasubba* (1890) 13 Mad, 197.

(*n*) This passage was cited with approval in *Appayasami* v. *Midnapore Zamindari Co* (1921) 48 I A, 100, 108 The series of decisions in the Madras province which laid down the inalienability of these estates on varying grounds will be found in paras 312 and 313 of the 4th edition of this work and most of them are discussed in the judgment in the *Pittapur* case (1899) 26 I.A., 83, 91, 22 Mad., 383.

(*o*) *Thakoor Kapilnanth* v. *The Govt* (1874) 13 Beng. L.R., 445, 22 W.R., 17 (where the impartible estate held by a Mutiny rebel was confiscated and the right of the rebel's elder son to succeed by survivorship was negatived), *Uddoy Adittya Deb* v. *Jadublal* (1880) 5 Cal., 113, on appeal, (1882) 8 I.A, 248, (*The Patkoom Raj* case); *Anundlal* v *Dheraj Gurrood* (1850) 5 M I A, 82 (*The Pacheet Raj* case); *Narain Khootia* v *Lakenath* (1881) 7 Cal., 46.

(*p*) (1888) 15 I A., 51, 10 All., 272 *supra*.

(*q*) (1899) 26 I.A., 83. 22 Mad., 383; *Protop Chandra Deo* v. *Jagdish Chandra* (1927) 54 I A., 289, 54 Cal., 955.

by will although the family is undivided unless by a family custom or by the condition of the tenure, he is precluded from so doing. The absence of any instance in which a previous holder has alienated the estate by will is not sufficient evidence to establish a custom (*r*). This rule does not obtain in respect of impartible estates in the province of Madras, since the Madras Impartible Estates Act, 1904.

Madras Impartible Estates Act.

§ 709 A. The Madras Impartible Estates Act, 1904, has restored in the province of Madras, the Mitakshara rule applicable to joint families as interpreted and applied to impartible estates in the earlier decisions of Courts. Section 4 (1) of that Act runs as follows: "The proprietor of an impartible estate shall be incapable of alienating or binding by his debts, such estate or any part thereof beyond his own lifetime unless the alienation shall be made, or the debt incurred, under circumstances which would entitle the managing member of a joint Hindu family, not being the father or grandfather of the other coparceners, to make an alienation of the joint property, or incur a debt, binding on the shares of the other coparceners independently of their consent" (*s*). The effect of this Act is therefore to emphasise the character of an ancestral impartible estate as joint family property and it does not admit either the doctrine of the son's liability

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(*r*) *Baijnath Prasad* v. *Tejbali Prasad* (1921) 48 I.A., 195, 43 All., 228, *Shibaprasad Singh* v. *Prayag Kumari Debee* (1932) 59 I.A., 331, 59 Cal., 1399; *Collector of Gorakhpur* v. *Ram Sunder Mal* (1934) 61 I.A., 286, 303, *Raja Madhasudan* v. *Khestabasi Sahu* (1929) 8 Pat., 932, *Ulagalum Perumal Sethurayar* v. *Subbalakshmi* (1936) 71 M.L.J., 1, *Gopal* v. *Raghunath* (1905) 32 Cal., 158 (estate inalienable by custom can be alienated for legal necessity); but see (1929) 8 Pat., 932 *supra* *Sellappa* v. *Suppan* [1937] Mad., 906 (expenses of daughter's marriage are valid legal necessity for which the holder can alienate); see *Sivasubramania* v. *Krishnammal* (1895) 18 Mad., 287, for a special custom of inalienability.

(*s*) *Sellappa* v. *Suppan* [1937] Mad., 906. Some special powers and modifications are contained in sub-sections (2) to (5) of section 4 and in sections 5 and 6 of the Act. It is open to the owner of an impartible estate to provide for succession to it in default of heirs (section 4, sub-section 5). The proprietor requires the Collector's consent to borrow for payment of land revenue (s. 6). The Act does not affect alienations or debts, made or incurred, prior to it (s. 7). Where a consent decree for sale is made, objection to it can be taken even in execution as the Act enacts a rule of public policy. *Raja Ramachandra* v. *Akella Venkata Lakshminarayana* (1919) 37 M.L.J., 65, *Raja of Kalahasti* v. *Venkatadri* (1927) 50 Mad., 897. The headnote in *Nagappa Chetti* v. *Brahadamba* (1935) 62 I.A., 70, 72, 58 Mad., 350 is inaccurate. Though the estate was included in the schedule to the Act, the debts in that case were prior to it and the decision was on the view that it was not established that impartibility attached to the estate, prior to the commencement of the Act.

for father's debt or the father's power to sell for an antecedent debt (s^1).

But, of course, the Madras Impartible Estates Act does not apply to an estate or part of it, even though it be a scheduled estate, which estate or part had been validly alienated prior to the Act (s. 7). Nor can sec. 4 of the Act restrict the powers of an owner, who, at the commencement of the Act, came into possession of an impartible estate not as an heir but under a valid gift or devise (s^2).

Income and accumulations.

§ 710. The right of joint enjoyment which is ordinarily incident to a coparcenary, where the joint estate is partible, is excluded by the custom of impartibility and primogeniture. Accordingly the income of an impartible estate and the accumulations of such income are the absolute property of the holder. They are not an accretion to the estate as in the case of an ordinary joint family estate (t). None of his kindred can therefore claim a share of the income or an account of the mode in which he has spent his income (u). There is neither coparcenary in such savings, nor survivorship (v). So also arrears of rents or income which accrued during the last holder's life would pass to his own heirs and not to the heir who takes the estate by survivorship (w).

Power of incorporation.

§ 711 It has long been settled that the holder of an impartible estate can incorporate other properties belonging to him with that estate so as to make them impartible and

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(s^1) [1937] Mad, 906, 908 *supra*, *Venkatalingama* v. *Arunachalam Chettiar* (1924) 19 M L W, 132.

(s^2) *Ullagalum Perumal* v. *Subbalakshmi* (1936) 71 M L J, 1. The definition of a proprietor of an impartible estate requires that he should be entitled to possession thereof as a single heir under a special family custom or under the general custom in Southern India

(t) *Shibaprasad* v *Prayag Kumari Debee* (1931) 59 I A, 331, 59 Cal, 1399; *Jagadamba Kumari* v. *Narain Singh* (1923) 50 I A., 1, 2 Pat., 319, *Parbati Kunavar* v *Jagdish Chunder* (1902) 29 I A., 82, 29 Cal., 433, *Janki Pershad* v *Dwarka Pershad* (1913) 40 I A, 170, 35 All., 391, *Murtuza Husain Khan* v *Mahomed Yasin* (1916) 43 I.A, 269, 38 All, 552, *Someshwari* v *Maheshwari* (1936) 63 I A, 441, 16 Pat., 1, affirming 10 Pat, 630; *Balasubramanya* v *Subbayya* (1938) 65 I A., 93, 104, affg. (1935) 69 M L J, 632

(u) *Maharajulun Garu* v. *Rajah Row* (1869) 5 M H.C, 31, 41; *Lutchmun Rao* v. *Terimul Row* 4 Mad. Jur., 241.

(v) See *Neelkisto Deb* v. *Beerchunder* (1869) 12 M I A, 540.

(w) *Aparna* v *Shiba Prasad* (1924) 3 Pat., 367; *Gurusami* v. *Pandia Chinna Thambiar* (1921) 44 Mad., 1.

descendible to a single heir (*x*). This is not an exception to the rule that a man cannot alter the law of succession to his property, for the custom governing the family is itself law and new acquisitions are only brought within its scope. The only exception is, it would seem, where an estate is granted by the Crown under a primogeniture sanad as in *Rajendar Bahadur's* case (*x*[1]).

Where a zamindar has not so incorporated his acquisitions, they will devolve according to the ordinary rules of Hindu law (*y*). Along with, or in default of his male issue, his widow as well as his widowed daughter-in-law and granddaughter-in-law would take his savings and arrears of rent due to him, before his brothers or their issue (*z*).

It has been held that movable property cannot form an accretion to an ancestral impartible estate but that only immovable property can be incorporated with it (*a*).

Evidence of incorporation.

No presumption of an intention to incorporate can be drawn from the blending of the income of the self-acquired property with the income of the estate as in the case of an ordinary joint family estate; for the income of the impartible estate is the holder's absolute property (*b*). The intention of the acquirer to incorporate his acquisitions with the estate may be either express or implied from his conduct or surrounding circumstances. The presumption of accretion is more readily drawn where the acquisitions were made by

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(*x*) *Shiba Prasad* v. *Prayag Kumari* (1932) 59 I.A., 331, 348-50, 352-3; *Lakshmipathi* v. *Kandasami* (1893) 16 Mad., 54; *Ramasami* v. *Sundaralingasami* (1894) 17 Mad., 422, 444; (1921) 44 Mad., 1 *supra*, *Visvanathaswami* v. *Kamulu Ammal* (1915) M.W.N., 968; *Sarabjet* v. *Indarjet* (1905) 27 All., 203, the *Udayarpalayam* case (1901) 24 Mad. at 610, the *Ramnad* case (1901) 24 Mad. at 636.

(*x*[1]) (1918) 45 I.A., 134, 40 All., 470, explained in (1932) 59 I.A., 331, 351-2.

(*y*) *Parbati* v. *Jagadis Chunder* (1902) 29 I.A., 82, 29 Cal., 433; *Janki Pershad* v. *Dwark Pershad* (1913) 40 I.A., 170, 45 All., 391; *Rani Jagadamba* v. *Narain* (1923) 50 I.A., 1, 2 Pat., 319.

(*z*) The widow took only in default of male issue before the recent Hindu Women's Rights to Property Act (XVIII of 1937).

(*a*) *Shibaprasad Singh* v. *Prayag Kumari Debee* (1932) 59 I.A., 331, 353, 59 Cal., 1399; *Maharajalungaru* v. *Rajah Row* (1869) 5 M.H.C, 31, 41. Both in *Lakshmipathi* v. *Kandaswami* (1893) 16 Mad., 54 and in *Visvanathasami* v. *Kamulu Ammal* (1915) M.W.N., 968, cattle used for cultivating *pannai* lands in an impartible estate were themselves held to be impartible and treated as accretions to the estate. This can no longer be law.

(*b*) *Rani Jagadamba* v. *Narain* (1923) 50 I.A., 1, 2 Pat., 319; *Har Govind Singh* v. *Collector of Etah* [1937] All., 292 (joint account and joint employees, no proof of incorporation); *Sellappa* v. *Suppan* [1937] Mad., 906.

previous holders and they devolved from predecessor to successor and were enjoyed along with the estate (*c*).

Rules of succession.

§ 712. Next, as to the succession to an impartible estate. According to the decision in the *Sivaganga* case, the fact of a Raj being impartible does not affect the rule of succession to it (*d*). In considering who is to succeed on the death of the owner of the estate, the rules which govern the succession to a partible estate are to be looked at: the question always is what would be the right of succession if instead of being an impartible estate, it were a partible one (*e*). The general principles governing the succession to such estates were fully stated by the Madras High Court in *Subramanya Pandiya* v. *Sivasubramanya* (*f*) and were approved by the Privy Council in *Parbati Kunwar* v. *Chandrapal Kunwar* (*g*). The Madras High Court said: "The first of them is that a rule of decision in regard to succession to impartible property is to be found in the Mitakshara law applicable to partible property, subject to such modifications as naturally flow from the character of the property as an impartible estate. The second principle is that the only modification which impartibility suggests in regard to the right of succession, is the existence of a special rule for the selection of a single heir when there are several heirs of the same class, who would be entitled to succeed to the property if it were partible under the general Hindu law. The third principle is that, in the absence of a special custom, the rule of primogeniture furnishes a ground of

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(*c*) *Shibaprasad* v. *Prayag Kumari* (1932) 59 I.A., 331, 350, 59 Cal, 1399, *Lakshmipathi* v *Kandasami* (1893) 16 Mad, 54, *Ramasami* v *Sundarlingasami* (1894) 17 Mad, 422, 444, *Sarabjit* v *Indrajit* (1905) 27 All, 203, the *Udayarpalayam* case (1901) 24 Mad, (610); the *Ramnad* case 24 Mad, (636), *Gurusami Pandia* v. *Pandia Chinna Thambiar* (1921) 44 Mad, 1, *Visvanathasami* v *Kamulu Ammal* 1915 M.W N, 968, 1014 In *Someshwar Prasad* v *Maheswari Prasad* (1936) 63 I A, 441, 447, 16 Pat, 1, where the owner of an impartible estate was a lunatic and the Court of Wards assumed superintendence of the estate, two villages which had been given out of the estate as Khorposh grants were purchased on behalf of the owner of the estate by the then manager. It was held that as the owner was a lunatic, no question of his intention to incorporate arose and the case was decided on the ground that there was no merger apart from any intention and conduct of the owner. This does not affect the general line of cases

(*d*) (1863) 9 M I A, 539.

(*e*) *Katama Nachiar* v. *Raja of Sivaganga* (1863) 9 M I.A, 539, 589, *Raja Jogindra* v. *Nityanund* (1890) 17 I.A., 128, 131, 18 Cal., 151.

(*f*) (1894) 17 Mad, 316, 325-327; *Kali Krishna* v. *Raghunatha Deb* (1904) 31 Cal., 224. See also *Sahebgouda* v. *Basavgouda* A.I R. 1931 Bom., 378, 33 Bom. L R., 580.

(*g*) (1909) 36 I.A., 125, 31 All., 457.

preference. In determining who the single heir is according to these principles we have first to ascertain the class of heirs who would be entitled to succeed to the property if it were partible, regard being had to its nature as coparcenary or separate property, and we have next to select the single heir by applying the special rule indicated above" (*h*).

Eldest son succeeds.

§ 713. In general, the custom is that such estates descend by the law of primogeniture (*i*). In that case, the eldest son is the son who was born first, not the first born of the senior, or even of the first married wife (*j*), unless in families where by custom, the sons take rank according to the seniority of their mothers (*k*). In *Ramasami Kamaya Naik* v. *Sundaralingasami*, a custom was made out by which among Kumbla Zamindars, a son by a senior wife has a preferential right of succession over a son by a junior wife, although the latter may be the elder (*l*).

Where the contest is between an adopted son and a son born subsequently, the latter will be preferred to the adopted son (*m*).

The senior line excludes others.

§ 714. The eldest son's line must be exhausted before the succession will pass to the next senior line; in other words, the nephew in the senior line will exclude the uncle (*n*); for, "when by the custom of primogeniture, the

(*h*) (1894) 17 Mad., 316, 325.

(*i*) *Thakur Ishri Singh* v. *Baldeo Singh* (1884) 11 I.A., 135, 10 Cal., 792; *Abdul Aziz Khan* v. *Appayyasami* (1903) 31 I.A. 1, 27 Mad., 131; *Rajah Udaya* v. *Jadab Lal* (1881) 8 I.A., 248, 8 Cal., 199. Section 2 (3) of Madras Impartible Estates Act II of 1904 refers to the '*general custom*' regulating succession to impartible estates in South India.

(*j*) *Ramalakshmi* v. *Sivanantha* (1872) 14 M.I.A., 570; *Ramappa* v. *Bangari* (1880) 8 I.A., 1, 2 Mad., 286; *Jagadish Bahadur* v. *Sheo Partab Singh* (1901) 28 I.A., 100, 23 All., 569.

(*k*) *Ramasami* v. *Sundarlingasami* (1894) 17 Mad., 422.

(*l*) (1894) 17 Mad, 422, affirmed in (1899) 26 I.A., 55, 22 Mad., 515. Another ground of preference relied upon by the High Court was in favour of a son by a wife of same class and rank as against an elder son born to a wife of inferior rank and class. (See 17 Mad., 422, 436.)

(*m*) *Yenumola* v. *Ramandora* (1870) 6 M.H.C., 93; *Naraganti* v. *Venkatachalapathi* (1882) 4 Mad., 250.

(*n*) *Ramayya* v. *Ranganayakamma* R.A. 28 of 1877 (Madras High Court)—not reported—reaffirmed in the *Naraganti* case (1882) 4 Mad., 250, which was approved by the Privy Council in the *Udayarpalayam* case (1905) 32 I.A., 261, 28 Mad., 508 and in *Bajnath* v. *Tej Bali* (1921) 48 I.A., 195, 43 All., 228. The decision of the Privy Council in *Ramayya* v. *Ranganayakamma* which went on another point as to whether the arrangement between the parties amounted to a separation is reported in (1879) 5 C.L.R., 439.

senior male in a class of heirs excludes the others, the exclusion continues not only during his life, but so long as he leaves lineal heirs competent to succeed to him. If an impartible estate devolves on the eldest of three sons by the custom of primogeniture to the exclusion of the rest, the preference due to seniority of birth is not a mere personal privilege, but a heritable interest which descends to his lineal heirs as his representatives. The doctrine of representation as between the father and his three lineal descendants, consequent on the notion that he is reborn in them, obtains on each occasion the succession opens up and the eldest son's right to exclude his brother is continued to his lineal male heirs" (*o*).

Right of representation.

Illegitimate son.

§ 715. Where the holder of an impartible estate, being a Sudra, leaves a legitimate son and an illegitimate son, the former succeeds to the estate and on his death, without leaving male issue, the illegitimate son succeeds by survivorship. This is the result of the exceptional coparcenary which is deduced from the passage in the Mitakshara in Chapter I, Section XII (*p*). But this rule will apply only where the impartible estate is the separate property of the father and not the property of the undivided family consisting of the father, his brothers, uncles and nephews. In that case, on the death of the legitimate son of the last holder, the succession will devolve by survivorship not on the illegitimate son but on the nearest coparcener of the next senior line. Where there are coparceners, the illegitimate son will be excluded and where there are no cooparceners, the widow will exclude him (*q*).

Nearness of blood.

§ 716. Nearness of blood is no ground of preference under the Mitakshara law in cases of disputed succession by survivorship to coparcenary property which is partible: it is likewise no ground of preference when such property is impartible. Therefore in a competition between a brother of the half-blood who is senior in age and a brother of the full blood who is junior in age, the former is entitled to succeed to the estate (*r*). But where the impartible estate was the separate

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(*o*) *Muttu Vaduganatha* v. *Periasami* (1893) 16 Mad., 11, 18, affirmed in (1896) 23 I.A., 128, 19 Mad., 451

(*p*) *Raja Jogendra* v. *Nityanund* (1890) 17 I.A., 128, 18 Cal., 151.

(*q*) *Parvati* v *Thirumalai* (1887) 10 Mad, 334, *Kamulu* v. *Visvanathasami* (1915) M W.N, 968, 981, 30 M.L.J., 451, on appeal, (1923) 50 I.A., 32, 46 Mad., 167. The illegitimate son will be excluded by the adopted son.

(*r*) *Subramanya* v. *Sivasubramanya* (1894) 17 Mad, 316.

property of the last holder, the brother of the full-blood would, on the analogy of succession to partible property, be preferred to the brother of the half-blood. Under the Dayabhaga law, as there is no survivorship even in respect of an impartible Raj or zamindari, the brother of the full-blood will be preferred to the brother of the half-blood. This was decided in the *Tipperah* case (*s*) which laid down that no rule of survivorship exists in the case of impartible estates, contrary to the decision in the *Shivagunga* case (*t*). But the error has been corrected by Lord Dunedin in *Baijnath Prasad Singh* v. *Tej Bali Prasad Singh* (*u*) who pointed out that the *Tipperah* case (*s*) was one under the Dayabhaga and not under the Mitakshara law.

From one line to another.

§ 717. Where a joint family holds an ancestral impartible estate, on the death of the holder, leaving no male issue, succession is governed by survivorship and it is further settled that "when impartible property passes by survivorship from one line to another, it devolves not necessarily on the coparcener nearest in blood, but on the nearest coparcener of the senior line" (*v*).

Reversionary succession.

§ 718. On the death of the last surviving member of the coparcenary in whom the estate was vested, the heirs to his separate property take it (*w*); just as in the case of a partible estate, so too, where the impartible estate has become the separate property of the holder, the rule of survivorship no longer obtains (*x*). In the absence of the widow, daughter or daughter's son or the mother, the succession devolves on the collaterals who are nearest in blood. Where however there are several collaterals of equal degree but of different branches,

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(*s*) (1869) 12 M.I.A., 523.

(*t*) (1863) 9 M.I.A., 539.

(*u*) (1921) 48 I.A., 195, 202, 43 All., 228. The error was previously pointed out in (1894) 17 Mad., 316, 325-7 *supra* and in (1901) 24 Mad., (609).

(*v*) *Naraganti* v. *Venkatachelapati* (1882) 4 Mad, 250, 267, followed by Muthusami Iyer, J., in *Muttuvadaganadha* v. *Periasami* (1893) 16 Mad., 11, 16, affd. (1900) 23 I.A., 28, 19 Mad., 451; *Kachi Kaliyana* v. *Kachi Yuva* (1905) 32 I.A., 261, 28 Mad., 508; *Baijnath* v. *Tej Bali* (1921) 48 I.A., 195, 43 All., 228; *Shiba Prasad* v. *Prayag Kumari* (1932) 59 I.A., 331, 59 Cal., 1399; *Collector of Gorakhpur* v. *Ram Sunder Mal* (1934) 61 I.A., 286, 56 All., 468; *Sahebgouda* v. *Basangouda* A.I.R. 1931 Bom., 378; *Har Govind Singh* v. *Collector of Etah* [1937] All., 292; *Konammal* v. *Annadana* (1928) 55 I.A., 114, 51 Mad., 189.

(*w*) *Yenumala* v. *Ramandora* (1870) 6 M.H.C., 93, 101.

(*x*) *Katama Nachiar* v. *Rajah of Shivgunga* (1863) 9 M.I.A., 539; *Konammal* v. *Annadana* (1927) 55 I.A., 114, 51 Mad., 189; *Ulagalum Perumal Sethuraya* v. *Subbalakshmi* (1936) 71 M.L.J., 1.

the senior representative of the senior line is the preferential heir (*y*). Muttusami Ayyar, J., in *Muttu Vaduganatha Tevar* v. *Dora Singha Tevar* was inclined to the view that in such a case. the eldest amongst the heirs of equal degree should be preferred (*z*). The decision of the Madras High Court in *Guruswami* v. *Pandia Chinna Thambiar* was to the effect that in a case of collateral succession, though the rule of seniority of the line is not applicable in the first instance but only the Mitakshara rule of nearness of blood, the former applies for the choice of one from among those of equal degree (*a*). The result is that a representative of a senior branch, though younger in age, is preferred to a representative of a junior branch, though older in age.

In a case in Madras, a special custom of *dayadipattam*, according to which the senior-most of the *dayadis* descended from the common ancestor is entitled to succeed irrespective of seniority of branch or nearness or blood was held to be made out (*b*).

In cases governed by the Dayabhaga, the heir will be the eldest member of the class of persons who will be entitled to succeed to the property if it were partible.

Succession of women.

§ 719. Women, in the absence of a special custom to the contrary (*c*) are entitled to succeed to impartible property where they would succeed to it if it were partible. Accordingly the claims of the widow (*d*), the daughter (*e*)

(*y*) *Gurusami* v. *Pandia Chinna Thambiar* (1921) 44 Mad., 1.

(*z*) (1881) 3 Mad., 290, 323, 327.

(*a*) (1921) 44 Mad., 1, following *Narinder* v. *Achal Ram* (1893) 20 Cal., 649 P.C. It was a decision however under the Oudh Estates Act I of 1869. In *Debi Baksh* v. *Chandraban Singh* (1910) 37 I.A., 168. 32 All., 599, in construing a sanad in respect of an estate entered in list 5 under the Oudh Estates Act I of 1869, which provided for succession by primogeniture, the Judicial Committee held that it meant lineal primogeniture.

(*b*) *Sivasubramania Naicker* v. *Krishnammal* (1895) 18 Mad., 287.

(*c*) *Hiranath Koer* v. *Baboo Ram Narayan Singh* (1872) 9 Beng. L.R., 274; *Chinatamun Singh* v. *Nowenkho Kunwari* (1875) 2 I.A., 263, 1 Cal., 153; *Katama Natchair* v. *The Rajah of Sivaganga* (1863) 9 M.I.A., 539, 543; *Ramnundun Singh* v. *Janki Koer* (1902) 29 I.A., 178, 29 Cal., 828.

(*d*) *Ibid.*, *Tara Kumari* v. *Chaturbrij Narayan Singh* (1915) 42 I.A., 192, 42 Cal., 1179; *Yenumala* v. *Yenumala* (1870) 6 M.H.C., 93; *Ulagalum Perumal* v. *Subbalakshmi* (1936) 71 M.L.J., 1; *Visvanathaswami* v. *Kamulu* (1915) M.W.N., 968.

(*e*) *Katama Natchiar* v. *The Rajah of Sivaganga* (1863) 9 M.I.A., 539, 543.

and the mother (*f*) have been recognised in preference to those of collaterals. Where there are more widows than one, the senior will take before the junior (*g*). The daughters succeed according to seniority, and on the death of the elder, the younger will succeed although the elder leaves a son surviving her (*h*). On the death of all the daughters, the eldest among the daughter's sons, irrespective of the rank of his mother, will take the estate (*i*). It must be remembered that a woman succeeding to the estate of a male takes a limited estate, and at her death the estate descends not to her heir. but to the next heir or heirs of the last male holder. As in the case of partible property, each male owner becomes a fresh root of descent.

Proof of separation.

§ 720. In order to establish that an ancestral impartible estate has ceased to be joint family property for the purpose of succession, it is necessary to prove an intention, express or implied, on the part of the junior members of the family to renounce their right of succession to the estate. It is not sufficient to show a separation merely in food and worship (*j*). Nor will the grant and acceptance of certain villages as for maintenance of a junior branch of the family in perpetuity determine the joint family character of the impartible estate (*j*[1]). Of course, the Zamindar for the time being cannot by a unilateral declaration make the estate his own separate estate. But it is competent to any other member of the family to sever in interest by a unilateral declaration even where the estate is impartible. Such a declaration must however in effect be a renunciation (*k*). Short of renunciation by the junior members of the family, it is extremely

(*f*) *Annapurni Nachiar* v. *Collector of Tinnevelly* (1895) 18 Mad., 277; on appeal, *Annapurni Nachiar* v. *Forbes* (1900) 26 I.A., 246, 23 Mad., 1. This case established the rule that the adopting mother succeeds in preference to a co-widow who did not take part in the ceremony of adoption.

(*g*) *Katama Natchiar* v. *Dorasinga* (1871) 6 M.H.C.R., 310.

(*h*) *Katama Natchiar* v. *The Rajah of Sivaganga* (1863) 9 M.I.A., 539, 543.

(*i*) *Muthu Vaduganadha Tevar* v. *Dorasinga Tevar* (1881) 8 I.A., 99, 3 Mad., 290; *Muttu Vaduganadha Tevar* v. *Periasami Tevar* (1896) 23 I.A., 128, 19 Mad., 451, affg. (1893) 16 Mad., 11.

(*j*) *Konammal* v. *Annadana* (1927) 55 I.A., 114, 51 Mad., 189; *Shibaprasad* v. *Prayag Kumari* (1932) 59 I.A., 331, 59 Cal., 1399; *Collector of Gorakhpur* v. *Ram Sundar Mal* (1934) 61 I.A., 286, 56 All., 468; *Chuni Lal* v. *Jai Gopal* (1936) 17 Lah., 378; *Vijayananda* v. *Commissioner of Income-tax* (1934) 56 All., 1009.

(*j*[1]) *Lakshmi Devi* v. *Suryanarayana* (1897) 24 I.A., 118, 20 Mad., 256.

(*k*) *Jagadamba Kumari* v. *Narain Singh* (1922) 50 I.A., 1, 2 Pat., 319; see cases in (*j*).

difficult to prove a division. The only other way would be that though the Raj or zamindari is itself indivisible, it may be taken into a division as property allotted to a separate member (k^1). Partition of all other property does not put an end to the undivided status in respect of the impartible estate (l).

As in the case of partible property, a renunciation by the owner or a junior member of the family will leave the impartible estate the joint property of the other members of the family. Accordingly when the eldest of three brothers transferred his interest in an impartible zamin to the two younger brothers, it was held that as between the descendants of the grantor and the son of the surviving grantee, the zamin was the separate property of the latter and that on his death, his rights passed to his widow. In other words, that which was the joint estate of three became the joint estate of two (m). So too when the owner of an impartible estate alienates it in favour of one of the members of the family, as he is entitled to do, it will become the self-acquired property of the alienee whose separate heirs will succeed to it on his death, in default of his own male issue. None of his collaterals in the original coparcenary will succeed by survivorship to the exclusion of his widow, daughter or daughter's son (m^1).

Maintenance.

§ 721. The rights to maintenance of junior members of a family holding an impartible estate to maintenance cannot be regarded as finally settled. In the *second Pittapur* case, it was observed by Lord Dunedin that apart from custom and relationship to the holder, the junior members of the family have no right to maintenance out of it; and it was suggested that no one below the first generation from the last Raja can claim maintenance as of right (n). But the case itself rested on the central assumption that an impartible estate cannot be joint family property and that the other members of the family have no sort of right in it. The

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(k^1) *Runganayakamma* v. *Ramayya* R.A. 28 of 1877, 5 C L.R, 439 P.C.

(l) *Yarlagadda Mallikarjuna* v. *Yarlagadda Durga* (1901) 27 I.A, 151, 24 Mad, 147; *Saheb Gouda* v. *Basangouda* A I.R. 1931 Bom., 378.

(m) *Periasami* v. *Periasami* (1878) 5 I.A, 61, 1 Mad, 312.

(m^1) (1936) 71 M L J, 1 *supra*.

(n) *Rama Rao* v. *Raja of Pittapur* (1918) 45 I A, 148, 41 Mad., 778, (1927) 54 I A, 289, 54 Cal., 955 *supra*. Before the former decision, invariably the rights of junior members to maintenance, whatever their relationship to the holder, were recognised in practice as well as by decisions of courts as a rule of Hindu law.

decision cannot be regarded except as one upon the actual facts of that case, now that its basis that there can be no coparcenary in an impartible estate has itself disappeared. Referring to it, Lord Dunedin himself pointed out in *Baijnath Prasad Singh* v. *Tej Bali Prasad Singh*, that the claim for maintenance was made not against the head of the family but against a donee who was treated by the claimant as altogether a stranger to the family and that the right to maintenance had not matured into a charge before the estate had got into the hands of the donee (*o*). In the latest case, *Collector of Gorakhpur* v. *Ram Sundar Mal* (*p*), the Privy Council have clearly laid down that the earlier judgments of the Board such as the *Challapalli* case (*q*) which regarded the right to maintenance of junior members, however limited, out of an impartible estate as being based on the joint ownership of the junior members of the family, should be followed.

Apart from custom or statute, the right of junior members to maintenance would seem to be co-extensive with their right of survivorship. As was pointed out by the Madras High Court in *Naraganti* v. *Venkatachalapathy* (*r*) which has often been approved by the Privy Council, "where from the nature of property, possession is left with one coparcener, the others are not divested of co-ownership. Their necessary exclusion from possession imposes on the co-owner two obligations to his coparceners in virtue of their co-ownership, the obligation to provide them with maintenance and the obligation to preserve the corpus of the estate". The latter

(*o*) (1926) 48 I.A., 195, 211, 43 All., 228; see also (1932) 59 I.A., 331, 59 Cal, 1399.

(*p*) (1934) 61 I.A., 286, 56 All., 468 See also *Vijayananda* v. *Commissioner of Income-tax* (1934) 56 All, 1009; *Commissioner of Income-tax* v. *Zamindar of Chemudu* (1934) 57 Mad., 1023 F.B.; *Subbayya* v. *Marudappa* [1937] Mad., 42; *Ram Chandra* v. *Sukhdeo* A I R. 1935 Nag., 133 (the right of junior member to receive maintenance is not attachable in execution).

(*q*) The *Challapalli* case, *Yarlagadda Mallikarjuna* v. *Yarlagadda Durga Prasada* (1900) 27 I.A., 151, 24 Mad, 147.

(*r*) (1881) 4 Mad., 250; in the *Udayarpalayam* case (1901) 24 Mad., 562, the plaintiff who was the son of the zamindar's grandfather's brother was held entitled to maintenance. See also *Chuoturya* v. *Sahub Purhulad* (1857) 7 M.I.A., 18; *Naragunty* v. *Vengama* (1861) 9 M.I.A., 66; *Muttusawmy* v. *Vencataswara* (1868) 12 M.I.A., 203 (illegitimate son); *Katchekalyana* v. *Kachivijaya*, ib., 495. The case of the *Pachet Raj* where it was held that there was no law, or custom, which entitled anyone but a son or daughter of the deceased Rajah to receive maintenance; *Nilmony Singh* v. *Hingoo* (1880) 5 Cal., 256 is inconsistent with the *Naraganti* case, *Baijnath's* case and *Collector of Gorakhpur v. Ram Sundar Mal.*

right no longer exists by virtue of the decisions. There is no reason why the former obligation to maintain them, by reason of their interest such as it is in the joint estate, should be denied; for the general law must prevail except to the extent to which the custom of impartibility and primogeniture affect it. The right to maintenance can certainly co-exist with impartibility as in the case of Malabai Kovilagams and Tarwads. The right to maintenance founded upon the right of coparcenary begins where coparcenary begins and ceases where coparcenary ceases (*s*).

The other ground on which the right to maintenance rests will equally apply. It is settled that the law allows maintenance to those members of a joint family who are excluded from inheritance and from a share on partition (*t*). Accordingly in addition to the junior members, the widows of the undivided members of the family as well as the other members who are excluded from inheritance and a share on partition by the impartible character of the property are entitled to be maintained out of its income So also the unmarried daughters of a proprietor are entitled to be married and to be maintained till marriage. But where the impartible estate is the self-acquired or separate property of the owner, his adult son is not entitled to maintenance as against that property (*u*).

§ 721 A. Section 9 of the Madras Impartible Estates Act, 1904, recognising the rights of junior members to maintenance based upon joint ownership makes a specific provision as to the persons entitled to maintenance out of an impartible estate and its income, where the estate has to be regarded as the property of a joint family for purposes of succession. Such persons are the son, grandson and great-grandson of the proprietor of the estate or of any previous proprietor as well as their childless widows, the widow of any previous proprietor, and the unmarried daughter of the proprietor or of any previous proprietor as well as of a son or grandson of the proprietor or of any previous proprietor, where she has neither father, mother nor brother.

(*s*) *Commissioner of Income-tax* v. *Zamindar of Chemudu* (1934) 57 Mad, 1023, 1025 F B *per* Ramesam, J., citing Lord Dunedin's observation in the second *Pittapur* case.

(*t*) *Vellayappa* v. *Nataraja* (1931) 58 I.A., 402, 414, 55 Mad, 1.

(*u*) *Subbayya* v. *Marudappa* [1937] Mad., 42.

CHAPTER XX.

GIFTS.

Early law of gifts.

§ 722. The early law of gifts is stated by Sanskrit writers under the title "Resumption of gifts", one of the eighteen titles of law. Narada says, "An *anvahita* deposit (*a*), a *yachita*, a pledge, joint property, a deposit, a son, a wife, the whole property of one who has offspring, and what has been promised to another man; these have been declared by the spiritual guides to be inalienable by one in the worst plight even. What is left (of the property) after the expense of maintaining the family has been defrayed, may be given. But by giving away anything besides, a householder will incur censure" (*b*). According to Brihaspati, "Self-acquired property may be given away at pleasure by its owner" (*c*). In other countries gifts try to clothe themselves with the semblance of a sale. Under Hindu law, sales claimed protection by assuming the appearance of a gift. The Mitakshara says: "Since donation is praised, if sale must be made, it should be conducted, for the transfer of immovable property, in the form of a gift, delivering with it gold and water (to ratify the donation)" (*d*). Narada mentions sixteen kinds of invalid gifts which embrace a variety of circumstances such as want of capacity of the donor, either permanent or temporary, absence of real intention to make a gift, influence of fear, fraud, misrepresentation, or mistake, many of which would invalidate a gift in modern law (*e*).

Property that may be gifted.

§ 723. Where property is absolutely at the disposal of its owner, he may give it away as freely as he may sell or mortgage it, subject to a certain extent to the claims of those who are entitled to be maintained by him (*f*). For instance,

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(*a*) "*Anvahita* is a deposit, which has been delivered by the depositor to a third person, on condition of its being returned afterwards to the owner. *Yachita* is what has been borrowed for use, especially clothes and ornaments, as on the occasion of a wedding or other festival", Narada, II, 14, note, S.B.E., Vol. XXXIII, p. 123.

(*b*) Narada, IV, 4-6; Yaj., II, 175.

(*c*) Brih., XV, 2, 3, 5, S.B.E., Vol., XXXIII, p. 342.

(*d*) Mit., I, 1 32; Dayatattva, V, 25.

(*e*) Narada., IV, 9-12; *Forman Ali* v. *Uzur Ali* (1937) 42 C.W.N., 14, 16.

(*f*) As to what property is at one's disposal, see §§ 352-354. As to the restrictions for maintenance, see sections 39 and 128 of the T. P. Act and § 698.

a father under the Dayabhaga law may make a gift of his property and a coparcener of his share. A Hindu, whether governed by the Mitakshara or the Dayabhaga, can dispose of his separate property. So too, a woman can make a gift of her stridhana. A coparcener cannot make a gift of his coparcenary interest even in provinces where he can alienate it for value except after a division in status (§ 382). Where the property is not absolutely at the disposal of a person, a transaction can only be supported on the ground of necessity and as a general rule, a gift of it could never be valid. Exceptions however are recognised by Hindu law where gifts can be made either for pious, religious, or charitable purposes, or on occasions when, according to the common notions of Hindus, gifts are usually made. This exceptional power can only be exercised properly and within reasonable limits (*g*). A gift of ancestral property by a father before adoption is binding on the son adopted (*g*[1]). Where a gift consists of a donor's whole property, the donee is personally liable for the debts due by and the liabilities of the donor at the time of the gift to the extent of the property comprised in it (*g*[2]).

§ 724. The modern law of gifts consists in part of case law and in part of the provisions of Chapters VII and II of the Transfer of Property Act, 1882 (*h*).

Definition of gift.

Gift is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person called the donor, to another called the donee, and accepted by or on behalf of the donee. Such

(*g*) These have already been discussed, *ante* §§ 369, 644.

(*g*[1]) §§ 204-205, *Kamalabai* v *Pandurang* A I.R 1938 Bom, 318 (even when the gift is made immediately before the adoption and on the same day)

(*g*[2]) Sec 128, T P. Act, *Satyanarayana* v *Venkatanarasimham* 1937 M W N., 395, *Sudhamoyee Bose* v *Bhujendra Nath* A I R 1937 Cal. 226, *Ragho Govind* v *Balwant* (1883) 7 Bom, 101, *Anrudh Kumar* v *Lachhmi Chand* (1928) 50 All, 818 *Ante* § 701

(*h*) Chapters II and VII of the Transfer of Property Act now apply to Hindus throughout British India except in the Punjab and the North-West Frontier Provinces, and the Scheduled districts of Bombay, but the principles of the Act apart from the technical rules are applied in the Punjab as rules of justice and equity, *Jhuman* v. *Dubia* (1923) 4 Lah, 439, *Teja Singh* v *Kalyan Das Chet Ram* (1925) 6 Lah, 487 After the amendments of the Transfer of Property Act by Acts XX and XXI of 1929, the Hindu Disposition of Property Act, XV of 1916, the Hindu Transfers and Bequests Act, Madras Act I of 1914, and the Hindu Transfers and Bequests (City of Madras) Act VIII of 1921 are, as to transfers after the 1st day of April, 1930, in effect replaced by Chapter II of the Transfer of Property Act, 1882, where it is in force.

acceptance must be made during the lifetime of the donor, and while he is still capable of giving. If the donee dies before acceptance, the gift is void (*i*). A gift of immovable property can only be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. A gift of movable property may be made either by a registered instrument signed as aforesaid or by delivery which may be made in the same way as goods sold may be delivered (*j*).

A gift of a mortgage interest in immovable property has been held to be a gift of immovable property so as to attract its requirements (*k*); but gifts of debts secured by mortgages can be validly made apart from the security (k^1). Gifts of actionable claims can be made only by the execution of an instrument in writing signed by the transferor or his authorised agent (k^2). A gift of the income of a property is, in the absence of an indication to the contrary, a gift of the corpus (§ 767). A gift comprising both existing and future property is void as to the latter, as, of course, it cannot take effect as a contract (k^3).

§ 725. Where the Transfer of Property Act is not in force, a gift may be made orally or in writing, since writing is not necessary under Hindu law for the validity of any transaction (*l*). Apart from the Transfer of Property Act, it has generally been held that under Hindu law delivery of possession is essential to complete a gift even though it is by a registered instrument (l^1). It would be more correct to say that according to Hindu law, acceptance by the donee is essential to the validity of a gift and delivery or taking of

Under Hindu law.

Acceptance only necessary.

(*i*) Transfer of Property Act, sec. 122. As to what may not be transferred, see S. 6, T. P. Act.

(*j*) Sec. 123.

(*k*) *Perumal Ammal* v. *Perumal Naicker* (1921) 44 Mad., 196.

(k^1) *Imperial Bank of India* v. *Bengal National Bank* (1931) 58 I.A., 323, 59 Cal., 377 reversing (1930) 58 Cal., 136.

(k^2) Sec. 130 of the T. P. Act.

(k^3) Sec. 124 of the T. P. Act.

(*l*) *Hurpurshad* v. *Sheo Dayal* (1876) 3 I.A., 259; *Balaram* v. *Appa* (1872) 9 Bom. H.C., 121.

(l^1) *Harjivan* v. *Naran Haribai* (1867) 4 Bom. H.C. (A C.J), 31; *Vasudev* v. *Narayan* (1883) 7 Bom., 131; *Abaji Gangadhur* v. *Mukta* (1894) 18 Bom., 688; *Gordhandas* v. *Bai Mancoover* (1902) 26 Bom., 449, 472; *Venkatachella* v. *Thathammal* (1869) 4 Mad. H.C., 460; *Ramamirtha* v. *Gopala* (1894) 19 Mad., 433; *Dagai* v. *Mothura* (1883) 9 Cal., 854; *Chandrabhaga* v. *Anandrav* A.I.R. 1938 Nag., 142.

possession is but one of the modes of acceptance (*m*). It is, however sufficient if the change of possession is such as the nature of the case admits of (*n*). Where the donor is out of possession and has done everything in his power to complete the gift, the fact that possession has not been given is no answer to a suit by the donee against the obstructing party (*o*). It is now settled that sec 123 of the Transfer of Property Act has superseded the rule of Hindu law, if any, that delivery of possession is absolutely essential for the completion of a gift (*p*).

May be express or implied.

§ 726. Acceptance of a gift required by sec. 122 of the Transfer of Property Act may be either express or implied (*q*) On delivery of the deed of gift to the donee, even before registration there is an acceptance of the gift and it is not open to the donor to revoke the gift after its acceptance and before its registration. Nor does the death of the donor after acceptance and before registration affect the

(*m*) *Dharmodas Das* v *Nistarini Dasi* (1887) 4 Cal, 446, *Lakshmoni* v. *Nithyananda* (1893) 20 Cal, 464 The Mitakshara says, "Gift consists in the relinquishment of one's own right, and the creation of the right of another, and the creation of another man's right is completed on that other's acceptance of the gift, but not otherwise. Acceptance is made by three means, mental verbal or corporeal Mental acceptance is the determination to appropriate, verbal acceptance is the utterance of the expression, 'this is mine or the like', corporeal acceptance is manifold, as by touching". "In the case of land, as there can be no corporeal acceptance without enjoyment of the produce, it must be accompanied by some little possession, otherwise the gift, sale, or other transfer is not complete". Mit, III, 5-6 translated by Mr William MacNaghten, 1 W MacN, 212, 217

(*n*) *Bank of Hindustan* v *Premchand* (1868) 5 Bom. H.C (O.C.J.), 83; *Krishnamani* v *Ananda* (1870) 4 B L R. (O.C J), 291, *Man Bhari* v. *Naunidh* (1882) 4 All, 40, 45, *Bai Kushal* v *Lakhma* (1883) 7 Bom, 452, *Wannathan* v *Keyahadath* (1871) 6 M H C R., 194; *Kallyani* v. *Narayana* (1886) 9 Mad, 267, *Chellamma* v. *Subamma* (1884) 7 Mad., 23 (gift of a *nibandha* or corrody), *Khursadji* v. *Pestonji* (1888) 12 Bom., 573 (gift of Govt. Promissory notes).

(*o*) *Kalidas* v *Kanhaya Lall* (1884) 11 I A, 218, 11 Cal., 121 followed in cases under Mahomedan law, *Mahomed Buksh* v. *Hosseini Bibi* (1888) 15 I A., 81, 15 Cal, 684, *Sheikh Muhumed* v. *Zuabida Jan* (1889) 16 I A 205, 11 All, 460 *Balmukund* v *Bhagwan Das* (1894) 16 All, 185, *Bhaskar* v. *Saraswatibai* (1892) 17 Bom, 486, *Rajaram* v *Ganesh* (1899) 23 Bom., 131, *Jottaram* v *Ramkrishna* (1903) 27 Bom, 31, *Nabadweepachandra Das* v *Lokenath Ray* (1932) 59 Cal., 1176, 1181, *U. Pandwun* v. *U Sandima* (1924) 2 Rang., 131, *Bhagwan Das* v *Gian Chand* A.I R. 1936 Lah., 49.

(*p*) *Phulchand* v *Lakkhu* (1903) 25 All, 358, *Lallu Singh* v. *Gur Narain* (1923) 45 All, 115 F B, *Madhab Rav* v. *Kashibai* (1910) 34 Bom., 287; *Dharmodas* v. *Nistarini Dasi* (1887) 14 Cal., 446; *Balbhadra* v. *Bhowani* (1907) 34 Cal., 853, *Deosaran Bharthi* v. *Devki Bharthi* (1924) 3 Pat., 842.

(*q*) *Anandi Devi* v. *Mohun Lal* (1932) 54 All., 534.

validity of the gift (*r*). A deed of gift executed in accordance with section 123, but never communicated to the intended donee and remaining in the possession of the grantor, undelivered, can of course be revoked (*s*). A donee can take nothing under an onerous gift unless he accepts it fully (*s*[1]).

Donatio mortis causa.

§ 727. According to Hindu law, a *donatio mortis causa* (void if the donor should recover from his illness or survive the donee) is valid. As regards the legal requisites of such gifts, the Hindu law makes no distinction between those made in contemplation of death and other gifts (*t*). Accordingly, as section 129 of the Transfer of Property Act, 1882 excludes from the provisions of the chapter relating to gifts, gifts of movable property made in contemplation of death, the legal requisites are a giving, either orally or by writing, with the intention to pass the property in the thing given, accompanied by its actual delivery and acceptance in the donor's lifetime (*u*).

Gifts may be made to a minor or lunatic.

§ 728. A minor or a lunatic cannot make any disposition of property by way of gift or settlement (*v*). But neither Hindu law nor sec. 122 of the Act prohibits a gift in favour of a person not competent to contract such as a minor or a lunatic. In either case, his guardian can accept the gift for him (*w*). A donee not competent to contract, on whose behalf a gift is accepted, is not bound by the acceptance where the gift is burdened with an obligation. But if after becoming competent to contract and being aware of the

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(*r*) *Kalyanasundaram* v. *Karuppa* (1927) 54 I.A., 89, 50 Mad., 193, approving *Atmaram Sakharam* v. *Vaman Janardhan* (1925) 49 Bom., 388 F.B. and *Venkati Rama* v. *Pillatti Rama* (1917) 40 Mad., 204 F.B.; *Venkatasubba* v. *Subba Ram* (1928) 52 Bom., 313 (P.C.); *Kamalabai* v. *Pandurang* A I.R. 1938 Bom., 318; *Kasturchand* v. *Mt. Wazir* A.I.R. 1937 Nag., 1.

(*s*) (1927) 54 I.A., 89, 94, 50 Mad., 193 *supra.*

(*s*[1]) Sec. 127, Transfer of Property Act.

(*t*) *Kumara Upendra Krishna* v. *Nabin Krishna* (1869) 3 B.L.R., 113; *Visalatchmi* v. *Subbu Pillai* (1871) 6 M.H.C.R., 270; *Bhaskar* v. *Bai Sarasvatibai* (1893) 17 Bom., 486, 495; *Sat Narain* v. *Krishna Dutt* A.I.R. 1925 Oudh, 383. See sec. 191, Succession Act.

(*u*) (1871) 6 M.H.C.R., 270 *supra.*

(*v*) *Bai Gulab* v. *Thakorelal* (1912) 36 Bom., 622; *Krishnamachariar* v. *Krishnamachariar* (1914) 38 Mad., 166; *Hardwari Lal* v. *Gomi* (1911) 33 All., 525. Compare sec. 126 of the T. P. Act.

(*w*) *Subramania Ayyar* v. *Sithalakshmi* (1896) 20 Mad., 147; *Joitaram* v. *Rani Krishna* (1902) 27 Bom., 31, 40; *Raghava Chariar* v. *Srinivasa* (1917) 40 Mad., 308, 318; *Munni Kunwar* v. *Madan Gopal* (1916) 38 All., 62.

obligation, he retains the property given he becomes so bound (*x*). But where a minor donee dies before he attains majority, his repudiation becomes impossible (*y*).

Imperfect gifts.

§ 729. An agreement to make a gift cannot be enforced unless it is in writing registered and is made on account of natural love and affection to a near relation (*z*). Where a gift intended to take effect by way of transfer is not completed, it will not be construed as a declaration of trust as there is no equity to perfect an imperfect gift (*z*[1]) To complete a gift there must be a transfer of the apparent evidences of ownership from the donor to the donee. "Every step taken towards proof of gift is in itself *pro tanto* a negation of a trust, for a trust retains the actual ownership in the trustee, while an endeavour to make a gift is an endeavour to divest the property and pass it away to the donee" (*a*). Of course, the donor may constitute himself a trustee for the donee.

§ 730 Prior to 1914-16, the rule of Hindu law was that the donee must be a person in existence at the date of the gift (*b*). An infant in the womb is, for the

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(*x*) Sec. 127, T. P. Act

(*y*) (1896) 20 Mad, 147, 160 *supra*

(*z*) The Indian Contract Act, S 25. A promise to make a gift of property on condition that the donee should reside with the donor, when the condition is performed, becomes a complete and enforceable contract. *Lakshmi Venkayamma* v *Venkata Narasimha* (1916) 43 I A, 138, 39 Mad, 509 as explained in *Ariff* v *Jadunath* (1931) 58 I A, 91, 104, 58 Cal, 1235

(*z*[1]) *Amarendra Krishna* v *Monimunjary* (1921) 48 Cal., 986, following *Milroy* v *Lord* (1862) 4 Deg F & J, 264, 45 E R, 1185, and *Richards* v. *Delbridge* (1874) L R, 18, Eq, 13, *Venkatachella* v. *Thathamma* (1869) 4 M H C, 460, *Hirabai* v *Jan Mahomed* (1883) 7 Bom, 229, *Bhaskar Purshotam* v *Sarasvatibai* (1893) 17 Bom, 486 (where it was held that a dying man constituted himself a trustee), *Gordhandas* v. *Bai Mancoover* (1902) 26 Bom., 449, 472, *Natha Gulab* v. *Shaller* A.I.R. 1924 Bom, 88, 25 Bom L R, 599

(*a*) *Hariram* v. *Madan Gopal* (1928) 33 C W N. 193, 497, 57 M L J, 581 P.C, *Muhammad Hussein* v *Aishabai* A I.R. 1935 Bom., 84, 36 Bom. L.R., 1155, *Venkataramayya* v. *Nagamma* A.I R. 1932 Mad, 272

(*b*) This is the actual time of giving, that is the date of the gift, if *inter vivos*, or the death of the testator, if by will, not the possible time of receiving, if a settlement by way of remainder, the date of the settlement See *Tagore* v *Tagore* (1872) 9 B L R, 399, I A. Supp. Vol. 47, 67; *Soudamoney* v. *Jogesh* (1877) 2 Cal, 262; *Kherodemoney* v. *Doorkamoney* (1879) 4 Cal, 455, *Bai Manubai* v *Dossa Morarji* (1893) 15 Bom., 443; *Ranganatha* v *Bhagirathi* (1906) 29 Mad, 412. In the Mitakshara system this would hardly be a correct rule of Hindu law. For, the very conception of right by birth involves the idea that a person not in existence at the date of the grandfather's death becomes entitled to his property at his birth and that equally with his father. A text of Vyasa cited in Mit., I, 1, 27 "they who are born, they *who are yet unbegotten,* and they who are still in the womb" places lives not in being on the same footing as children born or in the womb.

purpose of this rule, in contemplation of law, a person in existence (*c*). This rule of Hindu law is now abrogated by the Madras Act known as the Hindu Transfers and Bequests Act I of 1914, and the India Acts, the Hindu Disposition of Property Act XV of 1916, and the Hindu Transfers and Bequests (City of Madras) Act VIII of 1921, and is replaced by the provisions of those Acts which are in effect the same as the provisions contained in Chapter II of the Transfer of Property Act, 1882. While the Hindu Disposition of Property Act, 1916 is not retrospective, the Madras Act I of 1914 applies also to gifts or settlements executed before its commencement in respect also of such dispositions therein contained as would come into operation subsequent to the Act. Except as to what property a man can give away, the Hindu law of gifts has to a great extent ceased to be personal law and has become part of the general law of the land. And as the principles common to gifts and wills are more fully discussed in the next chapter, a brief statement is sufficient here.

Gift to unborn persons.

Law altered.

§ 731. A gift *inter vivos* to a person not in existence can therefore be made, subject to the limitations and provisions contained in Chapter II of the Transfer of Property Act (*d*). Accordingly, a gift to an unborn person which is subject to a prior gift must be of the whole of the remaining interest of the donor in the property (*e*). Where a gift is made to A for his life and after his death, to A's son for life and after the death of the latter to B and where A's son was not in existence at the date of the gift, the gift to A's son fails because it does not comprise the whole of the interest that remains to the donor (*e*[1]). The rule against perpetuities is stated in section 14 of the Transfer of Property Act and a gift in favour of an unborn person can be valid if it is made within the limits allowed by that rule. No gift can be made to take effect after the lifetime of one or more persons living at the date of the gift and the minority of the donee who shall be in existence at their death.

Rule against perpetuities.

(*c*) *Tagore* v *Tagore* (1870) 9 B.L.R., 377, 397, 400, 404, I.A. Supp. Vol. 47, 67.

(*d*) Act I of 1914, sections 3 and 4; Act XV of 1916, sections 2 and 3; Act VIII of 1921, sections 3 and 4.

(*e*) T. P. Act, sec. 13.

(*e*[1]) *Cf.* illustration (i) to S. 113 of the Indian Succession Act. *Kuppusami* v. *Jayalakshmi* (1935) 58 Mad., 15 (will), *Girjesh Datt* v. *Datain* 9 Luck., 329, A.I.R. 1934 Oudh, 35, 39 F.B. (gift *inter vivos*).

Gift to a class.

A gift in favour of a class of persons as to some of whom the gift is void for remoteness is nevertheless valid as to those who are capable of taking under the gift (*f*). A gift to take effect after a prior interest which is void as contrary to sections 13 and 14 of the Transfer of Property Act also fails (*g*).

Heritable annuity.

§ 732. A gift of an annuity to a man and his heirs can be validly made in Hindu law at least where it is charged upon immovable property or its income. In *Raja of Ramnad* v. *Sundarapandiya* it was held that the grant of an annuity in perpetuity out of the income of a zamindari created a charge upon the estate, not contravening the rule against perpetuities and that it did not lie in covenant only (g^1). According to Hindu law, a *nibandha* or corrody ('I will give 150 *suvarnas* every month of Kartigai') is valid (g^2). Muttuswami Iyer, J., pointed out in *Chalamanna* v *Subbamma*, that a solemn and binding promise in this form, equivalent to a declaration of trust, was not unknown to Hindu law (g^3), and Mookerjee, J., has also adopted that view (g^1).

(*f*) Transfer of Property Act, sec 15, this departs from the rule of English law [*Leake* v *Robinson* (1817) 2 Mer, 363, *Pearks* v. *Moseley* (1880) 5 App Cas, 714] and follows *Rai Bishen Chand* v *Mt. Asmaida Koer* (1884) 11 I A, 64, 6 All, 560, *Ram Lall Sett* v. *Kanai Lal Sett* (1886) 12 Cal, 663, *Bhoba Tarini* v. *Peary Lal* (1898) 24 Cal, 646, 658, *Bhagabati* v *Kali Charan* (1911) 38 I A, 54, 38 Cal, 468, affg (1905) 32 Cal, 992, *Ranimoni Dassi* v *Radha Prosad* (1914) 41 I A, 176, 41 Cal, 1007, *Manjamma* v *Padmanabhayya* (1889) 12 Mad, 393, *Ranganadha* v *Bhagirathi* (1906) 29 Mad, 412, *Mangaldas* v *Tribhuvandas* (1891) 15 Bom, 652, *Tribhuvandas* v. *Gangadas* (1894) 18 Bom, 7, *Krishna Rao* v *Benabai* (1896) 20 Bom, 571, *Khimji* v *Morarji* (1898) 22 Bom, 533, *Gordhandas* v *Bai Mancoover* (1902) 26 Bom, 449, 469 The decision of Stanley, J, in *Rajomoyee* v *Troylukho* (1902) 29 Cal, 260, 276 is not good law. The decision in *Sewdayal* v. *Official Trustee* (1931) 58 Cal, 768 was due to a misconception It is not law after the amendment of sec 15 of the Transfer of Property Act Even before it, sec 14 of the Act only, but not sec 15, was applicable to Hindu gifts, see the Hindu Disposition of Property Act, 1916 And the principle of sec. 15 had been rejected by a strong current of authority

(*g*) Sec 16 of the T P Act

(g^1) (1919) 46 I A, 64, 42 Mad, 581, affg 27 M.L.J., 684 in which Wallis, C J, expressed an opinion that even if it was not a charge and only in the nature of a personal estate, it would be valid (p 703), *Narayana Ananga* v *Madhava Deo* (1893) 20 I.A., 9, 16 Mad, 268, see also the *Tagore* case (1872) I A Supp. Vol. 47, 75; *Jatindra* v *Ghanashyam* (1923) 50 Cal., 266, *Matlub Hasan* v. *Kalawati* A I R 1933 All., 934.

(g^2) Dipakalika cited Dig, I, 443.

(g^3) (1883) 7 Mad., 23.

(g^4) (1923) 50 Cal., 266 *supra.*

Covenant and conditional grants.

The rule against perpetuities applies to covenants to grant *in futuro* interests in land and to conditional grants of future interests in property (g^5). But this rule now can apply subject to the alteration that an interest can be given to an unborn person within the limits of the rule against perpetuity. Contracts which do not create an interest in land do not offend the rule against perpetuities, but on the application of this rule to particular contracts relating to immovable property, conflicting opinions have been expressed (g^6).

Estates repugnant to Hindu law.

§ 733. So also a gift will be invalid which creates any estate unknown to, or forbidden by, Hindu law as for instance, an estate to heirs male or to male descendants or an estate descendible only to aurasa descendants excluding adopted sons (h). Provisions which are repugnant to the nature of the grant or transfer, such as a condition absolutely restraining the donee from alienating it (i) or from partitioning it, are also invalid (j). Partial restrictions on alienations or partitions will however be valid (k). A gift to which an immoral condition is attached

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(g^5) *Chandi Churn Barua* v. *Sidheswari* (1888) 15 I A., 149, 16 Cal., 71, *Maharaj Bahadur Singh* v. *Balchand* (1920) 48 I A., 376, 25 C.W N., 770

(g^6) *Dinkarrao* v *Narayan* (1923) 47 Bom., 191; *Harkishandas* v. *Bai Dhanu* (1926) 50 Bom., 566, 599; *Alibhai* v. *Dada* A.I.R 1931 Bom., 578, 33 Bom. L R., 1296, *Munuswami* v. *Sagalaguna* (1926) 49 Mad., 387, *Rama Rao* v *Thimmappa* (1925) 48 M.L.J., 463, *Nafar Chandra* v *Kailash Chandra* (1920) 25 C.W N, 201; *Kalachand Mukherji* v. *Jatindra Mohun* (1929) 56 Cal., 487, *Basdeo* v *Jhagru* (1924) 46 All, 333, *Aulad Ali* v *Ali Athar* (1927) 49 All., 527 F B., *Matura Subba Rao* v. *Surendranath* (1929) 8 Pat, 243.

(h) *Tagore* v. *Tagore* (1872) I.A Sup Vol 47, 9 Ben L.R, 377; *Suriya Rao* v. *Raja of Pittapur* (1886) 13 I A., 97, 9 Mad., 499.

(i) Transfer of Property Act, secs. 10 and 11, *Raghunatha Prasad* v. *Deputy Commissioner, Partabgarh* (1929) 56 I A., 372, 34 C.W N, 61, 58 M.L J, 1; *Venkataramanna* v. *Brammanna* (1869) 4 M H.C., 345; *Amiruddaula* v. *Nateri* (1871) 6 M.H.C., 356, *Anantha* v. *Nagamuthu* (1882) 4 Mad, 200, *Muthukumara* v. *Anthony Udavar* (1914) 38 Mad., 867; *Gokool Nath* v. *Issur Lochun* (1887) 14 Cal., 322; *Ali Hasan* v. *Dhirji* (1882) 4 All., 518, *Bhairo* v. *Parmeshri* (1885) 7 All., 516; *Rukmimbai* v. *Laxmibai* (1920) 44 Bom., 304, *Saraju Bala* v. *Jyotirmoyee* (1931) 58 I.A., 270, 35 C W.N., 903. It has been held in *Ma Yin Hu* v. *Ma Chit May* (1929) 7 Rang., 306 that a condition, that if the donee transfers the property without the donor's consent the gift would be revoked, is valid under section 126 of the T. P Act, *sed qu* Where the condition is against alienation, section 126 must be read with sections 10 and 12 of the Act.

(j) *Narayanan* v *Kannan* (1881) 7 Mad., 315, 317.

(k) *Muhammad Raza* v. *Abbas Bandi Bibi* (1932) 59 I.A., 236, 246, 7 Luck., 257, 36 C.W N, 774· "It seems clear that after the passing of the Transfer of Property Act in 1882, a partial restriction upon the power of disposition would not in the case of a transfer *inter vivos* be regarded as repugnant".

remains a good gift, while the condition is void (*l*). But if there is an immoral consideration for a transaction which is in form a gift, it is void and it makes no difference whether the transaction is executed or executory (*l*[1]).

§ 734. Where a gift is already complete, so that the property has passed from the donor to the donee, any conditions that may be subsequently added are absolutely void, since the person who attempts to impose them has ceased to have any right to do so (*m*). Where a gift to A for life is followed by a gift of the remainder of the estate to B, if the gift to A cannot take effect, the estate of B is accelerated, and takes effect at once (*n*) It is however open to the donor to make a gift of property while reserving to himself a life interest (*o*).

Vesting of interest.

Where a gift is made in favour of a person, his interest in it becomes vested at once, unless a contrary intention appears. Neither a condition postponing the enjoyment, nor the grant of a prior interest, nor a direction to accumulate, prevents the vesting, and where a donee whose interest is vested dies before he is entitled to possession, his interest is heritable as well as alienable (*p*).

An interest given to an unborn person becomes vested in him on his birth.

Contingent interest.

A gift can be made in favour of a person so as to take effect on the happening of specified uncertain event or if a specified uncertain event shall not happen. In such a case, the donee acquires only a contingent interest which becomes a vested interest on the happening of the event in the one case, or when it becomes impossible in the other (*q*). A gift can be made in favour of a person with the condition superadded that if a specified uncertain event happens, the interest is to pass to another person, or that if a specified uncertain event does not happen such interest shall pass to another

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(*l*) *Ram Sarup* v *Mt Bola* (1884) 11 I A, 44, 6 All, 313, Transfer of Property Act, 1882, secs. 25, 18.

(*l*[1]) *Ghumna* v *Ramchandra* (1925) 47 All, 619 following *Muthu Kannu* v *Shunmugavelu* (1905) 28 Mad, 413

(*m*) (1884) 11 I.A, 44, 6 All, 313 *supra.*

(*n*) *Ajudhia Buksh* v. *Mt Rukmin Kuar* (1884) 11 I A, 1, 10 Cal, 482, follg. *Lainson* v. *Lainson* 43 E R, 1063, sec. 27, Transfer of Property Act.

(*o*) *Lullu Singh* v *Gur Narain* (1923) 45 All., 115 F B.

(*p*) Transfer of Property Act IV of 1882, sec. 19.

(*q*) Sec. 21 of the T. P. Act.

person (q^1). When a prior interest is invalid as contravening the rule against perpetuities, the subsequent interest also fails (q^2). But of course if the ulterior disposition is not valid the prior disposition is not affected by it (q^3). A gift can be made with the condition superadded that the interest created shall cease to exist on the happening of an uncertain event. Accordingly where a gift is made to a person and his heirs followed by a defeasance clause that on failure of the donee's lineal male descendants, the property is to revert to the donor and his heirs, the defeasance clause would be void as it is to take effect on an indefinite failure of male issue. But there can be a gift of an absolute estate defeasible on the event of the failure of issue living at the death of the donee (q^4).

Gift, when revocable.

§ 735. A gift is revocable only when there is a condition authorising it, or on the grounds of coercion, fraud or undue influence (r). The grounds on which gifts were avoided under Hindu law are not open after the amendment of the Transfer of Property Act making Ch VII applicable to gifts by Hindus. Where a gift is procured by fraud or undue influence, while a mere volunteer cannot retain it, a purchaser for value from the donee without notice of the fraud or undue influence would be protected (s).

No presumption of joint tenancy.

Gift to females.

§ 736. There is no presumption of a joint tenancy in the case of a gift to several donees. They take only as tenants in common (t). There is no rule of Hindu law that a gift to a female carries with it, in the absence of express words, only a life estate or a limited estate of a Hindu woman (u). The contrary indeed appears to be settled (§ 765).

(q^1) Sec 28 of the T. P. Act. *Ganendro Mohun Tagore* v. *Rajah Juttendro Mohun Tagore* (1874) 1 I A., 387, 395

(q^2) Sec. 16 of the T. P. Act.

(q^3) Sec. 30 of the T. P. Act. *Narsing* v. *Mahalakshmamma* (1928) 55 I.A., 180, 50 All., 375.

(q^4) *Saraju Bala* v. *Jyotirmoyee* (1931) 58 I A., 270, 59 Cal., 142, *Bhoobun Mohini* v. *Hurrish Chunder* (1879) 5 I.A., 138, 4 Cal., 23.

(r) *Ibid*, Sec. 126, see *Manigavri* v. *Narandas* (1891) 15 Bom., 549.

(s) *Forman Ali* v. *Uzir Ali* (1936) 42 C.W.N., 14; *Behari Lal* v. *Sindubala* (1918) 45 Cal, 434, 439. See sec. 89 of the Trusts Act, 1882.

(t) *Jogeshwar Narain* v. *Ramchandra Dutt* (1896) 23 I A., 37, 23 Cal., 670; *Bahu Rani* v *Rajendra Baksh* (1933) 60 I.A., 95, 8 Luck., 121.

(u) *Bhaidas* v. *Bai Gulab* (1922) 49 I.A, 1, 7, 46 Bom., 153; *Sasiman* v. *Shib Narayan* (1922) 49 I.A., 25, 1 Pat., 305; *Shalig Ram* v. *Chiranjit Lal* (1930) 57 I.A., 282, 11 Lah., 645; *Saraju Bala* v. *Jyotirmoyee* (1931) 58 I.A., 270, 59 Cal., 142; *Rai Bishunath* v. *Rani Chandrika* (1933) 60 I.A., 56, 55 All., 61; *Mangamma* v. *Doravya* [1937] Mad., 335; *Narayanaswamy* v. *Gopalaswamy* (1937) 46 M.L.W., 258; *Hilalsingh* v. *Udesingh* (1937) 39 Bom. L.R., 1217.

Trusts in Hindu law.

§ 736 A. Trusts of various kinds have been recognised in Hindu law. It is obvious that property whether movable or immovable must for many purposes be vested more or less absolutely in some person or persons for the benefit of other persons (*v*). But as the Privy Council observed, "The anomalous law which has grown up in England of a legal estate which is paramount in one set of Courts, and an equitable ownership which is paramount in Courts of Equity does not exist in, and ought not to be introduced into Hindu law" (*v*). In *Chhatra Kumari* v *Mohan Bikram*, their Lordships reiterated that the Indian law does not recognise legal and equitable estates (*w*). In *Kenchava* v. *Girimallappa*, Lord Phillimore made it quite clear that "the theory of legal and equitable estates is no part of Hindu law and should not be introduced into the discussion" (*x*).

Trust how created

Apart from the Indian Trusts Act, under Hindu law, a transfer by way of trust may be made without writing (*y*) Now the Indian Trusts Act, 1882 which relates to private trusts applies to Hindus as well as to others where it is in force (*z*). A trust may be created for any lawful purpose by any person competent to contract and, with the permission of the principal Civil Court, by or on behalf of a minor. Every person capable of holding property may be a beneficiary Where the Indian Trusts Act is in force, no trust in relation to immovable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee. No trust in relation to movable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee (*a*)

Essentials of trust

Every person capable of holding property may be a trustee; but where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract (*b*) To constitute a trust not only an intention to create it is necessary but the purpose of the trust, the beneficiary, and the subject-

(*v*) (1872) 1 I A. Sup Vol 47, 71, see also *Webb* v. *Macpherson* (1904) 30 I.A., 238, 245, 31 Cal., 57.

(*w*) (1931) 58 I A, 279, 297, 10 Pat, 851, 859

(*x*) (1924) 51 I.A, 368, 374, 48 Bom, 569.

(*y*) See also sec 9 of the Transfer of Property Act.

(*z*) The Trusts Act, 1882, is now in force in the Madras Presidency, North Western Province, the Punjab, Oudh, Central Provinces, Coorg and Assam and the whole of the Presidency of Bombay including the Scheduled Districts.

(*a*) The Trusts Act, S 5.

(*b*) The Trusts Act, S. 10.

matter of the trust should be indicated with reasonable certainty; and unless the trust is declared by will or the person who creates the trust declares himself to be the trustee, the trust property must be transferred to the trustee (*c*).

Validity of trusts.

§ 736 B. It is settled that as a man cannot be allowed to do by indirect means what is forbidden to be done directly, trusts can only be sustained to the extent and for the purpose of giving effect to such beneficiary interests as the law recognises. It was held in the *Tagore* case that after the determination of such interests, the beneficial interest in the residue of the property remains in the person who, but for the gift or the bequest would lawfully be entitled thereto (*d*). Accordingly a trust cannot be created in favour of an unborn person contrary to the rule against perpetuities or to the rule of Hindu law that you cannot create an estate unknown to it, such as an estate in tail male.

The rule against perpetuity embodied in sec. 14 of the Transfer of Property Act is expressly made inapplicable to religious and charitable gifts by section 18 of the Act. Where a trust is created for religious or charitable purposes as well as for the benefit of one's own relations, the invalidity of the latter as offending the rule against perpetuity will not affect the validity of the former. Nor conversely will the validity of the former validate the latter. There is no rule of Hindu law that where the dominant motive is to benefit one's own relations and that fails for invalidity, a trust for charitable and religious purposes of part of the property will be invalid (*e*).

Resulting trusts.

Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust-property, the trustee, in the absence of a direction to the contrary, must hold the trust-property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative (*f*).

(*c*) Sec. 3, Trusts Act. *Parma Nand* v. *Nihal Chand* (1938) 65 I.A., 252, A.I.R. 1938 P.C. 195.

(*d*) The *Tagore* case (1872) I.A. Sup. Vol. 47, 72.

(*e*) *Kayastha Pathshala* v. *Mt. Bhagwati Devi* (1937) 64 I.A., 5, [1937] All., 3.

(*f*) Sec. 83, Trusts Act.

CHAPTER XXI

WILLS.

Wills unknown to Hindu law.

§ 737. The origin and growth of the testamentary power among Hindus has always been a puzzle to lawyers. Wills were wholly unknown to Hindu law. Apparently there was no name for them either in Sanskrit or in the vernacular languages (*a*) Probably a father made a partition of his self-acquired as well as family property before he died or before he entered the *vanaprastha* order. Deeds of gift were undoubtedly common, but such as were intended to take effect only on the death of the donor and revocable during his life, do not find a place in the elaborate enumeration and description of documents given by the Sanskrit writers (*b*) The reason probably was that sentiment was strongly against revoking gifts, once they were formally made. Wills were certainly known to Mohommedans and contact with them during the Mohommedan rule and later with the Western nations was probably responsible for the practice of substituting formal testamentary instruments for the informal written or oral instructions which must have been from early times, in occasional use, for though testamentary instruments in the sense known to English law were unknown, it does not necessarily follow that oral or written directions by a dying man to his heirs intended to affect their conscience in the disposal of his property after his death were never given (*c*).

§ 738. It has been suggested that some texts of the Hindu sages contain the actual germ of a will. Katyayana says: "What a man has promised, in health or in sickness, for religious púrpose, must be given; and if he die without giving it, his son shall doubtless be compelled to deliver it". And again, "After delivering what is due as a friendly gift (promised by the father), let the remainder be divided among the heirs." And so Harita says: "A promise legally made in

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(*a*) Mr Colebrooke refers to '*Sankalpa*' as explained by Jagannatha as signifying the nearest term for a will, and thinks that testament was unknown to Hindu law, Dig, II, 193 note, 2 Stra. H.L, 418, 420, 431 The Tamil Lexicon (Madras University) gives '*maranasasanam*' as signifying 'the last will and testament,' but as a modern usage (Vol. V, p 3084).

(*b*) Jha, H L S., I, Ch. IV, 96· the seven kinds of documents in use amongst the people were documents of partition, gift, purchase, mortgage, convention or agreement, bondage and debt; Brih., VIII; Narada, I *sqq* , Arthasastra, Bk I, Ch. X.

(*c*) *Nagalutchmee* v. *Gopoo Nadaraja* (1856) 6 M.I.A., 309, 344.

words, but not performed in deed, is a debt of conscience both in this world and the next" (*d*). These are inadequate data though undoubtedly a special sanctity attached to pious gifts. It is improbable that, when an unequal division by the father was condemned, the law of succession was allowed to be appreciably altered by testamentary dispositions.

In India, as in other countries, the introduction of gifts by will into general use has followed the conveyance of property *inter vivos* (*e*).

Testamentary power in Bengal.

§ 739. The testamentary power of a Hindu was first admitted in Bengal where the power of alienation was most exercised (e^1). In 1812, the Sudder pandits laid down the general principle, that "the same rule applies to bequests as to gifts; every person who has authority, while in health, to transfer property to another, possesses the same authority of bequeathing it" (e^2). It is now beyond dispute that in Bengal a father, as regards all his property, and a coheir as regards his share, may dispose of it by will as he likes, whatever may be its nature (e^3).

In Southern India.

§ 740. In Southern India, the tendency of the Sudder Judges was at first to accept the opinions of Sir Thomas Strange, Mr. Colebrooke and the pandits, that the legality of a will must be tried by the same tests as that of a gift; for instance, that it would be valid if made to the prejudice of a widow, invalid if made to the prejudice of male issue. Then, Madras Reg. V of 1829 (Hindu Wills) was passed, which, reciting that wills were instruments unknown, enacted that for the future Hindu wills should have no legal force whatever, except so far as they were in conformity with Hindu law according to authorities prevalent in the Madras Presidency. Wills were not only set aside where they prejudiced the issue, but the Courts also laid down that

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(*d*) Dig I, 400; I, 447, according to Brihaspati, gift by one afflicted with an illness is bad XV, 9, and Narada refers to gift by one distressed IV, 9, 10. "Distressed," means, "on the pain of an incurable disease," Dig., I, 453, *Forman Ali* v. *Uzu Ali* (1937) 42 C.W.N., 14.

(*e*) *Tagore* v. *Tagore* (1872) I. A Sup. Vol. 47, 68.

(e^1) See the *Nuddea* case, *Eshanchand* v. *Eshorchund* (1792) 1 S.D., 2; *Dialchund* v. *Kissory* (1793) Montr., 371; F. MacN., 357; *Gopee* v. *Rajkristna* (1800) Montr., 381, F. MacN., 356; *Ramtoonoo* v. *Ramgopal* (1808) 1 Kn., 245, F. MacN., 336.

(e^2) *Sreenarain* v. *Bhya Jha* (1812) 2 S.D., 23 (29, 37); *Juggomohun* v. *Neemo* (1831) Morton, 90.

(e^3) Per Lord Kingsdown, *Nagalutchmee* v. *Gopoo* (1856) 6 M.I.A., 309, 344; per Peacock, C.J., *Tagore* v. *Tagore* (1867) 4 B.L.R. (O.C.J.), 103, 159; per Willes, J., *Tagore* v. *Tagore* (1872) 9 B.L.R., 396, I.A. Supp. Vol. 47.

where a man without issue bequeathed his property away from his widow and daughters, such a will would be absolutely illegal and void, unless they had assented to it (*f*).

Finally the Sudder Court by its decree in 1850 affirmed, in accordance with the opinion of pandits, the testamentary power of a Hindu to dispose of his property (*g*). This decision was on appeal, affirmed in 1856 by the Judicial Committee The Privy Council observed: "The strictness of the ancient law has long since been relaxed, and throughout Bengal, a man who is the absolute owner of property may now dispose of it by will as he pleases, whether it be ancestral or not . . . even in Madras it is settled that a will of property, not ancestral, may be good" (*h*) After some conflicting decisions of the Sudder Court, the Madras High Court reviewed in 1862 all the previous decisions and reaffirmed the power of a testator, who has no male issue, to make a binding will by which the bulk of his property is bequeathed to a distant relation after providing sufficient maintenance for his widow (*i*). This decision, of course, put an end to all discussion as to the capacity of a testator in Madras to make a binding will.

In Bombay.

§ 741. In Bombay, in a very early case, the pandits when consulted said, "There is no mention of wills in our *Shastras*, and therefore they ought not to be made" (*j*). In 1866, Westropp, J said. "In the Supreme Court the wills of Hindus have been always recognised, and also in the High Court, at the original side. Whatever questions there may formerly have been as to the right of a Hindu to make a will relating to his property in the mofussil, or as to the recognition of wills by the Hindu law, there can be no doubt that testamentary writings are, as returns made within the last few years from the Zillahs show, made in all parts of the mofussil of this Presidency" (*k*).

(*f*) *Mootoovengada* v *Toombayasamy* Mad. Dec. of 1849, 27; *Tullapragadah* v. *Crovedy* 2 Mad. Dec., 79; *Sevacawmy* v. *Vaneyummal* Mad. Dec. of 1850, 50.

(*g*) *Nagalutchmee* v. *Nadaraja* Mad. Dec. of 1851, 226, relying on *Ramtoonoo* v. *Ramgopal* (1808) 1 Kn., 245.

(*h*) *Nagalutchmy* v. *Gopoo* (1856) 6 M.I.A., 309, 344.

(*i*) *Vallinayagam* v. *Pachche* (1862) 1 Mad. H.C., 326, 339.

(*j*) 2 Stra. H.L., 449, *Deo Baee* v. *Wan Baee* 1 Bor., 27 (29); *Goolab* v. *Phool*, *ib*, 154 (173); *Gungaram* v. *Tappee*, *ib*., 372 (412); *Ichharam* v. *Prumanund* 2 Bor., 471 (515); these decisions ranged from 1806 to 1820.

(*k*) *Narottam* v. *Narsandas* (1866) 3 Bom. H.C. (A.C.J.), 8.

The testamentary power of Hindus over their property must now be considered as completely established (*l*).

History of legislation.

§ 742. Express legislation in the shape of the Hindu Wills Act (XXI of 1870) followed, as it was thought expedient to provide rules for the execution, revocation, interpretation and probate of wills of Hindus, Jainas, Sikhs and Buddhists in the territories subject to the Lieutenant-Governor of Bengal and in the towns of Madras and Bombay. By that Act, certain sections of the Indian Succession Act, 1865, which, of course, was not applicable to Hindus (*m*) were made applicable to all wills and codicils made by Hindus within the said territories and limits and to wills and codicils made outside but relating to immovable property situate within those territories and limits. Sec. 3 of that Act provided that nothing contained in the Act shall authorise a testator to bequeath property which he could not have alienated *inter vivos*, or to deprive any person of any right of maintenance of which, but for the Act, he could not deprive them by will. It also further provided that nothing contained in the Act shall authorise a testator to create an interest which he could not have created before the 1st September, 1870. Wills made by Hindus in other parts of India continued to be governed entirely by Hindu law unaffected by any statutory provision. In 1881, the Probate and Administration Act provided for the grant of probate of wills and letters of administration to the estates of Hindus, whether governed by the Hindu Wills Act or not. The Succession Certificate Act (VII of 1889) was passed to facilitate the collection of debts on successions and to afford protection to parties paying debts to the representatives of deceased persons. Finally, the Indian Succession Act was passed in 1925 consolidating the law applicable to intestate and testamentary succession in British India. It superseded *inter alia* the India Succession Act, 1865, the Hindu Wills Act, 1870, the Probate and Administration Act, 1881 and the Succession Certificate Act (VII of 1889). This Act, as amended by Acts XXXVII of 1926 and XVIII and XXI of 1929, now applies, subject to certain exceptions mentioned therein, to all wills and codicils made by Hindus, Buddhists, Sikhs and Jainas throughout British India (m^1).

(*l*) *Soorjeemoney Dossey* v. *Denobundoo Mullick* (1862) 9 M I.A., 123, 136; *Beer Pertab* v. *Rajendra Pertab* (1867) 12 M.I.A., 1, 37-38; *Tagore* v. *Tagore* (1872) I.A. Sup. Vol. 47, 67-68, 9 Beng. L.R., 377.

(*m*) See sec. 331 of the Indian Succession Act (X of 1865).

(m^1) Neither parts II to V relating to intestate succession nor such provisions of part VI as are specially excepted by sections 57 and 58 apply to Hindus, Buddhists, Sikhs and Jainas.

The Indian Succession Act.

§ 713. The provisions of Part VI of the Indian Succession Act. 1925 (*n*) which are set out in Schedule III to that Act. subject to the restrictions and modifications specified therein, apply (1) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the 1st day of January, 1927 and (2) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jainâ before that date but on or after 1st September, 1870, within the territories and limits to which the Hindu Wills Act applied, as well as to all such wills and codicils made outside those territories and limits, so far as relates to immovable property situate within those territories or limits (*o*).

Definition of a will.

§ 714. A will is the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death (*p*). Every will or codicil made by a Hindu is now required to be in writing and attested by at least two witnesses (*q*).

(*n*) The Indian Succession Act (XXXIX of 1925), sections 57-191.

(*o*) *Ibid*, sec 57.

(*p*) *Ibid*, sec 2 (*h*). A codicil means an instrument made in relation to a will and explaining, altering or adding to its dispositions and shall be deemed to form part of the will, sec. 2 (*b*) In so far as the provisions of a will are intended to take effect from any date anterior to the death of the testator, it is not a will [*Brijraj Singh* v. *Sheodan Singh* (1913) 40 I A, 161, 35 All, 337], as for instance, if it reserves a life estate to the testator, *Pirsab Valad Kasimsab* v. *Guruppa Basappa* (1914) 38 Bom., 227 On the question whether a document is testamentary or not, see *Jagannatha* v. *Kunja* (1921) 48 I A, 482, 44 Mad., 733, *Vijayaratnam* v *Sudarsana Rao* (1925) 52 I.A., 305, 48 Mad, 614, *Krishna Rao* v *Sundara Siva Rao* (1931) 58 I A, 148, 54 Mad, 440, *Chand Mal* v *Lachhmi Narain* (1900) 22 All, 162, *Udai Raj* v. *Bhagwan Baksh* (1910) 32 All, 227, *Chaitanya Gobind* v. *Dayal Gobind* (1905) 32 Cal., 1082; *Din Tarini Debi* v. *Krishna Gopal* (1909) 36 Cal, 149 (matrimonial deed); *Baisnav Charan* v *Kishore Dass* (1911) 15 C W.N, 1014; *Subbareddi* v. *Doraisami* (1907) 30 Mad, 369 (no technical words necessary), *Garib Shaw* v. *Patia Dassi* A I.R. 1938 Cal, 200, 66 C L J, 337 (a document partly creating a trust during a testator's lifetime and partly containing testamentary dispositions).

(*q*) The detailed requirements as to signature and attestation are given in sec. 63 of the Indian Succession Act, 1925. But sec. 67 invalidating bequests to attesting witness or his wife or her husband does not apply to Hindus *Umakanta* v. *Biswambhar* (1929) 8 Pat, 419 The onus of establishing an oral will made before 1st January, 1927 is a very heavy one. It must be proved with the utmost precision, and with every circumstance of time and place, *Beer Pertab Sahee* v. *Rajender Pertab* (1867) 12 M.I A, 1, 28, *Venkat Rao* v *Namdeo* (1931) 58 I A, 362, 368, *Mahabir Prasad* v *Syed Mustafa* A.I.R. 1937 P.C., 174, 41 C.W.N., 933, (1937) 2 M.L.J., 518, *Ram Gopal Lal* v. *Arpna Kunwar* (1922) 49 I.A., 413, 44 All., 495 (onus as to signature).

Who can dispose of by will.

§ 745. Every person of sound mind, not being a minor, may dispose of his property by will (*r*). Apart from the Act, all the Courts have held that a Hindu who has not attained the age of majority prescribed by the Indian Majority Act, cannot execute a valid will (*s*). A person who has not the capacity to comprehend the extent of his property and the nature of the claims of people whom he is excluding from participation has not a sound disposing mind (*t*).

Fraud and coercion.

§ 746. A will, or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator is void (*u*). To constitute undue influence for setting aside a will there must be coercion. Neither fiduciary relationship, nor a dominating position which will readily raise a presumption of undue influence in cases of gifts *inter vivos*, will avail. The circumstance that one person had unbounded influence over another even though it was a very bad influence, would not be undue influence so as to invalidate the latter's will (*v*).

Undue influence.

Onus.

§ 747. The onus rests on the person who propounds a will to satisfy the Court that it is the will of a free and capable testator (*w*), and where circumstances exist which excite the suspicion of the Court, to remove such suspicion, and to prove affirmatively that the testator knew and approved of the contents of the document (*w*[1]). Where a

(*r*) I S. Act, sec. 59. Four explanations are given. Explanation 3 says. A person who is ordinarily insane may make a will during an interval in which he is of sound mind. Explanation 4 says: No person can make a will while he is in such a state of mind, whether arising from intoxication or from illness or from any other cause, that he does not know what he is doing.

(*s*) *Vijayaratnam* v. *Sudarsana Rao* (1925) 52 I.A., 305, 308, 48 Mad., 614; *Hardwari Lal* v. *Gomi* (1911) 33 All., 525; *Bai Gulab* v. *Thakore Lal* (1912) 36 Bom., 622; *Krishnamachariar* v. *Krishnamachariar* (1915) 38 Mad., 166.

(*t*) *Harwood* v. *Baker* (1880) 13 E.R., 117 P.C.; 14 Hals, 2nd ed., p. 228.

(*u*) The Indian Succession Act, 1925, sec. 61.

(*v*) *Boyce* v. *Rossborough* (1856) 6 H.L.C, 2; *Wingrove* v. *Wingrove* (1885) 11 P.D., 81; *Baudains* v. *Richardson* (1906) A.C., 169; *Craig* v. *Lamourex* (1920) A.C., 349; *Parfitt* v. *Lawless* (1872) L.R., 2 P & D, 462; *Bur Singh* v. *Uttam Singh* (1911) 38 Cal., 355 P.C.; *Sala Mahomed Jafferbhoy* v. *Dame Janbai* (1898) 24 I.A., 148, 152, 22 Bom, 17, *Nabagopal Sarkar* v. *Sarala Bala Mitter* A I.R. 1933 Cal., 574.

(*w*) *Barry* v. *Butlin* 2 Moo. P.C., 480, 12 E.R., 1089.

(*w*[1]) *Shama Churn* v. *Khettromani* (1901) 27 I.A., 10, 27 Cal., 521, explaining the rule in *Tyrell* v. *Painton* (1894) P. 151, as not applying unless circumstances excite suspicion; *Rash Mohini* v. *Umesh Chunder* (1898) 25 I.A., 109, 25 Cal., 824; *Sukh Dei* v. *Kedar Nath*

will is propounded by the principal beneficiary under it who took a leading part in its preparation and in procuring its execution, probate will be refused unless the evidence removes suspicion and clearly proves that the testator approved of the will (*x*). Ordinarily, of course, a will which is proved to have been signed and attested will be presumed, except where the testator's capacity is questioned, to have been made by a person of sound mind (*x*[1]) The onus of proving fraud or undue influence will be upon the caveator (*x*[2]).

Revocation.

§ 748 A will is liable to be revoked or altered by the maker of it, at any time when he is competent to dispose of his property by will (*y*). But marriage does not revoke a will or codicil of a Hindu (*z*), nor does the birth of a son subsequent to the execution of the will revoke it when he predeceases the testator (*a*). Section 70 of the Indian Succession Act now lays down categorically what acts only amount to revocation.

Extent of the testamentary power

§ 749. The law of gifts has furnished the analogy for the law of wills; it was settled in the *Tagore* case that even

(1901) 28 I A, 186, 23 All, 405, *Perera* v. *Perera* (1901) A C, 354, *Lachho Bibi* v *Gopi Narain* (1901) 23 All, 472, *Craig* v *Lamoure* (1920) A.C., 349, *Sajid Ali* v. *Ibad Ali* (1896) 22 I.A., 171, 23 Cal, 1 (as to what is insane delusion), *Shanmugaroya* v *Manika* (1909) 36 I A, 185, 32 Mad, 400, *Susil* v *Apsari* (1914) 19 C W N, 826, 20 C L J, 501, *Surendra Krishna* v *Rani Dassi* (1930) 47 Cal, 1043, *Saradindu Nath Raj* v *Sudhir Chandra Das* (1923) 50 Cal, 100, *Ibrahim* v *Mt Sada Bibi* (1929) 10 Lah., 558, *Jotindra Nath* v *Rajlakshmi* A I R 1933 Cal, 449 (mental capacity), *Surendra Nath* v. *Jnanendra Nath* A.I R 1932 Cal, 574.

(*x*) *Vellaswamy* v *Sivaraman* (1929) 57 I.A, 96, 32 Bom, L R, 511.

(*x*[1]) 14 Hals. 2nd ed, 227.

(*x*[2]) *Tyrrell* v *Painton* (1894) P, 151, 157, *Nabagopal* v *Sarala Bala* A I R 1933 Cal, 574

(*y*) Indian Succession Act, s 62 (revocation), where an agreement not to revoke a will was broken, see *Chhatta Kumari Devi* v *Mohun Bikram Shah* (1931) 58 I A, 279, 296, A I R 1931 P.C, 196. For the law before the Act, see, *Pertab Narain* v *Subhao Koer* (1877) 4 I A, 228, 3 Cal, 626 (no actual destruction necessary), where original will is lost, no presumption of revocation *Adiram* v *Bapulal* (1921) 45 Bom., 906 dissenting from *Anwar Hossein* v. *Secy of State* (1904) 31 Cal, 855 *Prajabala* v *Nityamoyee* A I R 1934 Cal, 17, see *Efari Dassya* v *Podei Dasya* (1928) 55 Cal, 482. No formal revocation is necessary, *Venkayamma* v. *Venkatramanayamma* (1902) 29 I.A, 156, 25 Mad., 678, subsequent disposal of property differently from the will does not amount to revocation, *Thakar Singh* v *Arya Pratinidhi* A I R. 1928 Lah, 934, *Rajendra Lal* v *Mrinalini* (1921) 48 Cal., 1100 (condition of gift made impossible by donor), *Lakshmi Narasamma* v. *Ammanna* (1936) 71 M L J, 845 (no formality necessary). As to obliterations, interlineations and alterations after execution requiring authentication, see Sec 71 of the Act.

(*z*) The Indian Succession Act, proviso to s 57.

(*a*) *Bodi* v. *Venkatasami* (1915) 38 Mad., 369.

if wills were not universally to be regarded in all respects as gifts to take effect upon death, they are generally so to be regarded as to the property which they can transfer, and the persons to whom it can be transferred (a^1). A Hindu may bequeath by will whatever property he or she is entitled to give away during life (b).

The rule is however not universal; and though a manager can dispose of a small portion of the family property in favour of the female members of the family by gift *inter vivos*, he cannot do so by will (c). A member of an undivided family cannot bequeath his coparcenary interest in the family property, because "at the moment of death, the right by survivorship is at conflict with the right by devise. Then the title by survivorship, being the prior title, takes precedence to the exclusion of that by devise" (d). In *Subbarami* v. *Ramamma*, a will made by a Hindu father who was joint with his infant son bequeathing certain family properties to his widow for her maintenance was held to be invalid as against the son although it would have been a proper provision if made by the father during his lifetime (e). Explaining this case as one where a father who is a co-sharer with his minor son cannot give consent on behalf of the latter, the Privy Council held in *Lakshmi Chand* v. *Anandi* that as it is

Devise of coparcenary property with consent of others.

(a^1) (1872) I.A., Sup. Vol. 47, 69.

(b) *Ante* §§ 382, 723; *Nagalutchmee* v. *Gopoo Nadaraja* (1856) 6 M.I.A, 309 (sole surviving coparcener), *Sontaun* v. *Jaggatsoondree* (1859) 8 M.I A, 66; *Beer Pertab* v. *Maharajah Rajendra* (1851) 12 M I A, 38; *Vallinayagam* v. *Pachche* (1863) 1 M.H.C., 326; *Narottam* v. *Narsandas* (1866) 3 Bom. H.C. (A.C.J.), 6, *Alami* v. *Komu* (1889) 12 Mad., 126, *Achutan Nair* v. *Cheriotti* (1899) 22 Mad., 9; *Promothonath* v. *Nagendrabala* (1908) 12 C.W N., 808, *Venkatasubba Rao* v. *Lakshmikantamma* A.I R. 1929 Mad, 785, *Wazir Singh* v. *Moti Singh* A.I.R. 1926 Lah., 395, *Basanta Kumar Basu* v. *Ram Shankar Roy* (1932) 59 Cal, 859. The same rule appears to prevail in the Punjab: Punjab Customs, 34, 68; Punjab Customary Law, 111, 94.

(c) *Parvathibai* v. *Bhagwant Vishwanath Patnak* (1915) 39 Bom., 593.

(d) *Vitla Butten* v. *Yamenamma* (1874) 8 Mad. H.C., 6; *Gooroova* v. *Narrainsawmy*, *ib*, 13; *Narottam* v. *Narsandas* (1866) 3 Bom. H.C. (A.C.J.), 6, *Gangubai* v. *Ramanna* (1866) 3 Bom. H.C. (A C.J.), 66; *Udaram* v. *Ranu* (1875) 11 Bom. H.C., 76; *Lakshman* v. *Ramchandra* (1881) 7 I.A., 181, 5 Bom., 48; *Lal Bahadur* v. *Kanhya Lal* (1907) 34 I.A., 65, 29 All., 244, *Hari Lal* v. *Bai Mani* (1905) 29 Bom., 351; *Lalta Prasad* v. *Sri Mahadeoji* (1920) 42 All., 461. This rule applies in favour of a son *in gremio matris* as much as it does in the case of a son *in esse*, *Hanmant Ramchandra* v *Bhimacharya* (1884) 12 Bom.. 105, *Parmanund* v. *Shivcharan Das* (1921) 2 Lah., 69; *Parvatibai* v. *Bhagwant* (1915) 39 Bom., 593, *Munni Lal* v. *Mt. Phula* A.I.R. 1927 All., 679; *Jamnadas* v. *Gordhandas* A I.R. 1926 Bom., 463.

(e) (1920) 43 Mad., 824.

open to a coparcener with the consent of his cosharers to charge for his own separate purposes the share of the joint family property which would come to him on a partition, a will made by one coparcener with the consent of the other coparceners, where they are adults, will be valid, not as a will, but as an agreement operative to transfer the property to the donee or legatee (*f*). A bequest of joint family property can be ratified by the surviving coparcener either by himself electing to take under the will or otherwise (*f*[1]). Where a son who is appointed executor and trustee under his father's will, obtains probate and accepts the position, he cannot assert an adverse title claiming that the property as joint family property, until he has got a discharge from the trust (*f*[2]).

Any disposition of ancestral property by will will be invalid as against a son born or adopted subsequent to the execution and before the testator's death, as also against a son in the womb at his death (*g*). But where a son born or adopted predeceases him, the dispositions of the will are good; for a Hindu will, like an English one, speaks as from the death of the testator, and its dispositions, if then not contrary to law, will be enforced (*h*).

(*f*) (1926) 53 I A., 123, 48 All, 313, following *Brijraj Singh* v. *Sheodan Singh* (1913) 40 I A, 161, 35 All, 337 The decision in *Appan Patracharlar* v *Srinivasacharlar* (1917) 40 Mad, 1122 is good law to the extent that the will, not as a will but as a gift by agreement is valid *Sadasivam* v *Sandanam* A.I.R 1927 Mad., 126, *Seetayya* v *Muthyalu* A I.R. 1931 Mad, 106, *Babu Singh* v *Lal Kuer* A.I R. 1933 All, 830, *Venkoba Sah* v. *Ranganayahi* (1934) 71 M L J, 454 The actual decision in *Bhikabai* v *Purshottam* (1926) 50 Bom., 558 where a father disposed of the whole ancestral property by will and not only the father's undivided share was right. But the reasoning that a will by which he transfers his undivided share, even with the consent of his adult son, cannot be regarded as an agreement is opposed to the decision in 48 All, 313 P C

(*f*[1]) *Parmanundoss* v *Venayek Rao* (1882) 9 I A, 86, 7 Bom, 19, *Anandrao* v *Admr Genl of Bombay* (1896) 20 Bom, 450 As to election, see sec. 180, Succn. Act which applies to Hindus *Kishen Chand* v *Narinjan* (1929) 10 Lah, 389

(*f*[2]) *Srinivasamurthi* v. *Venkatavarada* (1911) 38 I.A, 129, 34 Mad., 257 affg, 29 Mad, 239.

(*g*) A child in the womb and a son adopted by the testator's widow after his death are in contemplation of law in existence at the death of the testator, the *Tagore* case (1872) I.A, Supp. Vol. 47, *Bodi* v *Venkatswami Naidu* (1914) 38 Mad., 369, *Hanmant* v. *Bhimacharya* (1888) 12 Bom, 105, *Minakshi* v *Virappa* (1885) 8 Mad., 89, *Aiyasami Udayar* v. *Appasami* (1915) 28 M.L.J., 542, 545; *Alkhu Ram* v. *Raman Lal* A.I.R. 1933 All., 7 (*en ventre sa mere*), *Venkatanarayana Pillai* v. *Subbammal* (1915) 43 I.A., 20, 39 Mad., 107 (adoption), *Parmanund* v *Shivcharan* (1921) 2 Lah., 69 (adoption).

(*h*) (1914) 38 Mad., 369 *supra.*

Where a will contains an authority to adopt and a disposition of ancestral property, an adoption made by the widow subsequent to the testator's death, does not affect the disposition; 'for the will speaks as at the death of the testator, and the property is carried away before the adoption takes place' (*i*).

Where a member of an undivided Hindu family declares his intention to sever in interest, he can bequeath his undivided share in the property. It is immaterial that the communication of the testator's intention to sever, though sent before, was received after his death by the other coparcener (*j*). Communication may be necessary only where the other coparcener is not a minor under the testator's own guardianship (*k*).

A woman may dispose of by will any property which during her life is absolutely under her own control (*l*). She cannot dispose of property which she had inherited from a male and as to which her estate is limited by the usual restrictions. This rule is now universal in the case of a widow under the Hindu Women's Rights to Property Act, 1937, which makes her estate a limited one in all cases, notwithstanding any rule of Hindu law or custom to the contrary (*m*).

(*i*) See *ante* § 204; *Krishnamurthi* v. *Krishnamurthi* (1927) 54 I.A., 248, 50 Mad, 508; *Lakshmi* v. *Subramanya* (1889) 12 Mad., 490; *Narayanaswami* v. *Ramaswami* (1891) 14 Mad., 172. The giving of an authority to adopt is not necessarily inconsistent with the conferring of an absolute estate on the widow. *Jeevkore Bhai* v. *Krishnadoss* (1932) 63 M.L J, 242.

(*j*) *Narayanarao* v. *Purushottamrao* (1938) 1 M.L.J., 45; *Rama Ayyar* v. *Meenakshi Ammal* A.I.R. 1931 Mad., 278.

(*k*) *Venkateswara Pattar* v. *Mankayammai* (1936) 69 M.L.J., 410, 421-423; A.S. 353 of 1933, (1938) 1 M.L.J. S.N., 35; but see *Shivappa Rudrappa* v. *Rudrava* (1933) 57 Bom, 1.

(*l*) *Venkatarama* v. *Venkatasurya* (1880) 2 Mad., 333 P.C. *Ante* §§ 618, 619.

(*m*) Before the Act, as to movable property inherited by a woman in the Mithila School, see *Sureshwar* v. *Maheshrani* (1921) 47 I.A., 233, 238, 48 Cal., 100; *Latur Rai* v. *Bhagwan Das* A.I.R. 1936 Pat., 80; *Jagannath Prasad Singh* v. *Surajdeo Narain Singh* A.I.R. 1937 Pat., 483. In Bombay, whether under the Mitakshara or the Mayukha, a widow has no power to devise inherited movables, though in the Mayukha jurisdiction, she could dispose of them during her lifetime. See *ante* § 643; *Bechar* v. *Bai Lakshmi* (1863) 1 Bom. H.C., 56; *Bai Devkore* v. *Amritram* (1885) 10 Bom., 372; *Sha Chamanlal* v. *Ganesh* (1904) 28 Bom., 453; *Bhagirathibai* v. *Kahnujirao* (1887) 11 Bom., 285 F.B., *Gadadhar* v. *Chandrabhagabai* (1892) 17 Bom., 690 F.B.; *Chamanlal* v. *Bai Parvati* (1934) 58 Bom., 246, 253.

Disinheritance.

§ 750. A mere expression in a will that the heir-at-law shall not take any part of the testator's estate is not sufficient to disinherit him, without a valid gift of the estate to some one else. He will take by descent, and by his right of inheritance, whatever is not validly disposed of by the will and given to some other person (*n*). A person is deemed to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect (*o*) Where under the terms of a will the *corpus* of the estate is not to vest until the happening of a certain event, it will in the meantime vest in the heir, and on the death of the heir intestate it will devolve on his heir (*p*). On the other hand, it is not necessary that a will should contain an express declaration of a testator's desire or intention to disinherit his heirs, if there is an actual and complete gift to some other person capable of taking under it (*q*) And where a testator clearly expresses his intention to disinherit his son and at the same time bequeaths his property to another, the former will, in a doubtful case, enable the latter to be construed as an absolute estate (*r*).

Ineffectual devise.

Where there is a residuary legacy, all property which is not effectually disposed of by the testator will fall into the residue (*s*). But when there is no valid residuary legacy, the property undisposed of goes to the heir.

A bequest in favour of an infant, an idiot, a lunatic or other disqualified person will be valid, for, as possession under a devise is not necessary to its validity, it is not necessary that the legatee should be capable of assenting to

(*n*) Per Peacock, C J in the *Tagore* case (1867) 4 B L R. (O C J) 103, 187, Per Willes, J, on appeal, 9 B L R, 402, I A, Supp. Vol 47, *Promotho* v *Radhika* (1875) 14 B L R, 175, *Lallubhai* v *Mankuvarabai* (1878) 2 Bom, 488, *Mulraz* v. *Chalikani* (1838) 2 M I A, 54, *Subbayya* v *Surayya* (1887) 10 Mad, 251, *Narottam* v *Narasandas* (1866) 3 Bom H.C (A C J), 6 The rule of English law that the heir-at law is not to be disinherited but by express words or by necessary implication has no application to the wills of Hindus, *Tarakeshwar Roy* v. *Shoshi Shikareswar* (1883) 10 I.A, 51, 60, 9 Cal, 952

(*o*) As, for instance, where a person has appointed his executors but made no dispositions of his property, or the disposition is invalid or illegal, or is upon a contingency which has not yet happened, or where there is a valid disposition of part of the property and he dies intestate as to the rest See sec 30, Suc Act and illustration

(*p*) *Amulya* v *Kalidas* (1905) 32 Cal, 861

(*q*) *Prosunno* v. *Tarrucknath* (1873) 10 B L R, 267, 19 W R, 48.

(*r*) *Narsing* v. *Mahalakshmamma* (1928) 55 I A, 180, 196, 197, 50 All, 375

(*s*) S. 103, I. S Act, *Pursottamdas* v. *Gobind* (1926) 51 M L J, 6 P.C. But where a share which is part of the general residue lapses, it will go as undisposed of to the heir S. 108, I. S. Act. *Elizabeth* v. *Sutherland* A.I.R. 1936 Rang., 134.

it (*t*). A person who is guilty of murdering the testator cannot take any benefit under his will (*t*[1]).

Estate must be one allowed by Hindu law.

§ 751. Apart from recent legislation, under Hindu law the person capable of taking under a will must be such a person as could take a gift *inter vivos*, and therefore must either in fact or in contemplation of law be in existence at the death of the testator (*u*). This was put upon the ground that the law of gifts during life requires relinquishment 'in favour of the donee who is a sentient person' (*v*). In the *Tagore* case, however, it was observed that though the general principle of Hindu law is that a donee must be in existence, there may be exceptional cases of provisions by way of contract or of conditional gift on marriage or other family provision for which authority may be found in Hindu law or usage (*w*).

Recent Statutes

The view adopted in the *Tagore* case, that gifts to unborn persons were necessarily bad as repugnant to Hindu law, was obviously not that of the draftsman of the Hindu Wills Act, 1870, or else he could never have incorporated in it s. 101 of the Indian Succession Act, 1865. Indeed one eminent judge of Bengal, Wilson, J. held that the Hindu Wills Act must be taken to have altered the Hindu law in this respect (*x*), but this was dissented from in later cases in Bengal and in other High Courts (*y*). The result was constantly to defeat the obvious and clearly expressed intentions of Hindu testators, and was felt by the community as an intolerable restriction on their freedom of disposition.

Bequests to unborn persons valid.

§ 752. Accordingly the law in this respect was altered by Madras Act I of 1914 which applied not only to future dispositions but also to wills executed

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(*t*) *Kooldeb Narain* v. *Wooma* (1863) Marshall, 357, 2 Hay., 370.

(*t*[1]) *In the Estate of Hall, Hall* v. *Knight and Baxter* [1914] 1 P. 1; *Re Houghton, Houghton* v. *Houghton* [1915] 2 Ch., 173.

(*u*) *Juttendromohun Tagore* v. *Gnanendromohun Tagore* (1872) I.A., Sup. Vol. 47, 70, 9 B.L.R, 402; *Chandi Charan* v. *Sidheswari* (1889) 15 I.A., 149, 16 Cal., 71, *Kristoromoney* v *Norendro* (1886) 16 I.A, 29, 39, 16 Cal., 383 *Bai Motivahu* v. *Bai Mamubai* (1897) 24 I.A., 93, 21 Bom., 709; affg. (1891) 15 Bom., 443; *Dinash Chandra Roy* v. *Biraj Kamini* (1911) 15 C.W.N., 945.

(*v*) D. Bh., I, 21, (1872) I A. Sup. Vol., 47, 67 *supra*.

(*w*) (1872) I.A., Sup. Vol. 47, 70 *supra*, *Raja of Ramnad* v. *Sundarapandya* (1910) 46 I.A, 64, 42 Mad., 581 affg (1914) 27 M.L.J., 694, *Khajet Solehman* v. *Sir Salimullah* (1922) 49 I.A., 153, 49 Cal., 820, *Jatindra* v *Ghanashyam* (1923) 50 Cal, 266.

(*x*) *Alangamonjari Dabee* v. *Sonamoni Dabee* (1882) 8 Cal., 157.

(*y*) (1882) 8 Cal., 637; *Jairam Narronji* v. *Kaverbai* (1885) 9 Bom., 491; *Yethirajulu Naidu* v. *Mukuntha Naidu* (1905) 28 Mad., 363, *Radha Prasad Mullick* v. *Rani Money Dasi* (1910) 38 Cal., 188, on appeal (1913) 41 I.A, 176, 41 Cal., 1007.

before the date of the Act, in respect of such dispositions as were intended to come into operation after the date of the Act (*z*). The validity of a disposition in favour of an unborn person was however made subject to the rule against perpetuity contained in section 101 of the Indian Succession Act, 1865. Following the lead given by the Madras Act, in 1916, an Act of the Indian Legislature, the Hindu Disposition of Property Act (XV of 1916) was passed declaring the validity of dispositions in favour of unborn persons subject to the provisions of sections 100 and 101 of the Indian Succession Act, 1865, and to an independent provision modifying section 103 of the Indian Succession Act, 1865, confining the failure of the prior bequest to the grounds stated in sections 100 and 101 but not specifically excluding section 102 of the Act This Act applies to the whole of British India except to the province of Madras to which however it might be extended In 1920, in *Soundara Rajan* v. *Natarajan*, it was discovered that the Madras Act (I of 1914) which was passed by the Provincial Legislature was *ultra vires* that legislature in so far as it purported to affect the law administered on the original side of the High Court, having regard to the provisions of the Indian Councils Act, 1861, and the Indian High Courts Act, 1861 (*a*). As a consequence, in 1921, the Indian Legislature intervened with the Hindu Transfers and Bequests (City of Madras) Act (VIII of 1921) which simply repeated the provisions of Madras Act I of 1914 and applied them to the City of Madras.

As the Hindu Wills Act applied section 102 of the Indian Succession Act, 1865, relating to invalidity of gifts to a class, to the City of Madras, the combined operation of that section and of the enactments making dispositions in favour of unborn persons valid, resulted in an anomaly which was illustrated in the decision of the Judicial Committee in *Soundara Rajan* v. *Natarajan* (*b*). In 1925, the consolidating

(*z*) The Hindu Transfers and Bequests Act (Madras Act I of 1914), s 2 (2).

(*a*) (1920) 44 Mad., 446

(*b*) (1924) 52 I A, 310, 48 Mad, 906. As there could be no valid gift to unborn persons, sections 100 to 102 of the Succession Act did not apply to Hindu wills by reason of the saving clause in the Hindu Wills Act as interpreted by the Courts *Alangamanjari* v *Sonamani* (1882) 8 Cal., 637, *Ram Lal Sett* v *Kanai Lal Sett* (1886) 12 Cal, 663, *Bhagabati* v *Kali Charan* (1911) 38 I A, 54, 38 Cal, 468. When such gifts were made valid by the new legislation, the saving disappeared and sections 100 to 102 became directly applicable to Hindu wills governed by the Hindu Wills Act, with the anomalous result that even bequests to members of a class which were valid before, became invalid.

Indian Succession Act was passed, sections 113 to 117 of that Act replacing sections 100 to 104 of the Indian Succession Act, 1865. It became necessary to amend the new Succession Act of 1925 as well as to bring all the connected Acts into line and hence the Transfer of Property (Amendment) Supplementary Act (XXI of 1929) was passed (*c*). By that Act, section 115 of the Indian Succession Act, 1925, was substantially modified so as to make a bequest to a class void only in regard to those persons as to whom it would be inoperative by reason of sections 113 and 114 of the Indian Succession Act. Sections 116 and 117 of the Indian Succession Act, 1925 were also modified. The three Acts altering the rule in the *Tagore* case were also amended by making the bequests in favour of unborn persons subject to the limitations and provisions contained in sections 113 to 116 of the Indian Succession Act, 1925, as amended by the Transfer of Property (Amendment) Supplementary Act (XXI of 1929) (*d*).

The Indiar Succession Act

§ 753. Dealing with gifts and bequests to unborn persons, section 2 of Act XV of 1916 lays down:— Subject to the limitations and provisions specified in this Act, no disposition of property by a Hindu, whether by transfer *inter vivos* or by will, shall be invalid by reason only that any person for whose benefit it may have been made, was not in existence at the date of such disposition (*e*). The date of the disposition, when it is by will, is the date of the testator's death.

Gift to unborn persons

The limitations and provisions subject to which a bequest in favour of an unborn person may now be made are those specified in sections 113 to 116 of the Indian Succession Act, 1925, as amended.

Section 113: Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed (*f*).

Must be of whole remaining interest.

(*c*) Secs. 12, 13 and 14. These amendments have no retrospective operation, sec. 15.

(*d*) The saving contained in restriction No. 2 in Schedule III to the Act does not of course touch the enactments repealing the rule in the *Tagore* case but only serve to keep that rule alive in respect of wills executed before the dates of those enactments.

(*e*) Section 3 of Madras Act I of 1914 and section 3 of Act VIII of 1921 are also to the same effect. The Madras Act applies also to wills made before the Act in respect of dispositions taking effect after the Act. See *Venkayamma* v. *Narasamma* (1917) 40 Mad., 640; *Muthusami Aiyar* v. *Kalyani Ammal* (1917) 40 Mad., 818.

(*f*) See illustrations to section 113, the Indian Succession Act; *Kuppuswami* v. *Jayalakshmi* (1935) 58 Mad., 15.

Rule against perpetuity.

Section 114· No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's death and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age. the thing bequeathed is to belong (f^1).

While the interest which is given cannot be postponed beyond the minority of the person to whom it is given, it is immaterial whether or not the persons from the termination of whose lives the period of eighteen years is to be computed take any interest in the property or are connected with the persons taking such interest (f^2). The rule against perpetuities is applied by scrutinising the validity of the gifts as at the death of the testator, having regard, as a general rule, not to the events which have actually happened but to the events which might have happened If the legacies are so given that in a possible event. the rules as to remoteness will be infringed, then they fail although in the particular events which have actually happened, the legal period was not exceeded (f^3).

Gift to a class.

Section 115 If a bequest is made to a class of persons with regard to some of whom it is inoperative by reason of the provisions of section 113 or section 114, such bequest shall be void in regard to those persons only and not in regard to the whole class (g).

This brings the law into conformity with the decision of Wilson, J, in *Ram Lal Sett* v. *Kanai Lall Sett* (h) and the decisions of the Privy Council in *Bhagabati* v. *Kali Charan* (i)

(f^1) See the illustrations to section 114, the Indian Succession Act. This differs from the English rule which is to the effect that every limitation of property must, to be valid, vest within a life or lives in being and twenty-one years and a period of gestation afterwards The period of twenty-one years is a period in gross without reference to the minority of anyone The person whose minority may be referred to need not be the donee or take any interest in the property, 25 Hals 2nd ed, 79, 96

(f^2) 25 Hals. 2nd ed., p. 95.

(f^3) 25 Hals 2nd ed., 125, *Soundara Rajan* v *Natarajan* (1924) 52 I.A, 310, 319, 320, 48 Mad, 906, *Saudaminey Dossee* v *Jogeshchandar* (1877) 2 Cal, 262, *Nabin Chandra* v. *Rajani Chandra* (1920) 25 C.W N, 901, *Kalachand Mukherji* v *Jatindra Mohan* (1929) 56 Cal, 487, *Dungannon (Lord)* v. *Smith* (1846) 8 E.R, 1523, *In re Wilmer's Trusts, Moore* v *Wingfield* (1903) 2 Ch, 411, 422, *per* Stirling, L.J.

(g) See the illustrations to section 115, the Indian Succession Act, 1925.

(h) (1886) 12 Cal., 663; *Rai Bishen Chand* v *Mt Asmaida Koer* (1884) 11 I A, 154, 6 All, 560

(i) (1911) 38 I A, 54, 38 Cal., 468, affg. (1905) 32 Cal., 92.

and *Ranimoni Dassi* v. *Radha Prasad* (*j*) and abrogates the rule laid down in *Leake* v. *Robinson* (*k*).

Effect of invalid prior bequest.

Section 116: "Where by reason of any of the rules contained in sections 113 and 114, any bequest in favour of a person or of a class of persons is void in regard to such person or the whole of such class, any bequest contained in the same will and intended to take effect after or upon failure of such prior bequest is also void" (*l*). It is only where the prior bequest is void for remoteness or as contravening the rule in section 113 that the ulterior bequest is void. But the failure of the prior bequest for any other reason will not invalidate the subsequent bequest; it will only accelerate it (*l*[1]).

Rule in *Tagore* case inapplicable to charities.

§ 754. The doctrine laid down in the *Tagore* case (*m*) that a gift to a person not in existence is invalid has never had any application to gifts or trusts for religious or charitable purposes and to directions for the dedication of property for the establishment of images and the worship thereof. The rule against perpetuities does not apply to a bequest creating a charge of the whole or part of a testator's property in favour of a temple or for service or worship of an idol or for other religious or charitable purposes (*n*).

(*j*) (1914) 41 I.A., 176, 41 Cal., 1007. The decisions in *Rojomoyee Dassee* v. *Troylukho Mohiney Dassee* (1902) 29 Cal., 260; *Anandrao Vinayak* v *Admr. Genl of Bombay* (1896) 20 Bom., 450; *Sivasankara* v. *Soobramania* (1908) 31 Mad, 517 affirmed in 17 C.W.N., 488 P.C. and *Soundararajan* v. *Natarajan* (1925) 52 I A., 310, 48 Mad, 906 are no longer law.

(*k*) (1817) 2 Mer, 363, 35 E.R. 979.

(*l*) See the illustration to section 116 of the Indian Succesion Act, 1925.

(*l*[1]) The *Tagore* case (1872) I.A., Supp. Vol 47, 80; *Saudaminey Dasi* v. *Jogesh Chander* (1877) 2 Cal, 262, *Ajudhie Buksh* v. *Rukmin Kuar* (1883) 11 I A, 1, 10 Cal, 482, *Akhoy Mani* v. *Nilmoni* (1887) 15 Cal., 282; *Radha Prasad* v. *Rani Mani* (1906) 33 Cal., 947, 962, 963 (modified on another point as to the quantum of estate taken by the daughter's sons in 35 I A., 118, 35 Cal, 896), *See Javerbai* v. *Kablibai* (1891) 16 Bom., 492, 497.

(*m*) (1872) I.A., Sup. Vol. 47.

(*n*) *Bhupati Nath Smriti Thirtha* v. *Ram Lal Maitra* (1910) 37 Cal., 128 F.B. (idol); *Kayastha Pathasala* v. *Mt Bhagwati* (1936) 64 I A, 5, 15, 16, A I R 1937 A.C. 4; *Admr. General, Bengal* v. *Hughes* (1913) 40 Cal., 192; *Mathura Nath Mukerjee* v *Lakhi Narain* (1922) 50 Cal., 426; *Ajit Kumar Mitra* v. *Tarubala Dossee* (1936) 63 Cal., 209, *Prafulla Chunder Mullick* v. *Jogendra* (1905) 9 C W.N, 528; *Jairam* v. *Kuverbai* (1885) 9 Bom., 451; *Parbati* v. *Ram Barun* (1904) 31 Cal., 895; *Hemangini* v. *Nobinchund* (1882) 8 Cal., 788; *Bhuggobutty Prosonno Sen* v. *Gooroo Prosonno Sen* (1898) 25 Cal., 112; *Jamshedji-c-Tarachand* v. *Soonabai* (1911) 33 Bom., 122; *Mohar Singh* v. *Het Singh* (1910) 32 All., 337 (idol); *Goodman* v. *Saltash Corporation* (1882) 7 A.C., 633, *Wallis* v. *Solicitor General, New Zealand,* (1903) A.C., 173.

Rule against perpetuity inapplicable to charities.

While section 18 of the Transfer of Property Act excludes the rule against perpetuities in case of gifts *inter vivos* for religious or charitable purposes, there is no similar exception in the Indian Succession Act; yet, contrary to the decisions in *Bhuggobutty Prosonno Sen* v. *Gooroo Prosonno Sen* (*o*) and *Administrator-General, Bengal* v. *Hughes* (*p*), it was held in *Jones* v. *Administrator-General of Bengal* (*q*) that section 114 of the Indian Succession Act applies to religious and charitable gifts. But both section 14 of the Transfer of Property Act and section 114 of the Indian Succession Act apply in terms only to gifts and bequests to living persons and not to gifts and bequests for religious and charitable purposes. The reference to 'the minority of some person who shall be in existence and to whom if he attains full age the thing bequeathed is to belong', makes it clear that it has no application to such cases. The absence of a section in the Indian Succession Act corresponding to section 18 of the Transfer of Property Act, which appears to be superfluous, does not therefore make the rule against perpetuity applicable to bequests for religious and charitable purposes. There is nothing therefore in section 114 to affect the rule of Hindu law in the matter so far as such gifts are concerned.

Succession Act, s. 112.

§ 755. Though section 112 of the Indian Succession Act is not included in the enactments altering the rule in the *Tagore* case (*r*), that section also applies to wills made by Hindus. Section 99 of the Indian Succession Act, 1865 which corresponded to the present section 112 was however held not to apply to the will of a Hindu or invalidate provisions made in accordance with the principles of Hindu law (*s*).

Accordingly, a bequest by a father to the would-be wife of a son who was in existence at the time of the testator's death was held to be a valid bequest, within the exception of section 99, corresponding to section 112 of the Indian Succession Act, 1925 (*t*). This would be so even after the

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(*o*) (1898) 25 Cal., 112.

(*p*) (1913) 40 Cal, 192

(*q*) (1919) 46 Cal, 485

(*r*) (1872) I A Sup Vol 47.

(*s*) *Alangamonjari* v *Sonamoni Dabee* (1882) 8 Cal, 637; *Cally Nath Naugh* v. *Chunder Nath Naugh* (1882) 8 Cal, 378, *Ram Lal* v *Kanai Lal* (1886) 12 Cal., 663, *Jai Ram* v *Kuverbai* (1885) 9 Bom., 491, *Anand Rao* v. *Admr Genl of Bombay* (1895) 20 Bom, 450, *Dinesh Chandra Roy* v *Biraj Kamini Dassi* (1912) 39 Cal., 87.

(*t*) *Dinesh Chandra Roy* v. *Biraj Kamini Dassee* (1912) 39 Cal., 87, *Nakshetramali Dei* v. *Braja Sunder Das* (1933) 12 Pat., 708.

enactments altering the rule in the *Tagore* case which empower a Hindu to make a bequest in favour of an unborn person within limits. But apart from the cases coming within the exception, a bequest to a person by a particular description will be void if there is no person in existence at the testator's death answering that description; for the reasons given for the inapplicability of the section to Hindu wills in the earlier cases no longer exist.

Estates repugnant to Hindu law.

§ 756. According to the second rule laid down in the *Tagore* case, a man cannot create a new form of estate, or alter the line of succession provided by law, for the purpose of carrying out his own wishes or policy (*u*). The reasons for this were stated by Mr. Justice Willes: "The power of parting with property once acquired, so as to confer the same property upon another, must take effect either by inheritance or transfer, each according to law. Inheritance does not depend on the will of the individual owner; transfer does. Inheritance is a rule laid down (or, in the case of custom, recognised) by the State, not merely for the benefit of individuals, but for reasons of public policy (*u*[1]). It follows directly from this that a private individual, who attempts by gift or will to make property inheritable otherwise than the law directs, is assuming to legislate, and that the gift must fail, and the inheritance take place as the law directs" (*v*). Therefore, all estates of inheritance created by gift or will, so far as they are inconsistent with the general law of inheritance, are void as such. For instance, a Hindu donor or testator cannot create an estate-tail (*v*[1]) or an estate excluding female heirs (*w*) or

(*u*) *Tagore* v. *Tagore* (1872) I. A. Supp. Vol., 47, 9 B.L.R., 394. The *Tagore* case decided not only that a devise to an unborn person is invalid but that an attempt to create a new rule of inheritance is also invalid (1888) 16 I.A., 29, 39 *infra*.

(*u*[1]) Domat, 2413.

(*v*) 9 B.L.R., 394, 396, I.A. Supp., Vol 47. See *Sonatun Bysack* v. *Juggut Soondree* (1859) 8 M.I.A., 78, *Soshi* v. *Tarokessur* (1881) 6 Cal., 421, affd. *Kunwar Tarakeswar* v. *Kumar Soshi* (1883) 10 I.A., 51, 10 Cal., 952; *Suriya Row* v. *Gangadara* (1886) 13 I.A., 97, 9 Mad., 499; *Shookmoy* v. *Monohari* (1881) 7 Cal., 269, affd. (1885) 12 I.A., 103, 11 Cal., 684; *Krishtoromoney* v. *Narendra* (1888) 16 I.A., 29, 16 Cal., 383.

(*v*[1]) The *Tagore* case (1872) I. A. Sup. Vol. 47.

(*w*) *Rani Tarakessur Roy* v. *Soshi* (1883) 10 I.A., 51, 9 Cal., 952; *Vallabhdas* v. *Gordhandas* (1890) 14 Bom., 360, *Venkata* v. *Chellayammi* (1894) 17 Mad., 150; *Lakshmakka* v. *Boggaramanna* (1896) 19 Mad., 501; *Dhanalaxmi* v. *Hariprasad* (1921) 45 Bom., 1038; see *Admr. Genl., Bengal* v. *Lal Bihari Dhar* (1934) 61 Cal., 393, affd. in *Ganesh Chunder* v. *Lal Behary Dhar* (1936) 63 I.A., 448; *Madura Hindu Permanent Fund* v. *Kamakshi* (1926) 50 M.L.J., 355; *Madhav Rao* v. *Balabhai* (1927) 55 I.A., 74, 52 Bom., 176.

male heirs (*x*) or heirs by adoption (*y*) or any class of heirs or any particular heirs from succession (*z*).

This would be so only where the words 'male heirs' or 'male descendants' in a will have to be construed as words of inheritance. But if they could be construed as words of direct or independent gift to such persons, it would be a good gift to them where they could validly take under it (z^1).

Limited estates valid.

§ 757. There is no rule that the first recipient must take all the interest possessed by the testator, for limited interests are common enough (*a*). It is open to a donor or testator to create an estate for life or successive life interests or any other estate for a limited term provided that the donee is a person capable of taking under the gift or bequest (*b*).

Where a donor or testator attempts to create an estate heritable otherwise than in accordance with Hindu law, such a gift cannot take effect except in favour of such persons as could take under the gift to the extent to which the gift is consistent with law. The first taker would take for his life because the giver had at least that intention. He could not take more because the language is inconsistent with his having any different inheritance from that which the gift attempts to confer and that estate of inheritance which it confers is void (*c*).

Executory bequest

§ 758. Under Hindu law, a testator can give property whether by way of remainder or by way of executory bequest upon an event which is to happen, if at all, immediately upon the close of a life in being This rule, which has repeatedly been affirmed, was first laid down by the Privy Council in

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(*x*) *Kunhamina* v *Kunhambi* (1909) 32 Mad, 315.

(*y*) *Suriya Rao* v *Raja of Pittapur* (1886) 13 I A, 97, 9 Mad, 499.

(*z*) *Purna Sashi* v. *Kalidhan* (1911) 38 I.A, 112, 38 Cal, 603 (daughters and their sons), *Manohar Mukerji* v. *Bhupendranath* (1933) 60 Cal, 452 F B Under the guise of a trust of inheritance, a testator cannot indirectly create beneficiary estates which cannot directly be given without the intervention of a trust, the *Tagore* case (1872) I A Supp Vol 47, 72

(z^1) *Madhav Rao* v *Balabhai* (1927) 55 I A, 74, 52 Bom, 176

(*a*) *Kristoromoney* v. *Narendro* (1889) 16 I.A., 29, 39, 16 Cal, 383, 392.

(*b*) *Tagore* v *Tagore* (1872) I.A. Sup Vol. 47, 62, *Rani Tarakessur* v. *Soshi* (1883) 10 I A, 51, 9 Cal, 952, see *Nisar Ali Khan* v. *Mohammed Ali Khan* (1932) 59 I A, 268; *Ambalal Hargovind* v. *Ambalal Shivlal* A I R 1933 Bom, 34, 34 Bom. L R, 1506

(*c*) (1872) I A Sup. Vol 47, 66 *supra*, (1889) 16 I A, 29, 16 Cal, 383 *supra*, *Rani Tarakessur* v *Soshi* (1883) 10 I A, 51, 9 Cal, 952, *Manickyamala* v. *Nandkumar* (1906) 33 Cal., 1306.

Soorjeemoney Dossee v. *Denobundoo Mullick* (*d*). There a testator by his will left his property to his five sons providing that if any of his five sons should die without male issue, his share should pass over to the sons then living, or their sons and that neither his widow nor his daughter, nor his daughter's son should get any share out of his share. One of the sons died, leaving no male issue and it was held that his interest determined on his death and the gift over was upheld.

Defeasance.

It is settled therefore that a gift or bequest may validly be made, conferring an absolute estate, providing for its defeasance on the happening of a subsequent event. That event must however happen, if at all, immediately upon the close of a life in being (*e*). A defeasance by way of gift over must be in favour of some person who is capable of taking under the gift (*f*). An unborn person will, now under the altered rule, be capable of taking under such gift provided the gift to him will take effect if at all within the legal period set by the rule against perpetuity.

In *Chunilal Parvati Shankar* v. *Bai Samrath*, the Privy Council pointed out that the period to which an executory devise will be referred, will be the death of the first taker, unless, there are other circumstances and directions in the will inconsistent with that supposition (*g*).

Contingent bequest. S. 124.

But section 124 of the Succession Act, 1925 which repeats the provisions of section 111 of the Act of 1865 creates a difficulty. It provides: "Where a legacy is given, if a specified uncertain event shall happen and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect, unless such event happens before the period when the fund bequeathed is payable or distributable" (*h*).

(*d*) *Soorjeemoney Dossei* v. *Denobundo Mullick* (1862) 9 M.I.A., 123.

(*e*) (1862) 9 M.I.A., 123, 135; the *Tagore* case (1872) I.A., Supp. 47, 69, 70; *Bhoobun Mohini* v. *Hurrish Chunder* (1878) 5 I.A., 138, 148; 4 Cal., 123; *Kristoramoney* v. *Norendra Krishna* (1889) 16 I.A., 29, 16 Cal., 383; *Lalit Mohun* v. *Chukkan Lal* (1897) 24 I.A., 76, 24 Cal., 834; *Sarajabala* v. *Jyothirmoyee* (1931) 58 I.A., 870, 59 Cal., 142.

(*f*) (1899) 16 I.A., 29. 16 Cal., 383 *supra*.

(*g*) (1914) 38 Bom., 399, 18 C.W.N., 844 P.C., following *O'Mahoney* v. *Burdett* (1878) L.R., 7 H.L., 388; *Navalchand* v. *Maneckchand* (1921) 23 Bom. L.R., 450.

(*h*) See illustration 2 to sec. 124 of Act XXXIX of 1925.

In *Norendranath* v. *Kamalbasini*, a Hindu testator bequeathed his property to his three sons and provided that on, "any one of the sons dying sonless, the surviving sons shall be entitled to all the properties equally" (*i*). On the construction of section 111 of the Indian Succession Act, 1865 (which was the same as the present section 124 of the Indian Succession Act, 1925) as applied by the Hindu Wills Act, 1870, the Privy Council held that the period of distribution was the death of the testator and the gift to the three sons was indefeasible at that date, as the executory gifts could not take effect.

In *Indira Rani Ghose* v. *Akshay Kumar Ghose* (*j*) the Judicial Committee distinguished *Norendra Nath's* case (*k*) as turning upon the construction of the will in that case and held that section 124 does not apply if a period is specified in the will within which the contingent event is to happen, or putting it otherwise, that the section only applies if, without doing violence to the terms of the will, it can be held as a matter of words that the occurrence of the uncertain event prior to the period when the fund became payable or distributable is *alone* within the contemplation of the testator. And a warning was given against applying too rigid a construction of the English language to the will of an Indian testator.

Section 124 can therefore apply only where no time is indicated in the will, expressly or by reasonable inference, for the occurrence of the uncertain event, other than the death of the testator as the sole point of time (*l*).

So far as gifts or settlements *inter vivos* are concerned, neither section 124 of the Succession Act nor the decision in *Norendranath's* case has any application whatever and the decision in *Soorjeemoney* v. *Denobundoo Mullick* (*m*) and the cases following it remain altogether unaffected (*n*).

(*i*) (1896) 23 I A, 18, 23 Cal, 563.

(*j*) (1933) 59 I A, 419, 60 Cal, 554, *Chandidas* v. *Malina Bala* (1936) 41 C.W N., 432 (provision that widow, if childless, should get only maintenance, does not divest property vested in her husband).

(*k*) (1896) 23 I A, 18, 23 Cal, 563.

(*l*) *Bhupendra Krishna Ghose* v. *Amarendra Nath Dey* (1916) 43 I.A., 12, 43 Cal., 432, *Lala Ramjewan* v. *Dal Koer* (1897) 24 Cal., 406; *Suresh Chandra Mukerjee* v. *Jyotirmoyee* A.I.R 1930 P C, 284, 35 C W N, 61, *Kuppuswami* v *Ranganatha* A I R 1937 Mad, 835; *Bashist Narain Sahi* v. *Sia Ramchandra* (1933) 12 Pat, 18, *Satya Ranjan* v. *Annapurna Dasi* A.I.R. 1929 Cal., 145.

(*m*) (1862) 9 M.I.A, 123

(*n*) See sections 23 and 28 of the Transfer of Property Act. *Govindaraja Pillai* v. *Mangalam* (1932) 63 M.L J., 911; *Rameshwar Kuer* v. *Sheo Lal Upadheya* (1935) 14 Pat., 640.

§ 759. A gift over is now regulated by section 131 of the Succession Act. The event upon which the defeasance must operate cannot be an indefinite failure of male issue of the first or other taker (*o*) and section 132 provides that an ulterior bequest of the kind contemplated by section 131 cannot take effect unless the condition is strictly fulfilled. **Gift over.**

But a gift to A and if he should die without leaving male issue then over, is a good gift, but where the testator attaches to the gift over a condition that it should be an estate in tail male, the first absolute gift stands unaffected. While successive life-estates can be created, a series of absolute estates defeasible in succession on the happening of an uncertain event cannot be construed as a succession of life-estates, but will be void as an attempt to create an estate of inheritance not recognised by law (*p*).

Where an estate absolute in terms is given to a donee and an interest is created to take effect on the termination of the prior interest, the first absolute estate is not cut down and the subsequent interest fails (*q*). But where the gift to the first taker is not a clear absolute gift, but the gift over is of the entire interest, the prior interest may be construed to be a life-estate or a limited estate (*r*). It has been held on the authority of *Mahomed Shumsool* v. *Shewukram*, that an estate analogous to a Hindu widow's estate may be granted to a woman by will or by gift and that a contingent remainder can be fastened upon it (*s*).

Where there is a bequest to one person and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest although the failure may not have occurred in the manner contemplated by the testator (*t*).

(*o*) *Sarajabala Debi* v. *Jyotirmoyee* (1931) 58 I.A., 270, 278, 59 Cal, 142, *Lalit Mohan* v. *Chukkan Lal* (1897) 24 I.A., 76, 24 Cal., 834, *Raghunath Prasad* v. *Deputy Commissioner* (1929) 56 I.A., 372, 4 Luck, 483; *Ambalal* v. *Ambalal* A.I.R. 1933 Bom., 34; *Bai Dhanalaxmi* v. *Hari Prasad* (1921) 45 Bom., 1038. See ills. to s. 131.

(*p*) *Dhanlaxmi* v. *Hariprasad Uttamram* (1921) 45 Bom., 1038 follg. *Purna Shashi Bhattacharji* v. *Kalidhan Rai Chowdhuri* (1911) 38 Cal., 603 P.C.; *Ambalal* v. *Ambalal* A.I.R. 1933 Bom., 34.

(*q*) 28 Hals. 1st ed., 771, 772; *Mohan Lal* v. *Niranjan Das* (1921) 2 Lah., 175; *Partap Chand* v. *Mt. Makhani* (1933) 14 Lah., 485.

(*r*) *Pavani Subbamma* v. *Anumala Rama Naidu* (1937) 1 M.L.J., 268.

(*s*) *Maharaja of Kolhapur* v. *Sundaram Ayyar* (1925) 48 Mad., 1, 125 follg. (1874) 2 I.A., 7; (1937) 1 M.L.J., 268 *supra*; *Ram Bahadur* v. *Jager Nath* (1918) 3 P.L.J., 199 F.B.; but see *Mussumut Bhagbutti* v. *Chowdry Bholanath* (1875) 2 I.A., 256.

(*t*) Sec. 129, Succession Act; *Durga Pershad* v. *Raghunandan Lal* (1914) 19 C.W.N., 439; *Lakshmi Narasamma* v. *Ammanna* (1936) 71 M.L.J., 845.

Life estate with power of alienation.

§ 760. A life estate can be given with a power of alienation by will or gift *inter vivos* subject to the proviso that to the extent to which the power is not exercised, there is to be a gift over (*u*). Where there is an absolute gift under a will with a provision that if the donee does not dispose of it, the property shall pass to another, it has been held that the bequest is not void for repugnancy or uncertainty (*v*). Where there is an absolute bequest to one followed by a gift of what remains undisposed of at the death of the first legatee, if the intention is to maintain the absolute gift, the gift over is invalid (*w*). If there is no such clear intention, the absolute interest will be cut down to a life interest simply or to an interest for life with a power of disposition (*x*). So too, a provision in a partition or settlement that property which is allotted to a sharer to the extent to which it is undisposed of by him shall go to another sharer is valid (*y*). Where only a life interest passes from the donor, when that is spent, he or his heir can lawfully re-enter (*z*).

Impossible or immoral condition.

§ 760 A. A bequest upon an impossible condition or upon a condition the fulfilment of which would be contrary to law or morality would be void, such as a condition totally restraining marriage (*a*).

Cesser of interest.

§ 761. A testator can validly make a bequest subject to the condition that it shall cease to have effect on the happening of a specified uncertain event but the event on which the defeasance or cesser of the estate is to take effect must fulfil

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(*u*) *Hara Kumari Dasi* v *Mohim Chandra Sarkar* (1908) 12 C.W.N., 412

(*v*) *Thavalai Achi* v *Kannammal* A I R 1935 Mad., 704, 68 M L J, 707, but see *Bhupati Charan* v *Chandi Charan* (1934) 39 C.W N, 390 (gift over invalid)

(*w*) *In re Stringer's Estate, Shaw* v *Jones-Ford* (1877) 6 Ch, D 1; *In re Wilcock, Kay* v *Dewhurst* (1898) 1 Ch. 95, *In re Hancock, Watson* v *Watson* (1901) 1 Ch, 482, *Perry* v *Merritt* L R, 18 Eq, 152, Theobald on Wills, 495, see *Govindbhai* v *Dahyabhai* A.I R 1936 Bom, 201

(*x*) *Constable* v *Bull* 64 E R, 589, *In re Sanford, Sanford* v. *Sanford* (1901) 1 Ch, 939, *In re Pounder* 56 L J (C A.), 113; *Herring* v *Herring* (1881) 14 Ch D., 263, *Manumallaswami* v. *Narayanaswami* (1932) 63 M L.J., 107.

(*y*) *Ram Nirunjan Singh* v *Prayag Singh* (1882) 8 Cal, 138; *Kanti Chandra Mukerji* v. *Alu Nabi* (1911) 33 All, 414; *Muthuraman Chettiar* v *Ponnuswamy* (1915) 29 M L J., 214; *Bageshar Rai* v. *Mahadei* (1924) 46 All, 525. See *Uthe Amma* v. *Mani Amma* (1935) 68 M L.J., 372; *Parkash* v *Chandar Parkash* A I R. 1932 Lah., 215.

(*z*) (1879) 5 I A., 138, 4 Cal., 23 *infra*, (1899) 16 I.A., 29, 16 Cal., 383 *supra, Malireddi Narayanaswami* v. *Kondapalli Gopalaswamy* (1937) 46 M.L.W., 258.

(*a*) Sections 126 and 127 of the Succession Act; *Ram Sarup* v. *Bela* (1884) 11 I.A., 44, 6 All., 313.

the same condition of legality as a condition precedent (*b*). On the happening of a condition subsequent the estate granted reverts to the testator's heirs.

§ 762. The law regarding directions to accumulate is now laid down by section 17 of the Transfer of Property Act and section 117 of the Indian Succession Act which respectively apply to transfers and bequests by Hindus. Accumulations.

Section 117: (1) Where the terms of a will direct that the income arising from any property shall be accumulated either wholly or in part during any period longer than a period of eighteen years from the death of the testator, such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the aforesaid period, and at the end of such period of eighteen years, the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of—(i) the payment of the debts of the testator or any other person taking any interest under the will, or (ii) the provision of portions for children or remoter issue of the testator or of any other person taking any interests under the will, or (iii) the preservation or maintenance of any property bequeathed; and such direction may be made accordingly (*c*).

Before this provision, it was not incompetent for a Hindu, within proper limits, to direct an accumulation of the income of a property which vested in his executor or trustee. Conflicting opinions were expressed as to the period during which accumulations might be made (*d*).

(*b*) Secs. 134, 135 Suc. Act; *Bhoobun Mohini* v. *Hurrish Chunder* (1878) 5 I A, 138, 4 Cal, 23 As to where a bequest ceases to have effect unless the legatee does certain act and the legatee makes its performance impossible, see secs 136 and 137

(*c*) See the illustrations to Section 117. *Bissonauth* v. *Bamasoondery* (1867) 12 M.I.A., 41 (accumulations follow capital). For the law prior to the Act *Sonatun Bysack* v. *Juggut Soondery* (1859) 8 M I.A., 66, *Shookmoy* v. *Monohari* (1885) 12 I.A., 103, 11 Cal., 684; *Benode Behari* v. *Nistarini* (1905) 32 I A., 193, 33 Cal., 180; *Amrito Lal* v. *Surnoymoni* (1898) 25 Cal, 662 on appeal 27 I.A., 128, 27 Cal., 996, *Brama Mayi* v. *Jageschandra* (1871) 8 B.L.R., 400; *Mokoondolal* v. *Ganesh Chunder* (1875) 1 Cal., 104; *Cally Nath* v. *Chander Nath* (1882) 8 Cal, 378; *Nafar Chandra* v. *Ratan* (1910) 15 C W.N., 66 (accumulation for marriage expenses valid); *Watkins* v. *Admr. Genl., Bengal* (1920) 47 Cal., 88.

(*d*) *Amrito Lall* v. *Surnomoyee* (1897) 24 Cal., 589; *Rajendra Lall* v. *Rajcoomari* (1906) 34 Cal., 5; *Nafar Chandra* v. *Ratan Mala* (1910) 15 C.W.N., 66; *Ram Lal* v. *Bidhumukhi* (1920) 47 Cal., 76; *contra. Amrito Lal Dutt* v. *Surnomani Dasi* (1898) 25 Cal., 662, 690-1; *Raneemoney Dasi* v. *Premmoney* (1905) 9 C.W.N., 1033, 1043.

A direction to accumulate income for charitable purposes is not illegal in Hindu law (*e*). While section 18 of the Transfer of Property Act makes section 17 thereof inapplicable to gifts *inter vivos* for religious or charitable purposes, and while the language of sec. 114 of the Succession Act makes it inapplicable to charities, section 117 on its language would, in the absence of any exception, seem to apply to accumulations in connection with a bequest for religious or charitable purposes.

Powers of appointment.

§ 763. The Privy Council sanctioned a great extension of testamentary powers, by recognising the right of a testator to grant a power of appointment to a person named in his will, by which the final devolution of his estate should be regulated at the termination of interests previously created (*f*). In *Bai Motivahoo* v. *Bai Mamoobai*, the will directed that the whole of the immovable property of the testator should be constituted into a trust, the income of which should be applied by his trustees for the use of his wife Motivahoo, his daughter Mamoo, and the children of his daughter for their lives. "Afterwards the heirs of the said children are duly to apportion and receive this property. But should there be no children born of the womb of my daughter Mamoo, then after the death of Mamoo and of my wife Motivahoo this trust is to become void, and this property is to be delivered to such persons as my daughter Mamoo may direct it to be delivered by making her will."

The Judicial Committee affirmed the validity of this disposition. They said (p. 105): "It appears to them to follow, from the first taker being allowed to have only a life-interest, that her possession is sufficient to complete the executory bequest which follows the gift for life. The result of the decisions is that, according to settled law, if the testator here had himself designated the person who was to take the property in the event of Mamoo dying childless, the bequest

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(*e*) *Rajendra Lall* v. *Raj Coomari* (1907) 34 Cal, 5; *Ramanadhan Chettiar* v. *Vava Levvai* (1911) 34 Mad, 12 affirmed in (1917) 44 I.A., 21, 29, 40 Mad, 116.

(*f*) *Bai Motivahoo* v. *Bai Mamoobai* (1897) 24 I.A., 93, 102, 21 Bom., 709, affg. 19 Bom., 647; and *Javerbhai* v. *Kablibai* (1891) 15 Bom., 320, on appeal 16 Bom., 492; *Upendra Lal* v. *Hemchundra* (1898) 25 Cal., 405; *Yethirajulu* v *Mukuntha* (1905) 28 Mad., 363; *Brij Lal* v. *Suraj Bikram Singh* (1912) 39 I.A., 150, 34 All., 405; *Mahimchandra Sathar* v. *Harakumari Dassee* (1915) 42 Cal., 561; *Shirinbai* v. *Ratanbai* (1921) 48 I A., 69, 45 Bom., 711; *Admr. Genl. of Bengal* v. *Balkissen Misser* (1924) 51 Cal., 953; *Suraj Prasad* v. *Mt. Gulab Dei* A.I.R. 1937 All., 197; *Kali Prasad Gope* v. *Ram Golam Sahu* A.I.R. 1937 Pat., 163.

would be good. The remaining question is, whether his substituting Mamoo and giving her power to designate the person by her will is contrary to any principle of Hindu law. There is an analogy to it in the law of adoption. A man may by will authorise his widow to adopt a son to him, to do what he had power to do himself, and although there is here a strong religious obligation, their Lordships think that the law as to adoption shows that such a power as that now in question is not contrary to any principle of Hindu law. Further, they think that the reasons which have led to a testamentary power becoming part of the Hindu law are applicable to this power, and that it is their duty to hold it to be valid. But whilst saying this, they think they ought also to say that in their opinion the English law of powers is not to be applied generally to Hindu wills." While they made a declaration that the gifts to such persons as the donee of the power may appoint are valid gifts, they added, "that this Court cannot, and doth not, determine upon whom the property subject to such powers respectively, will devolve, if, and so far as, such powers are not validly exercised."

Now, as a result of the alteration of the rule of Hindu law by legislation, the objects of the power need not necessarily be persons in existence at the death of the testator, but may be such unborn persons as could take under a gift within the limits of the rule against perpetuity.

The power of appointment by itself does not confer upon the donee any beneficial interest in the estate (*g*). In *Brij Lal* v. *Suraj Bikram*, it was held that a direction by a Hindu testator that his nephew's widow should remain in possession of his estate with the power of appointing an heir, either in her lifetime or by will, did not amount to an absolute gift thereof (*h*). But the case may be different where an estate is given to the donee of the power. In *Narsingh Rao* v. *Mahalakshmamma*, a testator gave his wife a widow's estate and provided that if no son were born to his disinherited son within sixteen years, his widow should have the power to appoint as 'owner and representative and heir,' her daughter or her daughter's son. It was held that in default of the exercise of the power conferred upon the widow to bequeath the estate to her daughter or daughter's son, it was intended to descend to her heirs (*i*).

(*g*) (1892) 16 Bom., 492 *supra*.

(*h*) (1912) 39 I.A., 150, 34 All., 405.

(*i*) (1928) 55 I.A., 180, 194, 50 All., 375; *Kandarpamohun* v. *Akshaychandra* (1934) 61 Cal., 106.

Where the power of appointment is so given as to be itself an invalid disposition, there will be an intestacy (*j*).

§ 764. The rules as to vesting of a legacy under a Hindu will are now laid down in sections 104 and 119 of the Succession Act.

Section 104. If a legacy is given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and, if he dies without having received it, it shall pass to his representatives (*k*).

Vesting of legacies.

Section 119 Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy, and in such cases the legacy is from the testator's death said to be vested in interest.

Explanation. An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person (*l*).

In *Bickersteth* v *Shanu*, the Privy Council held that the established rule for construing devises of real estate is that they are to be held to be vested unless a condition precedent to the vesting" is expressed with reasonable clearness (*m*).

(*j*) *Sivasankara* v. *Soobramania* (1908) 31 Mad, 517, affirmed in (1913) 17 C W N, 488, P C

(*k*) Where the bequest is to the child or any lineal descendant of the testator and the legatee dies in the testator's lifetime the bequest does not lapse but passes to any lineal descendant of the legatee who survives the testator, according to section 109 of the Succession Act which now applies to Hindus

(*l*) See the illustrations to section 119 of the Indian Succession Act.

(*m*) [1936] A C, 290, A I R 1936 P C, 123, approving *Duffield* v. *Duffield* (1829) 4 E R, 1335, 1358, *Browne* v. *Moody* [1936] A.C. 635, 645, *In re Blackwell* (1926) 1 Ch, 223, *Bhagabati Barmanya* v. *Kalicharan* (1911) 38 I A., 54. 38 Cal, 468, *Viswanadhan* v. *Anjaneyelu* A.I.R. 1935 Mad, 865, *Beni Madho* v. *Bhagwan Prasad* (1911) 33 All, 558. See as to presumption in favour of early vesting, *Sifton* v. *Sifton* [1938] All., E R, 435 P.C.

§ 765. Where an absolute estate is given, any restrictions on the powers of transfer, partition, or enjoyment which the law annexes to the estate, will be rejected as repugnant (*n*). Partial restrictions on alienations and partitions may not be regarded as repugnant (*o*). The question is now governed by sec. 138 of the Succession Act (*p*). **Repugnant restrictions.**

§ 766. Two or more donees taking under a bequest take as tenants in common (*q*).

The principle of joint tenancy is unknown to Hindu law except in the case of joint property of an undivided Hindu family (*r*). In *Bahu Rani* v. *Rajendra Baksh* where a grant was made to two undivided brothers it was held that they took it as tenants in common (*s*). This *prima facie* inference can be displaced by express words or other sufficient indication making the estate granted a joint estate with benefit of survivorship (*t*). A bequest to two daughter's **Presumption of tenancy in common.**

(*n*) *Tagore* case (1872) I. A. Supp. Vol. 47, 65, 9 B.L.R., 395; *Ashutosh Dutt* v. *Doorga Churn* (1880) 6 I.A., 182, 5 Cal., 438; *Rai Kishore* v. *Debendranath* (1888) 15 I.A., 37, 15 Cal., 409; *Lalit Mohun* v. *Chukkun Lal* (1897) 24 I.A., 76, 24 Cal., 834; *Raghunath Prasad* v. *Deputy Commissioner* (1929) 56 I.A., 372, 4 Luck., 483; *Sarajabala Dossy* v *Jyotir Moyee* (1931) 58 I.A., 270, 59 Cal, 142; *Rameshwar Baksh* v. *Balraj Kaur* A.I.R. 1935 P.C., 187, 40 C.W.N, 8; *Mookondo Lall* v *Gonesh* (1876) 1 Cal., 104, *Callynath* v. *Chandranath* (1882) 8 Cal., 378, *Rameswar* v. *Lakshmi Prasad* (1904) 31 Cal., 111; *Gosavi Shivgar* v. *Rivett Carnac* (1899) 13 Bom., 463; *Husseinbhoy* v. *Ahmedboy* (1902) 26 Bom, 319; *Ram Kaur* v. *Atma Singh* (1927) 8 Lah., 181; *Umrao Singh* v. *Baldeo Singh* (1933) 14 Lah., 353.

(*o*) *Muhammad Raza* v. *Abbas Bandi Bibi* (1932) 59 I.A., 236, A.I.R. 1932 P.C, 158, 7 Luck., 257, following *In re Mackay* (1875) 20 Eq, 186 and *Gill* v. *Pearson* 6 East., 173.

(*p*) Corresponding to sec. 125 of the Act of 1865, *Bai Bapi* v. *Jamnadas* (1898) 22 Bom., 774; *Lala Ramjewan* v. *Del Koer* (1899) 24 Cal., 406, *Kedar Nath* v. *Gaya Nath* A.I R. 1930 Cal., 731.

(*q*) *Jogeswar Narain Deo* v. *Ramchandra Dutt* (1896) 23 I.A., 87, 23 Cal, 670. The head note that the bequest is to the daughter and the son is wrong; it is to the wife and the son. *Janakiram* v *Nagamony* (1926) 49 Mad., 98; *Bahu Rani* v. *Rajendra Baksh* (1933) 60 I A, 95, 8 Luck, 121, overruling *Vydinada* v. *Nagammal* (1888) 11 Mad., 258; *Fani Bhushan Saha* v. *Fulkumari Dasi* A.I.R. 1937 Cal., 1.

(*r*) *Bahu Rani* v. *Rajendra Baksh* (1933) 60 I.A., 95, 8 Luck., 121.

(*s*) (1933) 60 I.A., 95 *supra*, *Bai Diwali* v. *Patel Bechardas* (1902) 26 Bom., 445; *Kishori Dubain* v. *Mundra* (1911) 33 All., 665; *Mt. Jio* v. *Mt. Rukmani* (1927) 8 Lah, 219; *Gopi* v. *Jaldara* (1911) 33 All., 41 (daughters), *Ram Piari* v. *Krishna* (1921) 43 All., 600; *Janakiram* v. *Nagamony* (1926) 49 Mad., 98; *Venkata Krishnayya* v. *Madamma* A.I.R. 1928 Mad., 926 (devise to daughter and sister's son as intended son-in-law—take as tenants in common); *Krishnaswami* v. *Avayambal* A.I.R. 1933 Mad., 204; *Fani Bhushan Saha* v. *Fulkumari Debi* A.I.R. 1937 Cal., 1.

(*t*) *Yethirajulu* v. *Mukunthu* (1905) 28 Mad., 363, 373; see also *Bissonauth* v. *Bamasoondery* (1867) 12 M.I.A., 41.

sons by the maternal grandfather even where they were members of an undivided family was held to constitute them tenants in common (*u*).

Gift of income.

§ 767. Where a gift is made of the income, but the estate given is not in terms limited to the lives of the beneficiaries, nor is any line of descent provided after their deaths, it is an absolute gift of the estate itself (*v*).

No intention to dispose of corpus.

§ 768. A Hindu testator is not allowed to tie up his property indefinitely or in perpetuity so as to prevent its devolution in accordance with law. Accordingly, where there is no intention to dispose of the estate itself but to give only the profits for the benefit of a man's descendants in perpetuity, the bequest is invalid, even though coupled with the maintenance of a religious service (*w*). The property which is undisposed of devolves upon the heir.

Attempt to keep estate in suspense.

It is also not open to the testator to make his estate remain in suspense without an owner for any time Accordingly while a testator can validly make a bequest to take effect *in futuro*, if there is no present prior estate, the heir will take it until the interest created comes into operation (*x*). Where a testator appointed his widow as executrix but made no bequest in favour of his sons and merely gave directions for the management of the estate and for the postponement of partition to a particular date, it was held that the property vested in the widow as executrix and that the sons took the property as on an intestacy (*y*). Where a Hindu widow was directed by her husband's will to adopt a boy and executors were appointed

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(*u*) *Seshu Reddi* v *Malla Reddi* A I R. 1935 Mad. 852 A bequest to two daughters has however been held to constitute them joint tenants; *Suraj Prasad* v. *Mt. Gulab Debi* A.I R. 1937 All, 197

(*v*) Sec. 172 of the Indian Succession Act gives effect to this principle. *Madhavrao* v *Balabhai* (1927) 55 I A. 74. 52 Bom. 176; *Browne* v *Moody* [1936] A.C., 635, 645, *Ganesh Chunder* v. *Lal Behary* (1936) 63 I A. 448, 454, *Mannox* v *Greener* (1873) L R., 14, Eq., 456, *Margaret Fernandez* v *Solina Coelho* A I R 1925 Mad, 418, 420, *Shookmoy Chandradas* v. *Monoharı Dassey* (1885) 12 I A., 103, 11 Cal. 684, 692, affirming (1881) 7 Cal. 269, *Admr. Genl of Bengal* v. *Hughes* (1912) 40 Cal. 192, 214, *Hemaangini* v *Nobinchand Ghosh* (1882) 8 Cal. 788, *Mandakini Debi* v. *Arunabala Debi* (1906) 3 C L J, 515, 519.

(*w*) *Shookmoy Chandra* v. *Monoharri Dassi* (1885) 12 I.A., 103, 11 Cal., 684 For a case where the gift to charities was severable from the tying up of the property for the benefit of the testator's relations, even when the latter motive was dominant, see *Kayastha Pathasala* v. *Mt. Bhagwati* (1936) 64 I.A., 5.

(*x*) *Amulya Charan Seal* v. *Kali Das Sen* (1905) 32 Cal., 861.

(*y*) *Poorendra Nath Sen* v. *Hemangini Dasi* (1909) 36 Cal., 75.

to be in possession of the properties during the minority of the adopted boy and the widow refused to adopt, it was held that the widow was entitled to the properties as on intestacy (*z*).

Bequest by implication.

§ 769. A bequest need not be in express terms but may be by implication. But it must be a necessary inference to be drawn from the expressions used by the testator (*a*). To constitute a gift by implication, there must be a reasonable degree of certainty as to the persons intended to take and the nature of the estate which they were intended to take (*b*).

Persona Designata.

§ 770. Where a testator makes a bequest to a person whom he erroneously describes as the adopted son, the invalidity of the adoption would not make the gift invalid, unless on the construction of the will it appears that the intention of the testator is that a valid adoption is either a condition of or the motive for the bequest (*c*). Similarly where a testator directed that his nephew's son should be adopted by his widow and bequeathed to him his residuary estate and his widow, having refused to adopt him, died while he was still a minor, it was held that the legatee not having been adopted could not take under the will (*d*).

Rules of construction.

§ 771. The rules of construction of wills as stated by Lord Wensleydale in *Roddy* v. *Fitzgerald* (*e*) have been approved by the Privy Council in *Venkatadri Appa Rao* v. *Parthasarathi Appa Rao*, "The first duty of the Court expounding the will is to ascertain what is the meaning of the words used by the testator. It is very often said that the intention of the testator is to be the guide, but that expression is capable of being misunderstood and may lead to a specula-

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(*z*) *Varadanarayana Ayyangar* v. *Vengu Ammal* (1938) 47 M.L.W., 217 See *Jagannatha* v *Kunja Behari Deo* (1921) 48 I.A., 482, 44 Mad., 733.

(*a*) *Bissonauth Chunder* v. *Bamasoondery* (1867) 12 M.I.A., 41, 60.

(*b*) *Anand Rao* v. *Admr. General, Bombay* (1896) 20 Bom., 450; *Satish Chandra* v. *Niladri Nath* (1934) 39 C.W.N., 237.

(*c*) See *ante* § 216. *Nidhoomoni Debya* v. *Saroda Pershad* (1876) 3 I A., 253, 26 W R., 91 (*persona desiignata*); *Subbarayer* v. *Subbammal* (1901) 27 I.A., 162, 24 Mad., 414 (*persona desiignata*); *Fanindra Deb* v. *Rajeswar* (1885) 12 I.A., 72, 11 Cal., 463; *Lali* v. *Murlidhar* (1906) 33 I A., 97, 28 All., 488; *Abbu* v. *Kuppammal* (1893) 16 Mad., 335, *Patel Vandravan* v. *Patel Manilal* (1891) 15 Bom., 565, 573; *Lalta Prasad* v. *Salig Ram* (1909) 31 All., 5; *Navaneethakrishna* v. *Collector of Tinnevelly* (1935) 69 M.L.J., 632.

(*d*) *Karamsi Madhowji* v. *Karsandas Natya* (1899) 23 Bom., 271 P.C. See section 128 of the Succession Act and its illustrations and section 26 of the Transfer of Property Act.

(*e*) (1858) 6 H.L.C., 823; *Gordon* v. *Gordon* (1871) 5 H.L.C., 254, 284; *Abbott* v. *Middleton* (1858) 7 H.L.C., 65, 89.

tion as to what the testator may be supposed to have intended to write, whereas the only and proper inquiry is, what is the meaning of that which he has actually written. That which he has written is to be construed by every part being taken into consideration according to its grammatical construction and the ordinary acceptation of the words used, with the assistance of such parol evidence of the surrounding circumstances as is admissible, to place the Court in the position of the testator" (*f*).

As an aid and solely as an aid to arriving at a right construction of a particular will and to ascertain the meaning of the language used by the particular testator, a Court is entitled and bound to bear in mind the surrounding circumstances, the position of the testator, his family relationships, the probability that he would use words in a particular sense and his social and cultural environment. In other words, the Court is entitled to put itself into the testator's arm-chair (*g*).

The will in the first instance is to be construed apart from the question of the validity of its provisions (*h*).

The meaning of any clause in a will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other (*i*).

The intention of the testator shall not be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible (*j*).

(*f*) (1925) 52 I A., 214, 228-9, 48 Mad, 312, 329; *Soorjeemoney Dossee* v. *Dinobundoo Mullick* (1857) 6 M I A, 526, 551, *Bhoobun Movee* v. *Ram Kishore* (1865) 10 M I A, 308, *Lakshmibai* v *Ganpat* (1867) 4 Bom H C. (O C J), 151, *Lallubai* v. *Mankuvarbai* (1879) 2 Bom, 388, 408, *Murari Lal* v. *Kundanlal* (1892) 13 All, 339; *Somasundara* v *Ganga Bissen* (1905) 28 Mad, 386, *Cheda Lal* v. *Gobind Ram* (1908) 30 All, 455, *Basant Kumar Basu* v *Ramshankar Ray* (1932) 59 Cal, 859, *Sasanka Bhuchan* v. *Gopi Ballav* A I R. 1935 Cal, 716

(*g*) *Venkata Narasimha* v *Parthasarathy* (1914) 41 I A, 51, 71, 37 Mad, 199, 221, 222, *Nathu Ramu* v. *Gangabai* 42 C W N., 1082, A I R 1938 P C, 228

(*h*) 28 Hals. 1st ed, 667. In the *Tagore* case, it was laid down that 'the true mode of construing a will is to consider it as expressing in all its parts, whether consistent with law or not, the intention of the testator, and to determine upon a reading of the whole will, whether, assuming the limitations therein mentioned to take effect, an interest claimed under it was intended under the circumstances to be conferred' I A, Supp, Vol. 47, 79.

(*i*) Section 82 of the Succession Act See the rules regarding the construction of wills laid down in sections 74-90 of the Succession Act, which apply to Hindus. *Dinbai* v. *Nusserwanji* (1922) 49 I A., 323, 326, 49 Cal, 1005, 1008.

(*j*) Section 87 of the Succession Act, which applies to Hindu wills.

§ 772. Another general principle applicable to wills and to gifts *inter vivos* is that "a benignant construction is to be used, and that if the real meaning of the document can be reasonably ascertained from the language used, though that language be ungrammatical or untechnical, or mistaken as to name or description, or in any other manner incorrect, provided it sufficiently indicates what was meant, that meaning shall be enforced to the extent and in the form which the law allows" (*k*).

Accordingly if the gift conferred an estate upon a man with words imperfectly describing the kind of inheritance but showing that it was intended that he should have an estate of inheritance, the language would be read as conferring an estate inheritable as the law directs (*l*).

No express words of inheritance necessary.

If an estate were given to a man simply without express words of inheritance, it would, in the absence of a conflicting context, carry by Hindu law an estate of inheritance. If there were added to such a gift an imperfect description of it as a gift of inheritance, not excluding the inheritance imposed by the law, an estate of inheritance would pass (*m*).

§ 773. The Judicial Committee laid down in *Lalit Mohun Singh Roy* v. *Chukkun Lal Roy*, "There are two cardinal principles in the construction of wills, deeds and other documents. The first is that clear and unambiguous dispositive words are not to be controlled or qualified by any general expression of intention. The second is, to use Lord Denman's language, that technical words or words of known legal import must have their legal effect even though the testator uses inconsistent words, unless those inconsistent words are of such a nature as to make it perfectly clear that the testator did not mean to use the technical terms in their proper sense" (*n*).

The words, 'become owner (*malik*) of all my estate and properties' would, unless the context indicated a different meaning, be sufficient to indicate a heritable and alienable estate even without the words, 'enjoy with son, grandson, and so on in succession,' which latter words are frequently used in

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(*k*) The *Tagore* case (1872) I.A. Supp. Vol. 47, 65. See also *Venkatadri Appa Rao* v. *Parthasarathy Appa Rao* (1925) 52 I.A., 214, 48 Mad., 312.

(*l*) (1872) I.A. Supp. Vol. 47, 65 *supra*.

(*m*) I.A. Supp. Vol. 47, 65 *supra*. *Damodardas* v. *Tapidas* (1898) 25 I.A., 126, 22 Bom., 833; *Vallabhdas* v. *Gordhandas* (1890) 14 Bom., 360; *Rameshwar* v. *Lachmi* (1904) 31 Cal., 111.

(*n*) (1897) 24 I.A., 76, 85, 24 Cal., 834.

Hindu wills and have acquired the force of technical words conveying an heritable and alienable estate (*o*).

Construction of gifts to women.

§ 774. Whether a Hindu woman takes under a gift or bequest the same estate as a Hindu male does, when there are no words conferring an absolute estate and no express power of alienation, has been the subject of considerable controversy and fluctuation of opinion. It may now be taken as settled that there is no such difference, as was once supposed, between a gift to a male and a gift to a female. The later rulings of the Privy Council as well as the Indian Courts have generally adopted the rule of construction that the fact that the donee is a woman does not make the gift any the less an absolute gift where the words would be sufficient to convey an absolute estate to a male (*p*). In *Jagmohan Singh* v. *Sri Nath* (*q*) referring to the apparent conflict between the decisions in *Ramachandra Rao* v. *Ramachandra Rao* (*r*) and *Bhaidas Shivdas* v. *Bhai Ghulam* (*s*), the Privy Council said that the remarks in the former case were not intended in any way to qualify the judgment in *Bhaidas Shivdas* v. *Bhai Gulab*. Notwithstanding the clear pronouncement in the later cases, the rule long ago expressed in unqualified terms in *Mahomed Shumsool* v. *Shewak Ram* (*t*)

(*o*) (1897) 24 Cal, 834, 849 *supra*, *Surajmani* v. *Rabinath Ojha* (1908) 35 I A, 17, 30 All, 84, *Pratap Singh* v *Agarsingji* (1919) 46 I A., 97, 43 Bom, 778, *Ram Narayan Singh* v *Ram Saranlal* (1919) 46 I A, 88, 46 Cal, 683. Regarding wills in vernacular languages, see *Rajendra Prasad* v. *Gopal* (1930) 57 I A, 296, 10 Pat, 187.

(*p*) *Surajmani* v *Rabi Nath Ojha* (1908) 35 I A, 17, 30 All, 84 (wife and daughter-in-law, absolute), *Fatechand* v. *Rupechand* (1916) 43 I A., 183, 38 All, 446 (bequest to wife—absolute); *Bhaidas Shivdas* v *Bai Gulab* (1922) 49 I A, 1, 46 Bom, 153 (gift to widow—absolute), *Sasiman* v. *Shib Narayan* (1922) 49 I A., 25, 1 Pat, 305 (bequest to widow—absolute), *Sudhamoni Das* v. *Surat Lal Das* (1923) 45 M L J, 247 P.C, affg 25 C W N., 527, *Hitendra Singh* v. *Maharaja of Darbhanga* (1928) 55 I.A., 197, 7 Pat, 500 (bequest to wife, absolute estate), *Bishnath Prasad* v *Chandree Prasad Kumari* (1933) 60 I A, 56, 55 All, 61 (gift to daughter-in-law—absolute), *Saraju Bala* v. *Jyotir Moyee* (1931) 58 I.A, 270, 59 Cal. 142 (daughter—absolute), *Rameshwar* v. *Balraj* (1935) 40 C.W N., 8 P C, *Biprados Goswami* v. *Sadhanchandra Banerji* (1929) 56 Cal, 790; *Pramathanath Sarkar* v. *Suprakash Ghosh* (1931) 58 Cal, 77; *Provabati Debya* v. *Sarojini Devi* A.I.R. 1933 Cal, 72, 36 C W N, 1015, *Krishnaswami* v *Ramachandra* (1934) 67 M L J, 821 (devise to widow and son in same words—absolute estate), *Kanhya Lal* v *Mt. Hira Debi* (1936) 15 Pat, 151.

(*q*) (1930) 57 I A., 291, A I R, 1930 P C, 253, *Shivappa* v. *Rudrava* (1933) 57 Bom, 1, 17.

(*r*) (1922) 49 I A., 129, 45 Mad, 320.

(*s*) (1922) 49 I A., 1, 46 Bom, 153.

(*t*) (1875) 2 I A., 7, 14 B L.R., 226 (bequest to daughter-in-law—limited estate); *Rabutty* v. *Sibchunder* (1854) 6 M.I.A., 1; *Radha Prasad* v. *Ranee Mani* (1908) 35 I.A., 118, 35 Cal., 896.

that there is a presumption that the donor intends, where the donee is a woman, to take only a life estate, which has been responsible for considerable uncertainty in the construction of gifts and wills, has in some cases been relied upon and followed (*u*).

Bequest without words of limitation.

§ 775. Now sec. 95 of the Indian Succession Act applies to all wills made by Hindus and it lays down a rule of construction as to a gift *simpliciter*, which is uniformly applicable to all cases whether the gift is to a female or to a male: Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him.

Presumption against intestacy.

§ 776. It has been held in some cases that the presumption of English law against intestacy applies to the construction of Hindu wills(*v*). That presumption, of course, applies only in doubtful cases. The English rule is that if on a fair and reasonable construction of the will, there is ground for considering that the testator did not intend to die intestate, then only the Court should act on that presumption in construing doubtful expressions in the will. But it will not give an unnatural meaning to a word or construe plain words otherwise than in accordance with their plain meaning. In any case, it must be shown distinctly that the words in the will are sufficient to amount to a gift of the property, expressly or by implication, to some particular donee (*w*).

(*u*) *Basant Kumar Basu* v. *Ram Shankar Roy* (1932) 59 Cal., 859; *Annada Sundari* v. *Ratan Ram* A.I.R. 1934 Cal., 370; *Mangamma* v. *Dorayya* (1936) 71 M.L.J., 688, (1937) Mad., 335; *Mohan Singh* v. *Gur Devi* (1931) 12 Lah., 767; *Ashurfi Singh* v. *Biseswar* (1922) 1 Pat., 295. The observation in *Mahomed Shumsul* v. *Shewak Ram* was made at a time when it was thought that under the Hindu law in the case of immovable property given or devised by husband to his wife, she had no power of alienation unless it was conferred in express terms. The Judicial Committee has recently laid down that that proposition is not sound: *Shalig Ram* v. *Charanjit Lal* (1930) 57 I.A., 282, 289. *A fortiori* there is no reason for its retention in the case of other women.

(*v*) *Ellokassee Dossee* v. *Durponarain* (1880) 5 Cal., 59, 63; *Cheda Lal* v. *Gobind Ram* (1908) 30 All., 455, 458; *Seshayya* v. *Narasamma* (1899) 22 Mad., 357, 361; *Kanakammal* v. *Bakthavatsalu* (1923) 44 M.L.J., 23, 26.

(*w*) 28 Hals. 1st ed., pp. 665-666.

English rules of construction inapplicable.

§ 777. One principle which has often been reiterated is that the Court will not apply English rules of construction to Hindu wills, whether written in the vernacular or in English. Referring to the English rules of construction, Lord Moulton observed: "Such rules are purely an English product, based on English necessities and English habits of thought, and there would be no justification in taking them as our guide in case of Indian wills" (*x*). Some of the rules which are not artificial or peculiar to the English system have of course been applied to the construction of Hindu wills as being common to both the systems.

Vesting in executor.

§ 778. The executor of a deceased Hindu is his legal representative for all purposes and all the property of the deceased person vests in him as such except such property of the deceased which would otherwise pass by survivorship to some other person (*y*). In *Venkata Subbamma* v *Ramayya*, the Privy Council held that the estate of the testator vests in the executor, if he accepts office, from the date of the testator's death and he has the same powers as an executor under the Probate and Administration Act, 1881, even though probate has not been obtained (*z*).

The interest of the executor however in the property of the deceased is only in right of the deceased as his representative (*a*). An executor as such is not a trustee in the strict sense; but in respect of properties undisposed of or not validly disposed of, he is a bare trustee for the persons entitled to them on such intestacy (*b*). He will be a trustee in respect of legacies to which he has assented even before the estate has been administered. Where it has been

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(*x*) *Venkata Narasimha* v *Parthasarathy* (1914) 41 I A, 51, 71, 37 Mad, 199, *Norendra* v *Kamalbasini* (1896) 23 I A, 18, 26, per Wilson, J, in *Ramlal Sett* v. *Kanai Lal* (1886) 12 Cal., 663, 678, approved by the Privy Council in *Bhagabati* v *Kali Charan* (1911) 38 I A, 54, 64, 38 Cal., 468, *Skinner* v *Naunihal Singh* (1913) 40 I.A., 105, 114, 115; *Rajendra Prasad Bose* v *Gopal Prasad Sen* (1931) 57 I.A, 296, 303, 10 Pat, 187, *Indira Rani Ghose* v *Akhoy Kumar Ghose* (1933) 59 I A, 419, 430, 60 Cal, 554, *Din Tarini* v *Krishna Gopal* (1909) 36 Cal., 149, 156

(*y*) Indian Succession Act, sec 211, *Sir Mahomed Yusuf* v. *Hargovandas* (1923) 47 Bom, 231, *Ganapathi* v *Sivamalai* (1913) 36 Mad, 575, *Chidambara* v *Krishnaswami* (1916) 39 Mad., 365.

(*z*) (1932) 59 I A, 112, 55 Mad, 443, affg. (1926) 49 Mad, 261 F B

(*a*) *In re Davis Evans* v. *Moore* (1891) 3 Ch., 119, 124.

(*b*) *Kurrutelain* v *Abbasi* (1906) 32 I.A., 244, 33 Cal., 116.

fully administered, he will be a trustee of the residue of the property for the persons beneficially entitled (*c*).

Probate.

§ 779. No right as executor or legatee can be established in any Court unless probate of the will or letters of administration with the will annexed are granted in the case of wills made by any Hindu, Buddhist, Sikh, or Jaina, within the territories and limits to which the Hindu Wills Act, 1870, applied. But in respect of wills made outside such territories and limits, neither probate nor letters of administration with the will annexed are compulsory except as to immovable property within those territories and limits (*d*). Accordingly it has been held that probate need be taken only in respect of immovable properties situate within those territories or limits; and a suit for a pecuniary legacy unconnected with any such property dealt with by the will is maintainable without obtaining a probate (*e*).

A probate is conclusive as to the due execution of the will and the appointment of the executor. It decides nothing as to the title of the testator to the properties disposed of or as to the construction of the will and the validity of its provisions (*f*). The purposes for which probate or letters of administration are conclusive are stated in sec. 273 of the Indian Succession Act. It is conclusive as to the representative title of the executor against all debtors of the deceased and all persons holding property which belonged to him and

(*c*) *Nand Kishore* v. *Pasupati Nath* (1928) 7 Pat., 396; *Amarchand* v *Madhowji* (1905) 29 Bom., 188, 190, *Attenborough* v. *Solomon* [1913] A C., 76, 85.

(*d*) Sec. 273, I. S. Act; *Ghansham Dass* v *Gulabi Rai* (1927) 50 Mad, 927 F B. The suit may be instituted without a probate, *Chandra Kishore* v. *Prosanna Kumari* (1911) 38 I.A., 7, 38 Cal., 327. Succession Certificate is not necessary for property got by survivorship, *Raghavendra* v *Bhima* (1892) 16 Bom., 349; *Jagmohandas* v. *Allu Maria* (1895) 19 Bom., 338; *Sital Prasad* v. *Kaiful Sheik* (1922) 22 C W.N, 488. But it has been held to be necessary in case of property inherited. *Vairavan Chettiar* v *Srinivasachariar* (1921) 44 Mad, 499 F.B. This case proceeds upon the view that sons take their father's property as obstructed heritage which is erroneous. They take only by survivorship. See *ante* § 272.

(*e*) *Namberumal Chetty* v. *Veeraperumal* (1930) 59 M.L J, 596, 605.

(*f*) 14 Hals. 2nd ed., 193; *Ramchandra* v. *Ramabai* A.I.R. 1937 Bom., 341. *Komalangi* v. *Sowbakiammal* (1931) 54 Mad., 24; *In re the Estate of Alice Skinner* (1936) 58 All., 22; *Sudhir Chandra* v. *Uttara Sundari* (1932) 37 C.W.N, 435; *Jaswant Lal* v. *Goverdhan Lal* A.I.R. 1937 Lah., 804; *Nandkishore* v. *Pasupatinath* (1928) 7 Pat, 396; *Bhupati Charan Basu* v. *Chandi Charan* (1934) 39 C.W.N., 393. (Where the question who is entitled to the grant depends upon the construction of the will, it will be construed to that extent).

affords full indemnity to all debtors paying their debts and all persons delivering up such property to the person to whom such probate or letters of administration have been granted (*g*).

Executor's powers.

§ 780. An executor appointed under a Hindu will has power to dispose of the property of the deceased in such manner as he thinks fit, subject however to any restriction imposed by the will in respect of immovable property unless the court granting probate empowers him otherwise (*h*).

(*g*) *Kurrutelain* v. *Abbasi* (1906) 32 I.A., 244, 33 Cal., 116; *In re Bhobo Sundari* (1881) 6 Cal., 460, *Debendra* v. *Admr. Genl. of Bengal* (1906) 35 I A, 109, 35 Cal., 955 (complete representation).

(*h*) Sec. 307, Succession Act; *Krishnaswami* v. *Gouriamma* A I.R. 1936 Mad., 256; *Suneelkumar* v. *Shishirkumar* (1936) 62 Cal, 552.

CHAPTER XXII

RELIGIOUS AND CHARITABLE ENDOWMENTS.

Ishta and *Purtta.*

§ 781. Gifts for religious and charitable purposes had amongst the Aryans their source in charity and the desire to acquire religious merit. They fall into two divisions, *ishta* and *purtta*: the former meant sacrifices and sacrificial gifts and the latter meant charities. The former led to heaven and the latter to emancipation, thus placing charity on a higher footing than religious ceremonies and sacrifices (*a*). Manu says: "Let him, without tiring always offer sacrifices (*ishta*) and perform works of charity (*purtta*) with faith; for offerings and charitable works made with faith and with lawfully earned money procure endless rewards. Let him always practise, according to his ability with a cheerful heart, the duty of liberality (*danadharma*) both by sacrifices (*ishta*) and charitable works (*purtta*) if he finds a worthy recipient for his gifts" (*b*).

Ishta works are enumerated by Pandit Prannath Saraswati in his work on Endowments as: (1) Vedic sacrifices; (2) Gifts offered to priests at the same; (3) Preserving the Vedas; (4) Religious austerity; (5) Rectitude; (6) *Vaisvadeva* sacrifices; (7) Hospitality (*atithya*) (*c*). *Purtta* or charitable acts are tanks, wells with flights of steps, temples, planting of groves, the gift of food, dharmasalas and places for supplying water. the relief of the sick, the establishment of processions for the honour of deities and so on; gifts for the promotion of education and knowledge are specially meritorious (*d*).

It will be noticed that temples and processions for deities were considered as charitable acts (*purtta*), while hospitality (*atithya*) was considered as a sacrificial gift (*ishta*).

Charitable purposes.

§ 782. According to English law, 'charitable trusts' in the legal sense comprise four principal divisions: trusts for the relief of poverty, trusts for the advancement of education,

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(*a*) Yama says "Heaven is attained by *ishta;* by *purtta,* one enjoys final emancipation". Saraswati, 26. *Manohur Mukherji* v. *Bhupendranath* (1933) 60 Cal., 452 F.B.

(*b*) Manu, IV, 226-227.

(*c*) Saraswati, 20-21.

(*d*) Saraswati, 25-28. The subject is fully discussed in 'the Hindu Law of Endowments' by Pandit P. N. Saraswati, in the appendix on Public Charities in Mandlik's Hindu Law and in P. R. Ganapathi Iyer's 'Hindu and Mahomedan Religious Endowments.'

trusts for the advancement of religion and trusts for other purposes beneficial to the community not falling under any of the preceding heads (*e*). All charities to be administered by the Court must fall within one or other of these divisions but not every object which falls within those divisions is charitable unless it is of a public nature, intended to benefit the community or some part of it and not merely private individuals or a class of private individuals (*f*). The courts in India have, in relation to Hindu wills and gifts, adopted the technical meaning of charitable trusts and charitable purposes which the courts in England have placed upon the term 'charity' in the statute of Elizabeth (*f*[1]). All purposes which are charitable according to English law will be charitable under Hindu law. But, in addition, under the head of advancement of religion, there are other charitable objects in Hindu law which will not be charitable according to English law; for that law forbids bequests for superstitious uses, a restriction which does not apply to grants of this character in India, even in the Presidency towns (*g*), and such grants have been repeatedly enforced by the Privy Council (*h*). What are religious purposes and what religious purposes will be charitable must of course be entirely decided according to Hindu law and Hindu notions.

Superstitious uses not forbidden

The definition of charitable purpose in the Charitable Endowments Act (VI of 1890) includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility but does not include a purpose which relates exclusively to religious teaching or worship (*i*). Section 92 of the Civil Procedure Code, 1908, refers to public purposes of a charitable or religious nature and the Charit-

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(*e*) *Morice* v *Bishop of Durham* (1805) 10 Ves, 522, 532, *Commissioners of Income-Tax* v. *Pemsel* (1891) A.C, 531, 583, 4 Hals, 2nd ed., 109-10

(*f*) *Re Macduff*, *Macduff* v. *Macduff* (1896) 2 Ch, 451, 466 C A.; *Re Topham* (1938) 1 All E R, 181, 185.

(*f*[1]) *Gangbai* v *Thavur* (1863) 1 Bom. H C.R. 71; *University of Bombay* v *Municipal Commissioner, Bombay* (1892) 16 Bom, 217; *Sayad Hussein Miran* v. *Collector of Kaira* (1897) 21 Bom, 48, 52; *Monie* v *Scott* (1919) 43 Bom, 281, 292

(*g*) *Das Merces* v *Cones* 2 Hyde, 65, *Andrews* v. *Joakim* (1859) 2 B L.R. (O C J.), 148, *Judah* v *Judah* (1890) 5 B L R, 433, *Khusalchand* v *Mahadevgiri* (1875) 12 Bom H C, 214; *Rupa Jagshet* v. *Krishnaji* (1885) 9 Bom, 169, Ganapathi Iyer, Endowments, 196, 197.

(*h*) *Ramtonoo* v. *Ramgopal* I Kn, 245; *Jewun* v. *Shah Kubeeroodeen* (1841) 2 M.I A., 390, 6 W R., 3; *Sonatun Bysack* v. *Juggutsoondree* (1859) 8 M I A., 66; *Juggutmohini* v. *Mt. Sokheemoney* (1871) 14 M I.A., 289, 10 B L.R, 19.

(*i*) The Charitable Endowments Act (VI of 1890) S. 2.

able and Religious Trusts Act (XIV of 1920) refers to trusts created or existing for a public purpose of a charitable or religious nature. The Transfer of Property Act, 1882, defines, in effect, public religious and charitable trusts as transfers of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind (*j*).

A charitable or religious endowment, in order to be a charity in the legal sense, will have to be for purposes of a public nature, in other words, for the benefit of the community or some part of it (*k*). Otherwise, it will be a private trust (*l*). A trust is none the less a trust for a public purpose, if its main object is in fact the support of fakirs of a particular sect and the propagation of the tenets of that sect (*m*).

The distinction in Hindu law between religious and charitable endowments is a modern one (*n*).

Public and private endowments.

§ 783. Religious endowments are of two kinds, public and private. In a public endowment, the dedication is for the use or benefit of the public. But when property is set apart for the worship of a family god, in which the public are not interested, the endowment is a private one. The family idols are not however chattels or the property of the family. They are legal entities having, within limits, independent rights (*n*[1]).

(*j*) The Transfer of Property Act, S. 18.

(*k*) 4 Hals. 2nd ed., para. 146.

(*l*) *Sathappayyar* v. *Periaswami* (1890) 14 Mad., 1; *Prasaddas* v. *Jagannath* (1933) 60 Cal., 538.

(*m*) *Puran Atal* v. *Darshan Das* (1912) 34 All., 468.

(*n*) *Manohur Mukerji* v. *Bhupendranath* (1933) 60 Cal., 452, 475 F.B. For the distinction between a private and a public shrine, see *Parma Nand* v. *Nihal Chand* (1938) 65 I.A., 252, A.I.R. 1938 P.C., 195 (essentials of a public trust), *Doorganath Roy* v. *Ram Chunder Sen* (1876) 4 I.A., 52, 2 Cal., 341, *Jugalkishore* v. *Lakshman Das* (1899) 23 Bom., 659; *Ram Prasad Gupta* v. *Ram Kishun* (1932) 11 Pat., 594; *Protopchandra* v. *Brijnath* (1892) 19 Cal., 275; *Pannasundari* v. *Benares Bank Ltd*, A.I.R. 1938 Cal., 81; *Koman Nair* v. *Achutan Nair* (1935) 58 Mad., 91, 61 I.A., 105; *Sahdeo Das* v. *Raja Ram* A.I.R. 1932 All., 708, *Pujari Lakshmana Goundan* v. *Subramania Iyer* A.I.R. 1924 P.C., 44, 29 C.W.N., 112; affg. (1919) M.W.N., 899; *Puraviya* v. *Poonachi* (1921) 40 M.L.J, 289; *Premo* v. *Sheonath* A.I.R. 1933 Oudh, 22; *Venkata Sundara* v. *President, H. R. E. Board, Madras*, (1937) 2 M.L.J., 876.

(*n*[1]) (1925) 52 I.A., 245, 52 Cal., 809 *supra; Muthiah Chetti* v. *Periannan Chetti* (1916) 4 M.L.W., 228. The Privy Council in *Kunwar Doorga Nath* v. *Ram Chunder* (1877) 4 I.A., 52, 2 Cal., 341 observed: "Where the temple is a public temple, the dedication may be such that the family itself could not put an end to it but in the case of a family idol, the consensus of the whole family might give the estate another direction". See also *Gobinda Kumar* v. *Debendra Kumar* (1907) 12 C.W.N., 98. It was however pointed out

Rule against perpetuities inapplicable.

§ 784. Bequests to idols and temples are not invalid for transgressing the rule which forbids the creation of perpetuities. "It being assumed to be a principle of Hindu law that a gift can be made to an idol, which is a *caput mortuum*, and incapable of alienating, you cannot break in upon that principle by engrafting upon it the English law of perpetuities" (n^2). In fact both the cases, in which the Bengal High Court in 1869 set aside the will as creating secular estates of a perpetual nature, contained devises of an equally perpetual nature in favour of idols, which were supported (o) But where a will, under the form of a devise for religious purposes, really gives the beneficial interest to the devisees, subject merely to a trust for the performance of the religious purposes, it will be governed by the ordinary Hindu law and will be construed as creating a charge for a religious purpose and any provisions for perpetual descent, and for restraining alienation, will, therefore, be void The result will be to set aside the will, as regards the descent of the property, leaving the heirs-at-law liable to keep up the idols, and defray the proper expenses of the worship (p). *A fortiori* will the rule against perpetuities

Colourable religious endowment.

in *Sri Sri Gopal* v *Radha Binode Mandal* (1925) 41 C L J 396, A I R 1925 Cal, 996, 1003 that 'the question whether in cases of absolute debutter, where the property is absolutely vested in the deity, the successors of the members of the family, who give the estate another direction may not call in question the diversion of the estate did not arise nor was it considered by the Judicial Committee" Even if the consensus of the whole family can convert a debutter property, such consensus must be of all the members male and female, who are interested in the worship of the deity *Chandi Charan* v *Dulal Chandra Paik* (1927) 54 Cal, 30, *Monmohon Ghosh* v *Siddeshwar* (1922) 27 C W.N., 218, *Lalit Mohan* v *Brojendra Nath* (1926) 53 Cal, 251, *Manickammal* v *Murugappa* A I R 1935 Mad, 483, *Bhabatarini* v *Ashmantara* A I R 1938 Cal, 490 In *Ishwari Bhubaneshwari* v *Brajo Nath Dey* (1937) 64 I A, 203, [1937] 2 Cal, 447, the Privy Council have left the matter open though in the judgment of the High Court (60 Cal, 54) which they affirmed on other grounds, the Calcutta High Court has pointed out that there is no warrant in Hindu law for such a conversion by agreement The decision in 60 Cal, 54 has been followed in a later decision, *Panna Sundari* v *Benares Bank Ltd*, A I.R 1938 Cal, 81

(n^2) Per Markby, J, *Kumara Asima* v *Kumara Krishna* (1859) 2 B L.R. (O.C J), 11, 47, *Bhuggobutty Prosonno Sen* v *Gooroo Prosonno Sen* (1898) 25 Cal, 112, *Prafulla Chander* v *Jogendra Nath* (1905) 9 C W.N, 528

(o) *Tagore* v *Tagore* (1872) I A Supp Vol 47, 9 B L R, 377, *Krishnaramani* v *Ananda* (1870) 4 B L.R (O C J), 231, *Brojosoondery* v. *Luchmee Koonwaree* (1875) 15 B L R, (P C.), 176 note.

(p) *Sonatun Bysack* v. *Sreemutty Juggutsoondree Dossee* (1859) 8 M.I A, 66, explained in *Jadu Nath* v *Sitaramji* (1917) 44 I A, 187, 190, 39 All, 553, *Asutosh Dutt* v *Doorga Charan* (1880) 6 I A, 182, 5 Cal, 438 In *Promotho* v *Radhika* (1875) 14 B.L.R., 175 and *Sri Thakur Parmod* v *Atkins* (1919) 4 Pat L J, 533, the dedications were held to be merely nominal.

apply, where the estate created is in its nature secular, though the motive for creating it is religious (p^1).

§ 785. Gifts for the installation, consecration, worship and service of idols and gifts to idols already installed and consecrated (q), gifts for the building and renovation of temples (r), for the processions of idols and their vehicles and for religious festivals (s),'in other words, gifts to religious institutions or for religious purposes of every kind are valid religious endowments. Religious endowments.

§ 786. Maths are in the main religious institutions. Their primary purpose is the maintenance of a competent line of religious teachers for the advancement of religion and piety, for the promotion of religious knowledge, the imparting of spiritual instruction to Maths.

(p^1) *Anantha* v. *Nagamuthu* (1882) 4 Mad., 200.

(q) *Bhupati Nath* v. *Ram Lal Maitri* (1910) 37 Cal., 128 F.B., overruling 29 Cal., 260, *Shibessuree Debia* v. *Mothooro Nath* (1869) 13 M.I.A, 270, *Juggut Mohini* v. *Sokhemoney* (1871) 14 M.I.A., 289; *Prosonno Kumari Debya* v. *Golab Chand* (1875) 2 I A, 145, *Rajessuree Debia* v *Jogendra Nath* (1875) 23 W R, 278, *Dwarkanath* v. *Burroda Prasad* (1878) 4 Cal., 443, 446; *Gokool Nath Guha* v. *Issur Lochun Roy* (1887) 14 Cal, 222 [Siva temple, resthouse and garden; but see *Surbomungola* v. *Mohendronath* (1879) 4 Cal., 508], *Prafulla Chunder Mullick* v. *Jogendra Nath* (1905) 9 C.W N, 528 (Durga puja and Lakshmi puja), *Bhuggobutty Prosonno Sen* v *Gooroo Prosonno Sen* (1898) 25 Cal., 112, *Chandra Mohan* v *Jnanendra* (1923) 27 C.W.N, 1033, *Lakshmi Narayan Sinha* v *Gostha Raman Sinha* (1937) 41 C.W.N, 759, A.I.R. 1937 Cal, 327, *Bhabatarini* v. *Ashmantara* A.I R. 1938 Cal., 490; *Khusalchand* v. *Mahadeovgiri* (1875) 12 Bom. H C, 214, *Lakshmishankar* v. *Vajnath* (1882) 6 Bom, 24; *Rupa Jagshet* v *Krishnaji Govind* (1884) 9 Bom., 169 (gift to worship family idol), *Monohur* v *Lakshmiram* (1887) 12 Bom., 247 and on appeal (1899) 26 I.A., 199, 24 Bom., 50, *In re Lakshmibai* (1888) 12 Bom., 638, *Chintaman Bajaji Dev.* v. *Dhondo Ganesh* (1891) 15 Bom, 612, 620, *Jugalkishore* v. *Lakshman Das* (1899) 23 Bom., 659, *Karuppa* v *Arumuga* (1882) 5 Mad., 383. *Raghunath Prasad* v. *Gobind Prasad* (1886) 8 All., 76 (father's provision for permanent shrine for family idol), *Sarab Sukh Das* v. *Ram Prasad* (1924) 46 All., 130 (dedication for idol to be installed), *Bhekdhari Singh* v. *Sri Ramchanderjee* (1931) 10 Pat, 388 As to idols mutilated, see *Bijoychand* v *Kalipada* (1914) 41 Cal, 57 (the religious purpose survives the mutilation or destruction of the image) A trust for the performance of *sraddhas* is valid, see 9 C.W.N, 528 *supra* and 6 Bom., 24 *supra*, 4 Cal., 443 *supra*.

(r) *Thackersey Dewraj* v. *Hurbhum Nursey* (1884) 8 Bom., 432; *Mohar Singh* v. *Het Singh* (1910) 32 All., 337 (to complete a temple and maintain an idol), *Khub Lal* v. *Ajodhya Missir* (1916) 43 Cal., 574, 583 (completion of temple buildings).

(s) *Vaithilinga* v. *Somasundara* (1893) 17 Mad., 199: special endowments for specific services or religious charities are known as *katlais* in the Tamil country. *Annada Charan* v. *Kamala Sundari* A.I.R. 1936 Cal., 405 (festival). *Rathnam* v. *Sivasubramaniam* (1893) 16 Mad., 353; *Giyana Sambanda* v. *Kandasami Tambiran* (1887) 10 Mad, 375, 479; (1905) 9 C.W.N., 528, *supra*.

the disciples and followers of the math and the maintenance of the doctrines of particular schools of religion or philosophy. Though there are idols connected with the maths, their worship is quite a secondary matter. In addition to religious instruction, other charitable purposes are also served by these institutions, some of these maths being more charitable than religious (*t*)

Charitable endowments.

§ 787. Illustrations of bequests for charitable purposes are those for *sadavarats* (*u*), for dharmasalas, resthouses (*v*) and *annasatrams* (choultries) for feeding the poor (*w*), for the establishment and support of schools, colleges and uni-

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(*t*) *Vidyapurna Tirtha Swami* v *Vidyanidhi Tirthaswami* (1904) 27 Mad, 435, *Giyana Sambanda* v *Kandaswami* (1887) 10 Mad., 375. The nature and origin of these institutions were described in *Sammantha Pandara* v *Sellappa Chetty* (1879) 2 Mad, 175, 179, as follows —"A preceptor of religious doctrine gathers around him a number of disciples whom he initiates into the particular mysteries of the order, and instructs in its religious tenets Such of these disciples as intend to become religious teachers, renounce their connection with their family and all claims to the family wealth, and, as it were, affiliate themselves to the spiritual teacher whose school they have entered Pious persons endow the schools with property which is vested in the preceptor for the time being, and a home for the school is erected and a *mattam* constituted The property of the *mattam* does not descend to the disciples or elders in common, the preceptor, the head of the institution, selects among the affiliated disciples him whom he deems the most competent, and in his own life-time installs the disciple so selected as his successor, not uncommonly with some ceremonies. After the death of the preceptor, the disciple so chosen is installed in the gaddi, and takes by succession the property which has been held by his predecessor" See the definition of a math in the Madras Hindu Religious Endowments Act, section 9 (7).

(*u*) *Jamnabai* v *Khimji* (1890) 14 Bom, 1, *Tricumdas Mulji* v *Khimji Vullabh Dass* (1892) 16 Bom, 626, *Morarji Cullianji* v. *Nenbhai* (1893) 17 Bom, 351, *Jugalkishore* v *Lakshmandas* (1899) 23 Bom., 659

(*v*) *Purmanurdas* v *Venayak Rao* (1883) 9 I A, 86, 7 Bom, 19; *Gordhan Das* v *Chunni Lal* (1908) 30 All, 111

(*w*) *Dwarkanath* v *Burroda Persaud* (1879) 4 Cal, 443, *Rajendra Lall* v *Raj Coomari* (1907) 34 Cal, 5, *Kedar Nath Dutt* v *Atul Krishna Ghose* (1908) 12 C W N 1083 (feeding Brahmins on the day following Sivarathri), *Lakshmi Shankar* v *Vajnath* (1881) 6 Bom., 24 (for feeding Brahmins and performance of ceremonies), *Morarji Cullianji* v. *Nenbai* (1892) 17 Bom, 351, *Advocate-General, Bombay* v *Strangman* (1905) 6 Bom. L R, 56 (annachatram), *Narasimha* v *Ayyan Chetty* (1889) 12 Mad., 157 (annachatiam), *Alagappa* v *Sivaramasundara* (1896) 19 Mad, 211 (feeding), *Vaidyanatha* v *Swaminatha* (1924) 51 I.A, 282, 47 Mad, 884, *Ramappa Naidu* v *Lakshmanan Chetti* (1928) 54 M L J, 272, *Sheo Shonkar Gir* v *Ram Shewak* (1897) 24 Cal., 77 (feeding fakirs and mendicants), *Sardar Singh* v *Kunj Behari* (1922) 49 I.A., 383, 44 All, 503 (maintenance of priests and bhog offerings to a deity) Regarding gifts to charitable society, see *Anjuman Islamia of Muttra v Nasiruddin* (1906) 28 All, 384 Regarding gifts to poor relations, see (1904) 31 Cal., 166 *infra*, *Nakshetramali Dei* v. *Brajasunder* (1933) 12 Pat, 708.

versities (x), for dispensaries and hospitals for medical help to the sick and the infirm (y), for the construction and maintenance of tanks, wells, and reservoirs of water (z), and for the provision of drinking water for men and animals (z^1) and so on.

Bequest to dharma.

§ 788. It has frequently been held that a gift or bequest to dharma or dharam is void for vagueness and uncertainty. In Wilson's dictionary the term 'dharma' is defined as 'law, virtue, legal or moral duty' (a). The reasons for holding such gifts or bequests to be void were examined by the Privy Council in *Runchordas Vandrawandas* v. *Parvatibhai* (b) and the judgment of Lord Eldon in *Morice* v. *Bishop of Durham* was followed: "As it is a maxim that the execution of a trust shall be under the control of the Court, it must be of such a nature that it can be under that control so that the administration of it can be reviewed by the Court, or if the trustee dies the Court itself can execute the trust—a trust therefore

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(x) The *Tagore* case (1872) I. A. Supp. Vol. 47 (Tagore Law Lectureship), *Hari Dasi Debi* v. *Secy. of State* (1880) 5 Cal., 228, affd. in 8 I.A., 46, 7 Cal., 304; *Manorama* v. *Kalicharan* (1904) 31 Cal., 166 (University of Calcutta); *Jitendra Nath Palit* v. *Lokendra Nath Palit* (1915) 22 C.L.J., 593, *Girdhari Lal* v. *Ram Lal* (1899) 21 All, 200, *University of Bombay* v. *Municipality of Bombay* (1892) 16 Bom., 217. Regarding gifts to pandits holding *tolls* for learning (schools), at the time of the Durga puja, see *Dwarkanath* v. *Burroda Prasad* (1879) 4 Cal., 443.

(y) *Rajessurree Debia* v. *Jogendra Nath* 23 W.R., 278; *Hori Dasi* v. *Secy. of State* (1880) 5 Cal., 228 affd. in (1881) 8 I.A., 46, 7 Cal, 304; *Fanindra* v. *Admr.-Gen. of Bengal* (1901) 6 C.W.N., 321.

(z) *Sivaraman Chetti* v. *Muthaiya Chetti* (1888) 16 I.A., 48, 12 Mad., 241 affirming 6 Mad., 229; *Jamnabai* v. *Khimji* (1890) 14 Bom., 1; *Fatmabibi* v. *Advocate-General, Bombay,* (1882) 6 Bom., 42; *Khub Lal* v. *Ajodhya Missir* (1916) 43 Cal., 574; *Gauri Shankar* v. *Hemant Kumari* A.I.R. 1936 All., 301 F.B. (dedication of bathing ghat).

(z^1) *Jamnabai* v. *Khimji* (1890) 14 Bom., 1.

(a) For dharma in general, see *ante* § 6.

(b) (1899) 26 I A., 71, 23 Bom., 725 affirming (1897) 21 Bom., 646; *Bai Motivahu* v. *Mamubhai* (1895) 19 Bom., 647; *Devshankar* v. *Motiram* (1894) 18 Bom., 136 (bequest in favour of *dharmada* void for uncertainty); *Morarji Cullianji* v. *Nenbai* (1893) 17 Bom., 351 (bequest to dharm void): *Cursandas Govindji* v. *Vundravandas* (1890) 14 Bom., 482; *Gangabai* v. *Thavar Mulla* (1863) 1 Bom. H.C., 71; *Phundan Lal* v. *Arya Prithi Nidhi Sabha* (1911) 33 All., 793 (gift to no particular deity is invalid); *Chandi Charan Mitra* v. *Haribola Das* (1919) 46 Cal., 951 (gift to worship of god is invalid); *Bankey Lal* v. *Peare Lal* (1931) 53 All, 710 (gift to Sri Rama valid); *Satkarhi Bhattacharya* v. *Hazarilal* (1931) 58 Cal., 1025 (bequest to pious acts —*punyakarya,* is invalid); *Brij Lal* v. *Narain Das* (1933) 14 Lah., 827 (gift to dharmath is invalid); *Harilal Chhagan Lal Desai* v. *Bai Manjoola* A.I.R. 1936 Bom., 13 (bequest to religious, educational or philanthropic purposes is invalid); *Dinonath* v. *Hansraj* A I.R. 1936 Cal., 44 (charities and subscriptions promised, held uncertain).

which in case of maladministration could be reformed and a due administration directed, and then, unless the subject and objects can be ascertained upon principles familiar in other cases, it must be decided that the Court can neither reform maladministration nor direct a due administration" (*c*).

Subramania Ayyar, J., in *Parthasarathy Pillai* v. *Thiruvengada Pillai* has however pointed out that the word 'dharma' when used in connection with gifts of property by a Hindu has a perfectly well-settled meaning and denotes objects indicated by the terms '*ishta*' and '*purtta*' donations. The word is a compendious term referring to certain classes of pious gifts and is not a mere vague or uncertain expression (*d*). Mookerjee, J., in *Bhupati Nath* v. *Ram Lal Maitra* supports this view (*e*). According to Medhatithi and Kulluka, commenting on Manu, IV, 226-227, *dharma* in the context of gifts means *ishta* and *purtta* gifts. On this meaning of the word 'dharma', there can be no vagueness or uncertainty. The word is used in Hindu law for religious and charitable gifts recognised by that system.

Gifts void for uncertainty.

§ 789. Bequests for 'such charitable or public purposes as the trustees think proper' are void for uncertainty (*f*). Where the trustees are allowed an alternative as to whether the purposes to which they are to apply the property given are to be charitable or non-charitable, the gift is void (*g*). So, gifts for 'charitable purposes or other purposes' (*h*) or "gifts expressed in other alternative terms admitting non-charitable objects are not charitable; for they may be executed without any part of the property being applied to charitable purposes" (*i*). Gifts for 'charitable and benevolent purposes' (*j*), for 'charitable and pious purposes,' for 'religious and benevolent purposes,' for 'charitable and

(*c*) (1804) 9 Ves, 399, 10 Ves, 522, 32 E R, 947, 954.

(*d*) (1907) 30 Mad., 340, 343, compare *Vaidyanatha* v *Swaminatha* (1924) 51 I A, 282, 290-291, 47 Mad, 884, for the use of the word 'dharmam' in the sense of charity.

(*e*) (1910) 37 Cal, 128 F.B.

(*f*) *Blair* v. *Duncan* (1902) A C, 37.

(*g*) *Re Macduff, Macduff* v. *Macduff* (1896) 2 Ch., 451, 463, 470, C.A., *Re Davidson, Minty* v. *Bourne* (1909) 1 Ch, 567, C.A, 4 Hals. 2nd edn, para. 221 (pp. 167-168)

(*h*) *Re Chapman, Hales* v *A G* (1922) 2 Ch., 479, C.A.

(*i*) 4 Hals., 2nd ed., page 167.

(*j*) *Re Best, Jarvis* v. *Birmingham Corporation* (1904) 2 Ch, 354; *Caldwell* v. *Caldwell* (1921) 91 L.J. (P.C.), 95 H.L.

deserving objects' (*k*), for charitable and public purposes (*l*) and for 'religious and charitable institutions and purposes' are valid.

In *Venkatanarasimha Rao* v. *Subba Rao*, it was held that a trust either for the spread of Sanskrit language or for the spread of Hindu religion or for both was void in law and unenforceable; the words 'for the spread of Hindu religion' were regarded as too vague and uncertain to create an executable trust (*m*). The opinion of one of the judges in this case that a trust for the spread of Sanskrit language is void, cannot be supported. A bequest of the surplus income 'for proper and just acts' for the testator's benefit is bad for uncertainty (*n*). Equally a direction to dispose of the residue in a righteous manner in a pious and charitable way as may appear advisable to the executors is bad (*o*). A direction to use an amount in good works (*sara kam*) is void (*p*). But bequests of the residue to be spent and given away in charity in such manner and to such religious and charitable purposes as the executor may in his discretion think proper (p^1) or to such charities as the trustees may think deserving (*q*) have been held to be valid charitable bequests. A gift of the surplus income to be used in such manner as the executors may unanimously think proper for purposes of 'popular usefulness or for purposes of charity' has been held to be bad for uncertainty (*r*). A bequest to 'any of my agnates or any other Brahmin who may be brought in and settled in my dwelling house' is void (*s*). A general direction to

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(*k*) *Re Sutton, Stone* v. *A G* (1885) 28 Ch, 464.

(*l*) *Blair* v. *Duncan* (1902) A.C., 37, 44; *A. G., New Zealand* v. *New Zealand Insurance Co.* (1937) 1 M.L.J., 58 P C. (where benevolent purposes alone, held invalid).

(*m*) (1923) 46 Mad, 300; see also *Chandi Charan Mitra* v. *Haribala Das* (1919) 46 Cal, 951 (bequest for worship of god, held bad for uncertainty), *Brij Lal* v. *Narain Das* (1933) 14 Lah., 827 (bequest to dharmarth, dharmasala and Sanskrit education, invalid).

(*n*) *Gokool Nath Guha* v. *Issur Lochun Roy* (1887) 14 Cal., 222.

(*o*) *Nanalal Lallubhoy* v. *Harlochand* (1890) 14 Bom, 476.

(*p*) *Bai Bapi* v. *Jamnadas* (1892) 22 Bom, 774.

(p^1) *Parbati* v. *Ram Barum Upadheya* (1904) 31 Cal., 895.

(*q*) *Smith* v *Massey* (1906) 30 Bom., 500; *Gordhan Das* v. *Chunnilal* (1908) 30 All., 111.

(*r*) *Trikumdas Damodhar* v. *Haridas* (1907) 31 Bom., 583; *Jamnabhai* v. *Dharsey* (1902) 4 Bom. L.R., 893; *Surbomungola Dabee* v. *Mohendranath* (1879) 4 Cal, 508 (where a pucca bathing ghat at a suitable place in the river Hooghly and two temples for Siva were held bad for uncertainty). Wells with flights of steps are clear cases of charitable gifts and a bathing ghat is equally so, *Gauri Shankar* v. *Hemanta Kumari* A.I.R. 1936 All., 301 F.B.

(*s*) *Shyama Charan* v. *Sarup Chandra Sen* (1912) 17 C.W.N., 39.

trustees to pay at their discretion for the expenses of hospitals, educational and other institutions, marriage and thread ceremonies and excavation and consecration of tanks in villages having a dearth of water or in the construction and consecration of ghats and maths, has been held void and inoperative for vagueness and uncertainty (*t*).

Dedication, how effected.

§ 790. A dedication of property, whether movable or immovable, for a religious or charitable purpose, may, according to Hindu law, be validly made without an instrument in writing. It may be by a gift *inter vivos* or by a bequest or by a ceremonial or other relinquishment (*u*). A dedication of land for a public temple is not a gift requiring a registered deed and is not governed by section 123 of the Transfer of Property Act (*v*). The Indian Trusts Act, 1882, does not apply to public or private religious or charitable endowments (*w*).

Religious ceremonies not necessary.

On the question whether the usual religious ceremonies of *sankalpa* (the formula of resolve) and *samarpana* (delivery) are necessary (*x*), there is a conflict of decisions (*y*). Having regard to modern conditions and views, they cannot be regarded as absolutely essential requirements. It is the intention that is material and the dedication may be expressed or inferred otherwise than from formal or religious ceremonies

No trust required

§ 791 In order to create a valid dedication a trust is not required (*z*) An appropriation of property for specific

(*t*) *Sarat Chandra Ghose* v *Pratap Chandra Ghose* (1913) 40 Cal, 232.

(*u*) *Gangireddi* v *Tammireddi* (1927) 54 I A., 136, 50 Mad., 421, affirming (1922) 45 Mad, 281 on this point, *Ramalinga* v *Sivachidambara* (1919) 42 Mad, 440, *Pallayya* v. *Ramavadhanulu* (1903) 13 M L J, 364, *Muddun Lal* v *Komul Bibee* 8 W R, 42, *Maruti* v *Gopal Krishnan* A I R. 1932 Bom, 305, *Ganeshgir* v *Fatehchand* A I R 1935 Nag, 114

(*v*) (1903) 13 M L J, 364 *supra*, *Narasimha* v *Venkatalingum* (1927) 50 Mad, 687 F B, but see *Bhoopati Nath* v *Basanta Kumari* (1936) 63 Cal, 1098

(*w*) Indian Trusts Act, s 1 (1), *Gopu* v. *Sami* (1905) 28 Mad, 517, (1927) 50 Mad, 687 F B. *supra*

(*x*) For the ceremonies by which *utsarga* (relinquishment) is effected, see Saraswati, pp 127-128 and Ch. X; Mandlik, pp. 336-339.

(*y*) *Deosaran Bharathi* v *Deoki Bharathi* (1924) 3 Pat, 842, *Chaturbuj Singh* v *Sarada Charan Guha* (1932) 11 Pat, 701, *Prem Nath* v *Hari Ram* (1935) 16 Lah, 85, *Chandu Lal* v *Rampat Mal* A I R 1933 Lah, 189, *Ram Swaroop* v. *Thakur Ramachandraji* A.I.R. 1935 Nag, 35, *Bhabatarini* v *Ashmantara* A I R 1938 Cal, 490, 496

(*z*) *Manohar* v *Lakhmiram* (1888) 12 Bom., 247, *Bhuggobutty, P. Sen* v *Goroo Prosonno Sen* (1898) 25 Cal, 112; *Prafulla Chunder Mullick* v *Jogendranath* (1905) 9 C.W.N., 528, *Mathu Nath* v. *Lakhi*

religious or charitable purposes is all that is necessary for a valid dedication (z^1).

In *Vidyavaruthi* v. *Balusami Ayyar*, the Privy Council observed: "It is also to be remembered that a 'trust' in the sense in which the expression is used in English law, is unknown in the Hindu system, pure and simple. Hindu piety found expression in gifts to idols and images consecrated and installed in temples, to religious institutions of every kind and for all purposes considered meritorious in the Hindu social and religious system: to *Brahmanas*, *Goswamis*, *Sanyasis*, etc. When the gift was to a holy person, it carried with it in terms or by usage and custom certain obligations. Under the Hindu law, the image of a deity of the Hindu pantheon is, as has been aptly called, a 'juristic entity' vested with the capacity of receiving gifts and holding property. Religious institutions, known under different names are regarded as possessing the same 'juristic' capacity and gifts are made to them by name. In many cases in Southern India, especially where the diffusion of Aryan Brahmanism was essential for bringing the Dravidian peoples under the religious rule of the Hindu system, colleges and monasteries under the names of math were founded under spiritual teachers of recognised sanctity. These men had and have ample discretion in the application of the funds of the institution, but always subject to certain obligations and duties, equally governed by custom and usage. When the gift is directly to an idol or a temple, the seisin to complete the gift is necessarily effected by human agency" (a).

Dedication may be absolute or partial.

§ 792. A dedication of property for religious or charitable purposes may be either absolute or partial (b). In the former case, the property is given out and out to an idol or to a religious or charitable institution and the donor divests himself of all beneficial interests in the property comprised in the endowment (c). Where the dedication is partial, a

Narain (1922) 50 Cal., 426; *Venkatanarasimha* v. *Subba Rao* (1923) 46 Mad., 300

(z^1) *Ram Dhan* v. *Prayag Narain* (1921) 43 All., 503. A mere easement, for instance the right to use a ghat for removing dying persons may be created for a charitable purpose; *Jaggamoni* v. *Nilmoni* (1882) 9 Cal., 75.

(a) (1921) 48 I.A., 302, 311, 44 Mad., 831, 839.

(b) *Iswari Bhubaneshwari* v. *Brojo Nath Dey* (1937) 64 I.A., 203, 211, [1937] 2 Cal., 447 affirming 60 Cal., 54.

(c) *Jagadindra Nath* v. *Hemanta Kumari* (1904) 31 I.A., 203, 32 Cal., 129, *Jadu Nath* v. *Sitaramji* (1917) 44 I.A., 187, 39 All., 553; *Rajender* v. *Sham Chand* (1881) 6 Cal., 106; *Bhuggobutty Prosonno Sen* v. *Gooroo Prosonno Sen* (1898) 25 Cal., 112; *Chandi Charan* v. *Dulal Chandra* (1927) 54 Cal., 30; *Panna Sundari* v. *Benares Bank*

charge is created on the property or there is a trust to receive and apply a portion of the income for the religious or charitable purpose (*d*) In such a case, the property descends and is alienable and partible in the ordinary way subject to the charge in favour of the idol or the religious or charitable institution (*e*).

The effect of a valid dedication is to place the property comprised in the endowment *extra commercium* and beyond the reach of creditors (*e*[1]). The dedication is not invalidated by reason of the fact that the members of the donor's family are nominated trustees and given reasonable remuneration out of the endowment and also rights of residence in the dedicated property (*f*). The question whether the idol or the religious or charitable institution is to be considered the true beneficiary, subject to a charge in favour of the heirs or specified relations of the donor or whether the heirs are the true beneficiaries subject

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Ltd A I R 1938 Cal, 81, *Shri Ganesh Dharnidhar* v *Keshavrav* (1891) 15 Bom, 625, *Sathianama Bharati* v *Saravanabagi* (1895) 18 Mad, 266, 276, *Sundar Singh* v *Narain Das* A I R 1934 Lah, 920 (succession from guru to chela excluding natural heirs—absolute dedication), *Nihal Chand* v *Narain Das* A I R 1934 Lah, 949, *Lachhman Das* v *Arya Pratinidi Sabha* A I R 1932 Lah, 603 (temple out of public subscriptions is a public endowment, adverse acts of a priest cannot alter the real character of the temple property), *Narayan* v. *Dattatraya* A.I.R. 1933 Bom, 26

(*d*) *Sonatun Bysack* v *Juggutsoondree* (1859) 8 M I.A, 66 (dedication not made out), *Ashutosh Dutt* v *Doorga Churn* (1879) 6 I A, 182, 5 Cal, 438, *Jagadindra Nath Roy* v. *Hemanta Kumari* (1905) 31 I A, 203, 32 Cal, 129, *Jadu Nath* v *Sitaramji* (1917) 44 I A, 187, 39 All, 553, *Gopal Lall Sett* v *Purna Chandra Basack* (1922) 49 I A, 100, 49 Cal, 459; *Ram Coomar* v. *Jogender Nath* (1878) 4 Cal, 56, *Madhub Chandra* v *Rani Sarat Kumari* (1910) 15 C W N, 126, *Kulada Prasad Deghoria* v *Kali Das Naik* (1915) 42 Cal, 536, *Mahim Chandra Sarkar* v *Hara Kumari Dasee* (1915) 42 Cal, 561, *Bai Sundari Dassya* v *Benode Behary* (1935) 39 C W N, 1264, *Annada Charan* v. *Kamalasundari* A I.R. 1936 Cal, 405, *Ramappa Naidu* v *Lakshmanan Chettiar* (1928) 54 M L J, 272 (partial trust for choultry and idol), *Krishnaswami* v *Avayambal* A I R 1933 Mad, 204, *Bhekdhari Singh* v *Sri Ramchanderji* (1931) 10 Pat, 388, *Parshadi Lal* v *Brij Mohan Lal* A I.R. 1936 Oudh, 52 (bequest of one-fourth income held a charge).

(*e*) (1878) 4 Cal, 56 *supra*, *Suppammal* v *Collector of Tanjore* (1889) 12 Mad, 387, *Mahatab* v *Mirdad* 5 S.D, 268, 313 approved in *Delroos* v. *Nawab Syud* (1875) 15 Beng L R., 167, affirmed by the P C in 3 Cal, 324, *Fultoo* v *Bhurrut* 10 W R, 299, *Basoo* v. *Kishen* 13 W R, 200, *Brojo Sundaree* v *Luchmee* 20 W.R., 95 P C, (1859) 8 M I A, 66 *supra*, *Sheik Mahomed* v *Amarchand* (1890) 17 I.A., 28, 17 Cal, 498, (1905) 31 I A, 203, 32 Cal, 129 *supra*

(*e*[1]) *Bishen Chand* v *Syed Nadir* (1887) 15 I.A, 1, 15 Cal, 329

(*f*) *Ishwari Bhubaneshwari* v *Brojo Nath Dey* (1937) 64 I A, 203, 211, [1937] 2 Cal, 447, 455, affg (1933) 60 Cal, 54, *Jadu Nath Singh* v *Sitaramji* (1917) 44 I A, 187, 39 All, 553.

to a charge for the upkeep, worship and expenses of the idol or for the maintenance of any other religious or charitable institution will depend upon the construction of the gift or the will as a whole (*g*). Provision may be made for the expansion of the purpose of the dedication as the income increases or a fixed income or scale may be prescribed so that where the income exceeds what is required for it, it would not be comprised in the dedication (*h*).

Proof of dedication.

§ 793. Very strong and clear evidence of an endowment is required and the onus lies upon a party who sets up a dedication to prove that property has been inalienably conferred upon an idol to sustain its worship or upon a religious or charitable institution. Where there is no instrument of gift or trust, the mere fact that the rents and profits of immovable property have been utilised for the support of an idol or a religious or charitable institution is insufficient to establish an endowment or a dedication (*i*). The fact that the deceased karta of a joint Hindu family regularly paid the expenses of a choultry out of the profits of the family property, the expenses however not exhausting the whole of the profits, would not establish a dedication of the profits to the charity; for a distinction must be made between meeting *all the expenses* of a charity out of a particular property and applying *all the receipts* of that property to the charity (*j*).

The mere execution of a deed of gift or instrument is not enough to constitute a valid endowment (*k*). It is necessary that the executant should divest himself of the property; there must be a transfer of the apparent evidences of ownership from the donor to the donee. Whether he has done so or

(*g*) *Har Narayan* v. *Surja Kunwari* (1921) 48 I A., 143, 43 All., 291, (1937) 64 I A, 203, [1937] 2 Cal., 447, 455 *supra; Chandi Charan Das* v. *Dulal Chandra* (1927) 54 Cal., 30, 30 C.W.N, 930; *Bhekdhari Singh* v. *Sri Ramchanderji* (1931) 10 Pat, 388; *Krishnaswami* v. *Avayambal* A I.R. 1933 Mad., 204, *Kandasami* v. *Munisami* A.I.R. 1932 Mad, 589.

(*h*) (1937) 64 I.A., 203, [1937] 2 Cal., 447, 455 *supra.*

(*i*) *Mudden Lal* v. *Komal Bibee* (1867) 8 W.R., 42; *Konwur Doorganath* v. *Ram Chunder* (1877) 4 I.A., 52, 2 Cal., 341.

(*j*) *Gangi Reddi* v. *Tammi Reddi* (1927) 54 I.A., 136, 50 Mad., 421 reversing (1922) 45 Mad., 281; *Abhiram Goswami* v. *Shyama Charan* (1909) 36 I A., 148, 36 Cal., 1003; *Kulada Prasad* v. *Kalidas* (1915) 42 Cal, 536; *Gopi Mohan* v. *Bepin Behari* A.I.R. 1937 Cal., 371, 65 C.L.J., 325. See *Bansilal* v. *Govindlal* A.I.R. 1932 Bom., 439.

(*k*) *Jadu Nath* v. *Sitaramji* (1917) 44 I.A., 187, 39 All., 553; *Ram Dhan* v. *Prayag Narain* (1921) 43 All., 503; *Janardhan Jiu* v. *Khittish Chandra* A.I R. 1932 Cal., 419; *Sri Thakur* v. *Atkins* (1919) 4 P.L.J., 533.

not can only be determined by his subsequent acts and conduct (*l*). But where the intention to dedicate is clear and the divestiture is contemporaneous, the subsequent acts and conduct of the donor are irrelevant and cannot reinvest him; for a valid endowment, once created, can never be revoked (*m*). Where, however, this is not the case and his subsequent dealings with the property show that he did not intend to create an endowment, there will be no trust and the property will not be debutter and will continue to be his and is liable to be attached and sold in execution of decrees against him (*n*).

In cases where there is no real dedication of property but only an attempt to create a perpetuity in favour of one's own descendants, the gift to the idol is void (*o*). Where however the trust has been effectually created, the fact that the trustees or other persons concerned have failed to carry out the conditions of the trust will not invalidate it and neither the founder nor his heirs can resume it (*p*). The beneficial ownership in the trust properties cannot in such circumstances revert to the founder or his family.

Idol a juridical person.

§ 794. Where the dedication is of the completest character, the property comprised in it belongs to the idol or the religious or charitable foundation conceived as a juristic person capable of taking and

(*l*) (1921) 43 All, 503 *supra*, *Sri Thakur* v *Atkins* (1919) 4 P.L.J, 533, *Bhekdhari Singh* v. *Sri Ramchanderji* (1930) 10 Pat., 388; *Sri Sri Gopal* v. *Radha Binode* A.I.R 1925 Cal, 996, 41 C.L.J., 396; *Ramchandra Mukerjee* v *Ranjit Singh* (1900) 27 Cal, 242, 251.

(*m*) *Singh Sanatan* v. *Singh Rajput* (1938) 65 I.A., 106, 116. *Dasami Sahu* v *Param Shameshwar* (1929) 51 All., 621. But on the question of the intention to dedicate and whether the transaction was a sham or a cloak, the subsequent conduct will be relevant. See the Evidence Act, s 92, proviso (1). *Thiagaraja* v. *Vedathanni* (1936) 63 I.A., 126, 137-9, 59 Mad., 446.

(*n*) (1921) 43 All., 503 *supra*, *Suppammal* v. *Collector of Tanjore* (1889) 12 Mad, 387, *Watson* v. *Ramchund Dutt* (1890) 17 I.A, 110, 18 Cal, 10, *Sri Thakur* v *Atkins* (1919) 4 P.L.J., 533; *Bhekdhari Prasad* v. *Sri Ram Chanderji* (1931) 10 Pat, 388; *Madhub Chandra* v *Rani Sarat Kumari* (1910) 15 C.W.N, 126; *Ramchandra* v. *Ranjit Singh* (1900) 27 Cal., 242, 251.

(*o*) *Promotho Dossee* v *Radhika Persaud* (1875) 14 B.L.R, 175; *Sri Thakurji* v. *Sukhdeo Singh* (1920) 42 All, 395 F.B.; *Niranjan Prasad* v *Behari Lal* A I R. 1929 All., 302.

(*p*) *Gordhan Das* v. *Chunnilal* (1908) 30 All., 111, 114, 115; *Suppammal* v. *Collector of Tanjore* (1889) 12 Mad., 387; *Gopee Nath Chowdhry* v. *Gooroo Dass* (1872) 18 W.R., 472, *Nam Narain Singh* v. *Ramoon Panrey* (1874) 23 W R., 76; *Juggut Mohinee Dossee* v. *Sokhmoney* (1871) 14 M I A, 281, 306; *Madhub Chandra* v. *Sarat Kumari* (1910) 15 C.W.N., 126; *Hemangini* v. *Nobin Chund Ghose* (1882) 8 Cal., 788 (gift of a share in rent, and profits held amounted to a gift of a share of the corpus).

holding property (*q*). The possession and management of the dedicated property and the right to sue in respect of it are vested in the manager, dharmakarta, or shebait (*r*). A suit respecting the property in which the idol is interested is properly brought and defended in the name of the idol, although *ex necessitate rei* the proceedings in the suit must be carried on by some person who represents the idol, usually the manager of the temple, in which the idol is installed (*s*). But it is permissible to file a suit in the name of the idol where the shebait has not been appointed, the Court appointing some person to act as the guardian ad litem of the idol (*t*). Where there is a breach of trust (*u*) or the shebait claims adversely to the idol (*v*) it is necessary that the idol should be represented by a disinterested next friend. In *Pramatha Nath Mullick* v. *Pradyumna Kumar Mullick*, where the appellant claimed the right to remove the image during his term of worship, their Lordships held that the will of the deity as regards its location must be respected and the suit was remitted in order that the image might appear by a disinterested person to be appointed by the Court (*w*).

§ 795. A female can be the manager of a religious endowment though she cannot perform spiritual functions (*x*). It has

Female manager.

(*q*) *Jagadindra Nath* v. *Hemanta Kumari* (1904) 31 I.A., 203, 209, 32 Cal., 129; *Jadu Nath* v. *Thakur Sitaramji* (1917) 44 I.A., 187, 39 All, 553; *Vidya Varuthi* v. *Baluswami Iyer* (1921) 48 I.A., 302, 44 Mad., 831; *Pramatha Nath Mullick* v. *Pradyumna Kumar* (1925) 52 I.A., 245, 52 Cal., 809; *Kanhaiya Lal* v. *Hamid Ali* (1933) 60 I.A., 263, 8 Luck., 351; *Manohar Ganesh* v. *Lakshmiram* (1888) 12 Bom., 247, 263.

(*r*) *Prossunno Kumari* v. *Golab* (1875) 2 I.A., 145; *Jagadindranath* v. *Hemanta Kumari* (1905) 31 I.A., 203, 32 Cal., 129; *Bidhu Sekhar* v. *Kulada Prasad* (1919) 46 Cal., 877; *Jodhi Rai* v. *Basdeo Prasad* (1911) 33 All., 735 F.B.

(*s*) *Jodhi Rai* v. *Basdeo Prasad* (1911) 33 All., 735 F.B., overruling *Thakur Raghnathji* v. *Shah Lal Chand* (1897) 19 All., 330.

(*t*) *Administrator Genl. of Bengal* v. *Balkishen* (1924) 51 Cal., 953.

(*u*) *Thakersay Dewraj* v. *Hurbhum* (1884) 8 Bom., 432.

(*v*) *Bimal Krishna* v. *Jnanendra Krishna* [1937] 2 Cal., 105; *Upendranath* v. *Bai Kuntha Nath* (1928) 33 C.W.N., 96; *Pashupatinath* v. *Pradyumna Kumar* (1936) 63 Cal., 454, *Maruti* v. *Gopalkrishna* A.I.R. 1932 Bom., 305, 34 Bom. L.R., 415; *Kunja Behar* v. *Mohit Singh* A.I.R. 1934 Pat., 531; *Mt. Puna Bibi* v. *Keshab Rai* A.I.R. 1936 Pat., 411.

(*w*) (1925) 52 I.A., 245, 52 Cal., 809; see *Kanhaiyal* v. *Hamid Ali* (1933) 60 I.A., 263, 8 Luck., 351.

(*x*) *Keshavbhat* v. *Bhagirathibai* (1866) 3 Bom. H.C. (A.C.), 75; *Janoki Devi* v. *Gopal* (1882) 10 I.A., 32, 9 Cal., 766; *Surendra Keshav* v. *Doorgasundari* (1892) 19 I.A., 108, 128, 19 Cal., 513; *Raja Rajeswari* v. *Subramania* (1920) 40 Mad., 205; *Kashinath Mahadeo* v. *Gangubai* A.I.R. 1931 Bom., 170. See *Moottoo Meemnatchy* v. *Villoo* Mad. Dec. of

been held that a Hindu female is not incompetent by reason of her sex to succeed to the office of archaka or worshipper in a temple and to the emoluments attached thereto (*y*); for, she may appoint a qualified deputy to officiate in her stead.

Position of shebait, manager or dharmakarta.

§ 796. The manager of a temple is by virtue of his office the administrator of the properties attached to it, as regards which he is in the position of a trustee As regards the service of the temple and the duties appertaining to it, he is rather in the position of the holder of an office or dignity (*z*).

The position of a dharmakarta of a public temple is not that of a shebait or pujari of a shrine or of the head of a math Those functionaries have a much higher right with larger power of disposal and administration and they have a personal interest of a beneficial character The dharmakarta is literally no more than the manager of a charity and his rights are never in a higher legal category than that of a mere trustee (*a*)

The shebait is one who serves and sustains the deity whose image is installed in the shrine The duties and privileges of a shebait are primarily those of one who fills a sacred office (*b*). Shebaitship in its true conception therefore involves two ideas. the ministrant of the deity and its manager; it is not a bare office. but an office together with certain rights attached to it

The position of a shebait, dharmakarta, or manager of a temple or other religious institution towards debuttar property is not similar to that in England of a trustee towards the trust property it is only that certain duties have to be performed by him which are analogous to those of trustees (*b*).

1858, 136, *Joy Deb Surmah* v *Huroputty* 16 W R, 282 See *Hussain Beebee* v *Hussain Sheriff* (1868) 4 Mad H C, 23, Punjab Customs, 88, unless the actual discharge of spiritual duties is required, *Mujavar* v. *Hussain* (1880) 3 Mad, 95 Special custom is necessary, *Janokee* v *Gopaul* (1877) 2 Cal, 365, affd. (1883) 10 I.A, 32, 9 Cal, 766

(*y*) *Annayya* v *Ammakka* (1918) 41 Mad, 886 F B, overruling *Sundarambal* v. *Yogavana Gurukkal* (1915) 38 Mad, 850 and distinguishing *Mohan Lalji* v *Girdhan Lalji* (1913) 40 I A, 97, 35 All, 283, *Meenakshi* v. *Somasundaram* (1921) 44 Mad, 205

(*z*) *Ramanathan Chetti* v *Murugappa Chetti* (1906) 33 I A, 139, 29 Mad, 283, 289

(*a*) *Srinivasachariar* v *Evalappa Mudaliar* (1922) 49 I.A., 237, 250, 45 Mad, 565, approving *Vidyapurna Tirthaswami* v *Vidyanidhi Tirth Swami* (1904) 27 Mad, 435, *Rama Reddy* v *Ranga Dasen* (1926) 49 Mad, 543, 546

(*b*) *Nagendranath Palit* v *Robindra* (1925) 53 Cal, 132, 143, *Manohur Mukerjee* v *Bhupendranath Mukherjee* (1933) 60 Cal, 452, 494 F B

They have not the legal property, which is vested in the deity or the institution. Each of them has only the title of a manager of a religious endowment and is as such entitled, subject to usage, to the custody of the idol and its property (*c*).

Right to offerings.

The right of a shebait or of a priest to offerings made to an idol naturally depends upon the nature of the offerings in the absence of a custom or an express declaration by the founder to the contrary. Where they are of a permanent character, they ordinarily belong to the temple (*d*). Where they are perishable they may be appropriated by the priest or other persons entitled to it by custom (*e*).

Borrowing and alienations for necessity.

§ 797. The possession and management of the property of a religious endowment belong to the manager, dharmakarta or shebait and this carries with it the right to bring whatever suits are necessary for the protection of the property. He is bound to do whatever is necessary for the benefit or preservation of the properties of the idol. It is therefore competent for the manager, shebait or dharmakarta to incur debts and borrow money for the proper expenses of keeping up the religious worship, repairing the temples, or other possessions of the idols, instituting or defending hostile litigious attacks and to prevent the endowed properties from being brought to sale in execution of decrees binding upon the institution (*f*). The power however to incur such debts must be measured by

(*c*) (1933) 60 Cal., 452 F.B., *Shibessouree Debia* v. *Mottooroo Nath* (1870) 13 M.I.A., 270; *Jagadindra Nath* v. *Hemanta Kumari* (1904) 31 I.A., 203, 32 Cal, 129; *Ratnendralal Mitter* v. *Corpn. of Calcutta* (1914) 41 Cal., 104 (shebait, only a manager); *Rangacharya* v. *Guru Revti* A.I.R. 1928 All., 689; *Nagendranath Palit* v. *Rabindra Nath* (1926) 53 Cal., 132.

(*d*) *Kumaraswami Asari* v. *Lakshmana Gounden* (1930) 53 Mad., 608 (where the pujari was allowed to spend the surplus income on himself), (1870) 13 M.I.A., 270 *supra* (rents), *Sri Mahant* v. *Govindacharlu* (1935) 68 M.L.J., 295 (archaka's remuneration by a share of offerings valid); *Manohar Ganesh Tambekar* v. *Lakshmi Ram* (1888) 12 Bom., 247, affd. in 26 I.A, 199, 24 Bom, 50; *Girijanund Datta* v. *Sailajanund Dutta* (1896) 23 Cal., 645 (coins and metallic articles); *Sri Venkataramanaswami Temple* v. *Ramaswami* (1937) 2 M.L.J., 893 (where it was held that the archakas were entitled to hundi collections). A shebait has no power to levy fees from devotees who want to enter a temple. *Asharam Ganpatram* v. *Dakore Temple Committee* (1920) 44 Bom., 150.

(*e*) *Gangadhara Mudali* v. *Doraisami Bhattar* (1937) M.W.N., 975.

(*f*) *Prosunna Kumari* v. *Golab Chand* (1875) 2 I.A., 145; *Konwur Doorganath* v. *Ram Chunder Sen* (1876) 4 I.A., 52, 2 Cal., 341; *Jagadindra Nath* v. *Hemanta Kumari* (1904) 31 I.A., 203, 32 Cal., 129; *Nallayappa* v. *Ambalavana* (1904) 27 Mad., 465, 473; *Nagendra Nath Palit* v. *Rabindra Nath* (1926) 53 Cal., 132; *Venkataraman* v. *Sivagurunatha* A.I.R. 1933 Mad., 639.

the existing necessity for incurring them (*g*). The authority of the manager of an idol's estate would appear to be in this respect analogous to that of the manager for an infant heir whose power to alienate can only be exercised rightly in a case of need or for the benefit of the estate (*h*).

A debuttar estate may therefore be mortgaged to secure the repayment of money borrowed and applied to prevent its own extinction by sequestration. For an absolute alienation of debuttar property, there must, it would seem, be an imperative necessity constraining the manager to make it (*i*). In these matters, it is only the immediate, not the remote cause, the *causa causans* of the borrowing which has to be considered (*j*). The construction of buildings for the reception and accommodation of visitors or of dining halls for feeding pilgrims are necessities (*k*)

Benefit of the estate.

§ 798 No indication is to be found in any of the cases as to what is in this connection the precise nature of the things to be included under the description, 'benefit of the estate' (*l*). The preservation, however, of the estate from extinction, the defence against hostile litigation affecting it, the protection of it or portions from injury or deterioration by inundation, these and such like things are held to be benefits (*m*). But a manager would not be justified in selling debuttar land

(*g*) *Niladri Sahu* v *Chaturbhuj Das* (1926) 53 I.A., 253, 6 Pat., 139, *Lakshmindrathirthaswamiar* v *Raghavendra Rao* (1920) 43 Mad., 795.

(*h*) *Srimath Daivasikamani* v *Noor Mahomed* (1908) 31 Mad., 47; *Sheo Shankar* v *Ram Sheuak* (1897) 24 Cal., 77, *Ramprasanna* v *Secy of State* (1913) 40 Cal., 895, *Bachint Singh* v *Ganpat Rai* A.I.R. 1937 Lah., 660 *Venkataraman* v *Sivagurunatha* A.I.R. 1933 Mad., 639 (money borrowed to keep up daily worship, though shortage of money is due to bad management), *Premdas* v *Sheo Prasad* A.I.R. 1934 Nag., 222 (discharge of prior mortgage and payment of legitimate expenses of temple).

(*i*) *Palaniappa Chetty* v *Srimath Devasikamoni* (1917) 44 I.A., 147, 40 Mad., 709, 719, see *Anantakrishna Shastri* v. *Pravag Das* [1937] 1 Cal., 84, where all the cases are discussed; *Venkataramana Ayyangar* v *Kasturi Ranga* (1917) 40 Mad., 212, 221 F.B., *per* Seshagiri Ayyar, J

(*j*) *Niladri Sahu* v *Chaturbhuj Das* (1926) 53 I.A., 253, 6 Pat., 139.

(*k*) *Vibhudapriya* v *Lakshmindra* (1927) 54 I.A., 228, 50 Mad., 497.

(*l*) *Hunnoomanpersaud's* case (1856) 6 M.I.A., 393, 423, 424, *Prosunno Kumari Debya* v. *Golab Chand* (1875) 2 I.A., 145, 151, 152, 14 B.L.R., 450, 469, *Konwur Doorganath Roy* v *Ram Chunder Sen* (1876) 4 I.A., 52, 62, 64, 2 Cal., 341, 352 3.

(*m*) *Hossein Alikhan* v *Mahant Bhagban* (1907) 34 Cal., 249; *Kedar Nath* v *Jagarnath* A.I.R. 1924 Pat., 355, see *Panchakshari* v. *Venkataratnam* (1935) 58 Mad., 160 (for needless proceedings, dharmakarta personally liable for costs).

for the purpose of investing the price of it so as to bring in more income (*n*).

Permanent leases invalid.

§ 799. It is beyond the powers of a manager to grant a permanent lease at a fixed rent in the absence of unavoidable necessity; for, to fix the rent, though adequate at the time, in perpetuity in lieu of giving the endowment the benefit of an augmentation of a variable rent from time to time would be a breach of duty on the part of the manager (*o*). In *Palaniappa Chetty* v. *Sreemath Deivasikamony* (*p*), Lord Atkinson observed: "Three authorities have been cited which establish that it is a breach of duty on the part of a shebait, unless constrained thereto by unavoidable necessity, to grant a lease in perpetuity of debuttar lands at a fixed rent, however adequate that rent may be at the time of granting, by reason of the fact that, by this means, the debuttar estate is deprived of the chance it would have, if the rent were variable, of deriving benefit from the enhancement in value in the future of the lands leased". A trustee, however, can create proper derivative tenures and estates conformable to usage (*q*).

Obligations of manager.

§ 800. As the manager is subject to the obligation of a trustee, he should not however purchase any property belonging to the endowment even though he pays an abundant price for it (*r*). All moneys expended in carrying out the obligations imposed upon him as trustee, all expenditure incurred by him in defending his position as the shebait unsuccessfully assailed,

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(*n*) (1917) 44 I.A., 147, 40 Mad., 709 *supra*, *Nagendra Nath* v. *Rabindranath* (1925) 53 Cal., 132, *Hemraj* v. *Nathu* (1935) 59 Bom., 525 F.B. See *ante* § 363.

(*o*) *Shibessouree Debia* v *Mothooranath* (1870) 13 M.I.A., 270, 275.

(*p*) (1917) 44 I.A, 147, 155-156, 40 Mad., 709, 719.

(*q*) *Abhiram Goswami* v. *Shyama Charan* (1909) 36 I.A, 148, 36 Cal., 1003; (1917) 44 I.A, 147, 40 Mad., 709. (Former breaches of trust would not amount to a usage justifying the grant of a permanent lease); *Vidyavaruthi* v. *Baluswami* (1921) 48 I.A., 302, 44 Mad, 831; *Ramchandra* v. *Kashinath* (1895) 19 Bom., 271; *Sheo Sankar* v. *Ram Sewak* (1897) 24 Cal., 77; *Muthusamier* v. *Sreemethanidhi* (1915) 38 Mad., 356; *Jai Krishna* v. *Bhuk Lal* (1921) 6 P.L.J., 638; *Manohar Mukerjee* v. *Bhupendranath* (1933) 60 Cal., 452, 495 F.B.; *Bhabhani Charan* v. *Suchetra* A.I.R. 1930 Cal., 270 (transferable and heritable lease with no fixed rent, valid); *Nandalal* v. *Arunchandra* (1935) 41 C.W.N., 464 (monthly tenancy); *Mahant Ramdhan* v. *Mt. Parbati* (1937) 16 Pat., 476, but see *Raman* v. *Karunakaran* A.I.R. 1933 Mad., 852 (where necessity was held to be made out). The High Court has no jurisdiction to give directions in respect of debuttar property to a shebait or to give him leave to alienate such property on the ground of necessity. *Sree Sree Ishuar Narayan Jai* v. *Soler* [1937] 2 Cal., 133.

(*r*) *Peary Mohan Mukherji* v. *Manohur Mukherji* (1921) 48 I.A., 258, 48 Cal., 1019.

he is entitled to be reimbursed from the trust estate. This right of indemnity is incident to his position as trustee and the liability in respect of that indemnity is a charge on the estate (*s*).

It is the duty of a dharmakarta or manager or shebait to maintain the customary usages of the institution and if he fails to do so, he is guilty of a breach of trust and still more so if he deliberately attempts to effect a vital change of usage and to make it binding on the worshippers by obtaining the decree of a Court to establish it (*t*).

Liability to account.

A shebait, manager or dharmakarta is bound to keep true and correct accounts of all moneys received and disbursed (*u*).

A trustee or a shebait cannot delegate his authority, as fiduciary duties cannot be the subject of delegation but it is open to him to appoint a sub-agent; such appointment must only be as a means of carrying out his own duties himself and not for the purpose of delegating those duties by means of such appointment (*v*).

Position of the head of a math.

§ 801. As regards the class of institutions known as maths, particularly in South India, there have been conflicting views as to whether the head of a math is a trustee (*w*) or a corporation sole (*x*). It is now settled that he is neither the one nor the other; he is simply the manager of an institution with wider powers than those possessed by a dharmakarta,

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(*s*) *Peary Mahun Mukherji* v. *Narendranath* (1910) 37 I.A., 27, 37 Cal., 229 P.C.; *Narayanan Chettiar* v. *Lakshmana Chetti* (1916) 39 Mad., 456.

(*t*) *Sankaralinga Nadan* v. *Rajeswara Dorai* (1908) 35 I.A., 176, 31 Mad., 236 affirming (1902) 12 M.L.J., 355; *Krishnasami* v. *Samaram Singarachari* (1907) 30 Mad., 158 (alteration of *namam*). In *Subbarayaloo* v. *Ranganatha* (1938) 1 M.L.J., 530, it was held that the term 'all Vaishnavas of the Thengalai sect' in the scheme relating to Sri Parthasarathi Temple, Madras, was comprehensive enough to include untouchables of that sect so as to enable them to vote at the election of dharmakartas and that the absence of any usage to that effect was not fatal.

(*u*) *Thackersey Dewraj* v. *Hurbhum Nursey* (1884) 8 Bom., 432; *Manohur Ganesh* v. *Lakshmi Ram* (1888) 12 Bom., 247; *Jugalkishore* v. *Lakshmandas* (1899) 23 Bom., 659.

(*v*) *Gopal Shridhar Mahadeb* v. *Shasheebhushan Sarkar* (1933) 60 Cal., 111; *Bonnerji* v. *Sitanath Das* (1921) 49 I.A., 46, 49 Cal., 325; *Parasurama* v. *Thirumal Row* (1921) 44 Mad., 636.

(*w*) *Giyana Sambandha* v. *Kandasami* (1887) 10 Mad., 375; *Balaswamy* v. *Venkataswamy Naicken* (1917) 40 Mad., 745, 748. See also *Kailasam Pillai* v. *Nataraja* (1910) 33 Mad., 265 F.B.

(*x*) *Vidyapurna* v. *Vidyanidhi* (1904) 27 Mad., 435.

manager or trustee of a temple (*y*). In *Vidyavaruthi* v. *Balusami Aiyar*, the Privy Council have held that the head of a math is not a trustee with regard to its endowments, save as to any specific property proved to have been vested in him for a specific and definite object (*z*). They added: "Called by whatever name, he is only the manager and custodian of the idol or the institution. In almost every case he is given the right to a part of the usufruct, the mode of enjoyment and the amount of the usufruct depending again on usage and custom. In no case was the property conveyed to or vested in him, nor is he a "trustee" in the English sense of the term, although in view of the obligations and duties resting on him, he is answerable as a trustee, in the general sense, for mal-administration".

Apart from a case of necessity, he is incompetent to create any interest in the math property to endure beyond his life (*a*). Unlike the manager of a religious or charitable institution, the head of a math has ample discretion in the application of the funds of the math but always subject to certain obligations and duties governed by custom and usage (*b*). The disciples of a math have sufficient 'interest' to maintain a representative suit not only for a declaration of the invalidity of an improper alienation of the math properties by the head of the math but also for a decree directing possession to be given to the head of the math for the time being (*c*).

Limitation for suits.

§ 802. Special rules of limitation have now been enacted in respect of suits for the recovery of immovable and movable properties which have been alienated by the manager Notwithstanding that in law a manager of a religious or a charitable institution is not an express trustee, for the purpose of the Limitation Act, the property comprised in a Hindu religious or charitable endowment is, by section 10 of

(*y*) *Vidyavaruthi* v *Balusami* (1921) 48 I.A., 302, 44 Mad., 831; *Kailasam Pillai* v. *Nataraja* (1910) 33 Mad., 265 F.B. In *Ram Prakash Das* v. *Anand Das* (1916) 43 I A, 73, 43 Cal., 707, it was said to be an ownership in trust

(*z*) (1921) 48 I.A., 302, 44 Mad., 831, 839.

(*a*) (1921) 48 I A, 302, 44 Mad, 831 *supra*

(*b*) *Vibhudapriya* v *Lakshmindra* (1927) 54 I.A., 228, 236, 50 Mad., 497, *Vidyavaruthi* v. *Balusami* (1921) 48 I.A, 302, 312, 44 Mad., 831.

(*c*) *Chidambaranatha Thambiran* v. *Nallasiva Mudaliar* (1918) 41 Mad., 124 (Dharmapuram math). For similar right of the worshippers of a temple, see *Subramania Aiyar* v. *Nagarathna Naicker* (1910) 20 M.L.J., 151 (temple), *Venkataramana Ayyangar* v *Kasturi Ranga* (1917) 40 Mad., 212 F.B; *Vadlamudi Sastrulu* v. *Venkataseshayya* A.I.R. 1928 Mad., 614.

the Indian Limitation Act, 1908, as amended by Act I of 1929, deemed to be property vested in trust for a specific purpose and the manager is to be deemed the trustee thereof The result is that as against him and his legal representatives or his assigns, not being assigns for valuable consideration, a suit to follow the trust property or its proceeds or for an account of such property or proceeds is not barred by any length of time.

to set aside alienations

A suit to set aside a transfer of property for value made by a manager of a religious or charitable endowment is governed by articles 134-A and 48-B of the Limitation Act prescribing periods of twelve and three years, according as the property is immovable or movable from the time when the transfer becomes known to the plaintiff. These articles relate to suits by persons interested in the endowment to set aside alienations made by the manager (*c*[1])

to recover property.

A suit by the manager of a religious or charitable endowment to recover possession of immovable property comprised in the endowment which has been transferred, or of movable property which has been sold, by a previous manager for a valuable consideration must be brought within twelve years from the death, removal or resignation of the transferor or of the seller under articles 134-B and 134-C of the Indian Limitation Act Even prior to the above changes,

Alienation valid for life

it was held that an invalid alienation, such as a permanent lease, was good for the life of the alienor and adverse possession commenced to run against his successors and the institution, under article 144 of the Indian Limitation Act, 1908, only from the death or other termination of office of the transferor (*d*).

It was supposed that a different rule prevailed as regards properties belonging to a temple or to a family idol as distinguished from properties belonging to a math Quite recently in *Ponnambala Desikar* v *Periyanan Chetti*, the Privy Council have held that there is no such distinction and even in the case of an invalid alienation by the dharmakarta of a temple,

(*c*[1]) (1918) 41 Mad. 124 *supra*, *Venkataramana* v. *Kasturiranga* (1917) 40 Mad, 212 F B

(*d*) *Vidyavaruthi* v *Balusami* (1921) 48 I A, 302, 44 Mad., 831; *Ram Charan Das* v *Naurangi Lal* (1933) 60 I A, 124, 130, 12 Pat., 251, *Abhiram Goswami* v *Shyama Charan* (1909) 36 I A, 148, 36 Cal, 1003, *Muthusamier* v *Sri Methanithi Swamiyar* (1915) 38 Mad, 356, *Vidyapurna* v *Vidyanidhi* (1904) 27 Mad, 435, *Narsaya* v *Venkataramana* (1912) 23 M L J, 260, *Mahomed* v. *Ganapat* (1890) 13 Mad, 277; *Jamal Saheb* v. *Murugayya Swami* (1886) 10 Bom. 34, *Sivaprakasa* v. *Manickam* (1933) 64 M.L.J, 577, A.I.R. 1933 Mad, 481.

adverse possession would begin to run against his successors or the institution only from the termination of the tenure of office of the alienor (*e*). Where the transfer is not a private sale or lease but an execution sale, it has been held that adverse possession begins to run from the date of the sale or delivery of possession (*f*).

In *Vidyavaruthi* v. *Balusami* and in *Ponnambala Desikar* v. *Periyanan Chetti*, it was further held that in the case of a permanent lease, acceptance of rent by a successor of the transferor who made the invalid alienation would create a new lease for the life of the successor so that adverse possession could run against the institution only on his death (*g*). Where however no such inference of a new lease could be made, the possession would be adverse from the termination of the office of the transferor (*h*). Where however a temple and its properties or a math and its properties are sold, the alienation will not be good for the life of the transferor and adverse possession will commence to run from the date of the alienation as it is a destruction of the entire trust (*i*).

Adverse possession of office.

Similarly where the office of trustee or dharmakarta is transferred, the article applicable will be article 124 of the Indian Limitation Act (*j*). A trusteeship with power to appoint a successor is an estate well-known and recognised by law and can be prescribed for (*k*).

(*e*) (1936) 63 I A, 261, 275, 59 Mad., 809, 818, 819, explaining *Nainapillai Maraccayar* v *Ramanathan Chettiar* (1923) 51 I.A, 83, 47 Mad, 337

(*f*) *Subbaiya Pandaram* v *Md Mustapha Maracayar* (1923) 50 I A, 295, 46 Mad, 751

(*g*) (1921) 48 I A, 302, 44 Mad, 831, (1936) 63 I A, 261, 278, 59 Mad, 809, 823, 824

(*h*) (1936) 63 I A, 261, 59 Mad, 809 *supra*, *Ishwar Shyam Chand Jiu* v *Rani Kanai Ghose* (1910) 38 I.A., 76, 38 Cal., 526.

(*i*) (1921) 48 I.A., 302, 44 Mad, 831 *supra*, *Ram Charan Das* v. *Naurang Lal* (1933) 60 I A, 124, 12 Pat, 251 distinguishing *Gnana-sambandha* v. *Velu* (1899) 27 I.A., 69, 23 Mad, 271 and *Damodar Das* v *Lakhan Das* (1910) 37 I A., 147, 37 Cal., 885, *Ram Lagan* v. *Nandi-pat Mahton*, A I R. 1938 Pat, 143, *Alam Khan* v. *Karuppannaswami* (1937) 47 M L.W. 165

(*j*) *Gnanasambandha* v *Velu* (1899) 27 I A., 69, 23 Mad, 271; *Ram Piari* v. *Nandlal* (1917) 39 All., 636; *Nathe Pujari* v. *Radha Binode* (1918) 3 P L J, 327, see *Jagannadha Row* v. *Rama Doss* (1904) 28 Mad., 197, *Suppabhatter* v. *Suppu Sokkayya* (1915) 29 M.L.J., 558; *Lilavati* v. *Bishun Chobey* (1907) 6 C.L.J., 621.

(*k*) *Annasami Pillai* v. *Ramakrishna Mudaliar* (1901) 24 Mad., 219, *Veeraraghava* v. *Srinivasa* (1912) 23 M.L.J., 134; *Chidambaram Chetti* v. *Minammal* (1900) 23 Mad., 439; *Ramanatha* v. *Murugappa* (1904) 27 Mad., 192.

Setting aside of alienations.

§ 803. An alienation of endowed property made by a manager or dharmakarta of a religious or charitable institution or the head of a math can be set aside not only by his successor but also by persons interested in the endowment even during the lifetime of the alienor (*l*). Whether in such a case, the alienation can be declared void *in toto* or void only beyond the life or tenure of office of the alienor is not yet settled. Where the alienation is by way of a permanent lease at an adequate rent, it will be good for the tenure of office of the alienor and will be declared to be invalid beyond the termination of office; for the institution will have the benefit of the rents even during the alienor's tenure of office. Where however the alienation is by way of sale or gift or a permanent lease at a low rent it would seem on principle that in the absence of necessity, it is liable to be set aside *in toto*. But in *Ram Charan Das* v. *Naurangi Lal*, the Judicial Committee observed that where a disposition of property is by way of an absolute grant, it would be good during the tenure of office of the grantor (*l*[1]). But a sale or gift or a permanent lease at a low rent of the endowed property, especially where it is of the bulk of the property, will virtually deprive the institution, even during the life of the alienor, of the income necessary for its maintenance and services The view expressed in *Naina Pillai Marakayar* v *Ramanathan Chettiar* reconciles many of the difficulties by making the alienation good only as against the alienor by way of estoppel, leaving it open to persons interested in the endowment to set it aside *in toto* and to re-attach the properties to the institution even during his lifetime (*l*[2]). But the *dictum* of the Privy Council in *Ponnambala Desikar* v *Periyanan Chetty* with reference to that case apparently assumes it to be a rule of substantive law that in all classes of religious institutions, whether they are maths or temples, the alienation would be invalid only beyond the lifetime or the tenure of office of the manager (*l*[3]). These decisions were all given under the law as it stood before the amendment of the Limitation Act in 1929. Now the amendment of sec. 10 and articles 134-A and 48-B of the Limitation Act, which

(*l*) *Chidambaranatha* v *Nallasiva* (1918) 41 Mad., 124.

(*l*[1]) (1933) 63 I.A, 124, 12 Pat., 251.

(*l*[2]) (1923) 51 I A, 83, 47 Mad, 337, *Mahamaya* v. *Haridas Haldar* (1915) 42 Cal, 455, *contra Subbarayudu* v. *Kotayya* (1892) 15 Mad, 389, *Sivaswami* v *Thirumudi* (1929) 57 M.L.J., 219, *Bhagawat* v *Bindeshwari* (1930) A L.J, 964.

(*l*[3]) (1936) 63 I.A, 261, 59 Mad., 809, 819, *Chidambara* v. *Manickampillai* (1933) 64 M.L J, 577.

make the manager of the endowment a trustee in whom the property is vested, have not only effected a change in the law of limitation but have given statutory recognition to the view that the manager is in law a trustee, at least for the purposes of alienations, and for the purpose of following the property of the institution. They recognise the right of persons interested in the institution to have the alienation made by the manager set aside altogether during his life (*l*[1]). It would seem therefore that an alienation will not bind the institution, in the absence of necessity or benefit, even during the tenure of office of the alienor.

Even during life.

§ 804. In the case of an alienation made by the head of a math or other religious institution, the burden lies upon the alienee to prove either that the debt was incurred for necessary expenses of the institution itself or that he made proper and *bona fide* inquiries as to the existence of such necessity (*m*). The rules applicable to alienations of the manager for an infant heir are equally applicable (§§ 361-366). Where, however, holder after holder of a math recognises and deals with a debt as one binding on himself and his successors or where with lapse of time, the parties to the transaction have died or disappeared, the Court is more easily satisfied that the debt was properly incurred (*n*). Where the validity of a permanent lease granted by a manager comes into question after a very long time so that it is not possible to ascertain what were the circumstances under which it was made, the Court will assume that the grant was made for necessity so as to be valid (*o*).

Burden of proof.

§ 805. In a suit to recover a simple money debt, incurred by the sanyasi head of a math for its necessary purposes, where there is no indication that he intended to make himself personally liable, the properties of the math can be made liable whether the suit is brought during the lifetime of the

Creditors' remedies for unsecured loans.

(*l*[1]) The wording of articles 134-A and 48-B is not like that of article 125 which recognises the validity of a widow's alienation for her life.

(*m*) *Konwur Doorganath* v. *Ram Chunder* (1876) 4 I.A., 52, 2 Cal., 341; *Venkataraman* v *Sivagurunatha* A.I.R. 1933 Mad, 639 (enquiry by lender). § 371.

(*n*) *Murugesam* v. *Manika Vasaka* (1917) 44 I.A, 98, 40 Mad., 402; *Magniram Sitaram* v. *Kasturbhai* (1921) 49 I.A., 54, 46 Bom., 481.

(*o*) *Magniram Sitaram* v. *Kasturbhai* (1921) 49 I.A, 54, 46 Bom., 481; *Chockalingam Pillai* v. *Mayandichettiar* (1896) 19 Mad., 485; *Raman* v. *Karunakara* A.I.R. 1933 Mad., 852.

incumbent who incurred the debt or his successor (*p*). In such cases the decree should provide as was held in *Niladri Sahu* v. *Mahant Chaturbhuj Das* (*q*), that on default of payment by the successor, a receiver may be appointed of the income of the math so that his beneficial interest may be applied to discharge the decree after providing for the expenses of the math, the performance of ceremonies and a reasonable provision for the maintenance of the head of the math. In *Vibhudapriya* v *Lakshmindra*, where the head of a math borrowed moneys for the expenses of a periodic festival, for the feeding of all Brahman pilgrims and for rebuilding a dining hall, it was held that they were proper purposes. The debts were held to be binding on the successor, though they were only simple money debts and no charge was created (*r*).

Decrees against managers and heads.

§ 806. A decree passed in a suit against a shebait, manager or dharmakarta, as representing an idol or religious or charitable institution is binding on his successors, provided it was passed without any fraud or collusion. The reason is that the successors in office form a continuing representation of the property of the idol or the math (*s*). It has been held that the head of the math represents it even when the suit is brought on a promissory note executed by him and that he cannot question the validity of the transaction. The binding nature of the decree in such cases is not affected by

(*p*) *Lakshmindra* v *Raghavendra* (1920) 43 Mad. 795, *Davasika mani* v *Noor* (1908) 31 Mad. 17, *Shankar* v *Venkappa* (1885) 9 Bom. 422, *Vibhudapriya* v *Lakshmindra* (1927) 54 I.A. 228, 50 Mad. 197, *Sundaresan* v *Visvanadha* (1922) 45 Mad. 703 distinguishing *Swaminathe* v *Srinivasa* (1916) 32 M.L.J. 259. See *Shailendranath* v *Hade Kaza Mane* (1932) 59 Cal. 586, 608. Regarding debts of a *de facto* manager, see *Saminatha* v *Purushottama* (1893) 16 Mad. 67, *Kasim Saiba* v *Sudhindra* (1895) 18 Mad. 359.

(*q*) (1927) 53 I.A. 253, 6 Pat. 139, *Vibhudapriya* v *Lakshmindra* (1927) 54 I.A. 228, 50 Mad. 497.

(*r*) (1927) 54 I.A. 228, 50 Mad. 497, reversing (1923) 44 M.L.J. 187.

(*s*) *Prosunno Kumari* v *Golab Chand* (1875) 2 I.A. 145, 14 Beng. L.R. 450, *Gora Chand* v *Makhan Lal* (1907) 6 C.L.J. 404, *Lilabati* v *Bishun Chobey* (1907) 6 C.L.J. 621, *Tharula Das* v *Jalandhar* (1912) 39 Cal. 887, 893, *Upendra Nath* v *Kusum Kumari* (1915) 42 Cal. 440, *Bai Meherbai* v *Maganchand* (1904) 29 Bom. 96, *Gulabbhai* v. *Sohanodasji* (1928) 52 Bom. 431, *Sudhindra* v *Budan* (1886) 9 Mad. 80, *Madhavan* v *Keshavan* (1887) 11 Mad. 191. But it has been held that a decree passed *ex parte* is not *res judicata* as against a successor. *Subramania* v *Vaithilinga* (1931) 60 M.L.J. 590. Where a decree is passed against a person as manager, execution can be had only against the properties of the endowment (1915) 42 Cal. 440, 445 *supra*.

the fact that it is based on a compromise (*t*). But where a decree is made against the trustee personally, the corpus of the trust estate cannot be sold to satisfy the claim of the judgment creditor (*u*).

Devolution of Mahant's office.

§ 807. Succession to the office of mahant or head of a math is to be regulated by the custom of the particular math and one who claims the office by right of succession is bound to allege and prove what the custom of the particular institution is, for the only law regulating succession to such institutions is to be found in the custom and practice of that institution (*v*). As was observed in *Vidyapurna Tirthaswami* v. *Vidyanidhi Tirthaswami*, in most cases, especially in Southern India, the successor is ordained and appointed by the head of the math during his own lifetime and in default of such appointment, the nomination may rest with the head of some kindred institution or the successor may be appointed by election by the disciples and followers of the math or in the last instance by the court as representing the sovereign (*v*[1]) Where the head of a religious institution is bound to celibacy, it is frequently the usage that he nominates his successor by appointment during his own lifetime, or by will (*w*). Such a power of nomination must however be exercised not corruptly or for ulterior reasons, but *bona fide* and in the interests of the math; otherwise the appointment will be invalid (*x*). Sometimes this nomination requires confirma-

(*t*) *Manikka Vasaka Desikar* v *Balagopalakrishna* (1906) 29 Mad, 553.

(*u*) *Bishen Chand Basawat* v *Nadir Hossein* (1887) 15 I.A., 1, 15 Cal., 329, *Ram Krishna* v *Padma Charan* (1902) 6 C.W.N., 663.

(*v*) *Satnam* v *Bhagwan* A I R. 1938 P.C, 216, *Greedharee* v. *Nundo Kishore* (1867) 11 M I A, 405, *Muthu Ramalinga* v. *Perianayagam* (1874) 1 I.A, 209, *Janoki* v. *Gopal* (1882) 10 I.A, 32, 9 Cal, 766, *Genda Puri* v *Chatar Puri* (1887) 13 I A, 100, 9 All, 1, *Ramalingam* v *Vythilingam* (1893) 20 I A, 150, 16 Mad., 490, *Lahar Puri* v *Puran Nath* (1915) 42 I.A., 115, 37 All, 298, *Ram Parkash Das* v. *Anand Das* (1916) 43 I.A, 73, 43 Cal., 707, *Bhagaban* v *Raghunandan* (1895) 22 I A., 94, 22 Cal, 843, *Jwala Das* v *Pir Sant Das* A I.R. 1930 P.C., 245, 34 C W N, 933 (mahant claiming right to nominate successor must prove it).

(*v*[1]) (1904) 27 Mad, 435, 457, *per* Bhashyam Ayyangar, J.

(*w*) *Hoogly* v. *Krishnamund* S.D. of 1848, 253; *Soobramaneya* v. *Aroomooga* Mad. Dec of 1858, 33, *Greedharee* v *Nundo Kishore* (1867) 11 M.I.A., 405, 1 W R. (P.C), 25, *Trimbakpuri* v *Gangabai* (1887) 11 Bom, 514; *Ramalingam* v. *Vythilingam* (1893) 20 I A, 150, 16 Mad., 490, *Annasami* v. *Ramakrishna* (1901) 24 Mad., 219; *Tiruvambala Desikar* v. *Manikkavachaka* (1917) 40 Mad., 177; *Vidyapurna* v. *Vidyanidhi* (1904) 27 Mad, 435; *Bishambar Das* v. *Mt. Phulgari* (1930) 11 Lah., 673, *Haridas Gangadas* v. *Ramdas* A.I.R. 1931 Bom, 79, 32 Bom. L R., 1381, *Raghunath Das* v *Ganesh Das* A.I.R. 1932 All 603 (practice of similar maths cannot be ignored).

(*x*) *Nataraja* v. *Kailasam* (1920) 48 I.A., 1, 44 Mad., 283; *Ramalingam* v. *Vythilingam* (1893) 20 I A., 150, 16 Mad., 490; *Ram Parkash Das* v. *Anand Das* (1916) 43 I.A., 73, 43 Cal., 707; *Vaidyanatha* v. *Swaminatha* (1924) 51 I.A., 282, 47 Mad., 884.

tion by the members of the religious body Sometimes the right of election is vested in them (*y*). Where the head of a math designated a person as his successor but died before the successor could be formally initiated, it was held that the designated person was entitled to succeed (*z*). The power of nomination cannot however be delegated (*a*). Neither the office of a mahant nor the property of math can be the subject of partition (*b*) It has been held that one who has been nominated as a junior pandarasannadhi to succeed to the headship of the math has, even during the lifetime of the head of the math, a vested right of which he cannot be deprived, except for just cause (b^1) An ascetic head of a math does not *ipso facto* forfeit his office for immorality but is liable to be removed from his office on proof of his immoral conduct (b^2)

The grounds of disqualification recognised in Hindu law will apply to holders of such offices, they remain unaffected by the Hindu Inheritance (Removal of Disabilities) Act, 1928

Devolution of managership.

§ 808 The devolution of the office of shebait of an idol or of dharmakarta of a temple or manager of a charitable endowment, upon the death or termination of office of the incumbent, depends upon the terms upon which it was created, or the usage of each particular institution, where no express deed of trust or foundation exists (*c*) Where nothing is said in the grant as to the succession, the

(*y*) *Mohunt Gopal* v *Kerparam* S D of 1850, 250, *Narain* v. *Brindabun* 2 S D 151 (192), *Gossain* v *Bissessur* 19 W R, 215, *Madho* v *Kamta* (1878) 1 All, 539 *Mahant Laharpuri* v *Mahant Puran Nath* (1915) 42 I A., 115, 37 All, 298 *Deua Das* v *Shew Prasad* A I R 1929 Pat, 531, *Satnam Singh* v *Bhagwan Singh* A I R. 1938 P C, 216, *Sita Prasad* v *Thakur Das* (1870) 5 B.L.R, 73, *Mahant Ramji* v. *Lachhi Das* (1902) 7 C W N, 145

(*z*) *Krishnagiri* v. *Shridhar* (1922) 46 Bom, 655.

(*a*) *Ramji* v *Lachhu* (1902) 7 C W N, 145

(*b*) *Sethuramaswamiar* v *Meruswamiar* (1918) 45 I A., 1, 41 Mad, 296 See *Ram Charan Ramanuj Das* v *Gobind Ramani Das* (1928) 56 I A, 104, 31 Bom L R., 715, reversing (1925) 52 Cal, 748, (1925) 29 C W N, 931, A I R 1925 Cal, 1107 (where the usage in a math consisting of several asthals is to have only one mahant, a separation of the office is improper, unless there are special circumstances justifying it).

(b^1) *Thiruvambala* v *Manikkavasaka* (1917) 40 Mad., 177

(b^2) (1917) 40 Mad, 177 *supra*

(*c*) *Greedharee* v *Nund Kishore*, Marsh, 573, affd (1867) 11 M I A, 428, 8 W R (P.C), 25, *Muttu Ramalinga* v. *Periyanayagam* (1874) 1 I A, 209, *Janoki* v *Gopal* (1883) 10 I A, 32, 9 Cal, 766, *Genda* v *Chattar* (1887) 13 I A, 100, 9 All, 1, *Appaswami* v *Nagappa* (1884) 7 Mad, 499, *Bimalabala Sinha* v. *Deb Kinkar* A.I.R. 1932 Pat., 267.

right of management passes by inheritance to the natural heirs of the donee, according to the rule, that a grant without words of limitation conveys an estate of inheritance (*d*), unless such devolution is inconsistent with, or opposed to the purpose the founder had in view in creating the trust (*e*) or where the office is descendible to a single heir (*f*). The property passes with the office, and neither it nor the management is divisible among the members of the family (*g*). Where the right to manage charities, without any beneficial interest in the charity properties, is vested in a joint Hindu family, the senior male member of such a family is, until a partition is effected, entitled to exercise the right of management vested in the family on its behalf (*h*).

Where the management can, without detriment to the trust, be held by turns, it is open to the members of the family to agree to or for the court to decree management by turns or in some settled order and sequence (*i*). Sometimes the constitution of the body vests the management in several, as representing different interests, or as a check upon each other, and any act which alters such a constitution would be invalid (*j*). Where the office carries with

(*d*) *Chutter Sein's* case, 1 S.D 18 (239), *Ramachar* v. *Venkata Row* A.I.R. 1938 Mad., 661 See *Tagore* case (1872) 9 B.L.R. (P.C.), 395, I.A. Supp. Vol. 47, *per curiam*, 9 Cal., 79, *Nanabhai* v. *Shriman Goswami* (1888) 12 Bom., 331, *Gnanasambanda* v. *Velu Pandaram* (1899) 27 I.A., 69, 23 Mad As to escheat to Crown, see *Secretary of State* v. *Haibatrao* (1904) 28 Bom., 276, *Sethuramaswamiar* v. *Meruswami* (1917) 45 I.A., 1, 7, 41 Mad., 296, 303, on appeal from (1911) 34 Mad., 470, *Asita Mohan* v. *Nirode Mohun* (1920) 47 I.A., 140, 24 C.W.N., 794 (joint shebaits), *Sri Girdharji* v. *Roman Lalji* (1889) 16 I.A., 137, 17 Cal., 3, *Mohan* v. *Madhusudhan* (1910) 32 All., 461, *Sheo Prasad* v *Aya Ram* (1907) 29 All., 663

(*e*) *Mohan Lalji* v *Gordhan Lalji* (1913) 40 I.A., 97, 35 All., 283.

(*f*) *Ayiswaryanandaji* v *Sivaji* (1926) 49 Mad., 116.

(*g*) *Jaafar* v. *Aji* (1864) 2 Mad H.C., 19, *Kumaraswami* v. *Ramalinga* Mad. Dec. of 1860, 261, *Trimbak* v. *Lakshman* (1896) 20 Bom., 495.

(*h*) *Thandavaroya* v. *Shunmugam* (1909) 32 Mad., 167, (1917) 45 I.A., 1, 41 Mad., 296 *supra*, (1926) 49 Mad., 116, 146.

(*i*) *Ramanathan Chetty* v *Murugappa Chetty* (1906) 33 I.A., 139, 29 Mad., 283 affirming (1904) 27 Mad., 192, *Ayiswaryanandaji* v *Sivaji* (1926) 49 Mad., 116, 147, *Meenakshi* v. *Somasundara* (1921) 44 Mad., 205, *Alasinga Bhattar* v. *Venkata Sudarsana Bhattar* (1936) 70 M.L.J., 424, *Rai Sundari Dasya* v. *Benode Behary* (1935) 39 C.W.N., 1264, *Nubkissen* v. *Hurrischunder* 2 M. Dig., 146. See *Anundmoyee* v. *Boykantnath* 8 W.R., 193, *Ramsoondur* v. *Tarruck* 19 W.R., 28, *Mitta Kunth* v. *Neerunjun* 14 B.L.R., 166, 22 W.R., 437, *Mancharam* v. *Pranshankar* (1882) 6 Bom., 298

(*j*) *Rajah Vurmah* v. *Ravi Vurmah* (1877) 4 I.A., 76, 1 Mad., 235; see *Teramath* v. *Lakshmi* (1883) 6 Mad., 270; a fluctuating community of persons may be the managers of endowments, *Secy. of State* v *Haibatrao* (1904) 28 Bom., 276; *Muthiah Chetti* v. *Periannan* (1916) 4 M.L.W., 228 (caste management).

it the right to receive offerings, a member of the family may sue to establish his right and to have a period fixed for his turn of management (*k*).

Alienation of trusteeship.

§ 809. A trustee cannot sell, lease or otherwise alienate the right of management, though coupled with the obligation to manage in conformity with the trusts annexed thereto (*l*), nor is the right saleable in execution under a decree (*m*) In *Rajah Vurma Valia* v *Ravi Vurmah Kunhi Kutty*, the Privy Council observed that even if a custom sanctioning not merely the transfer of a trusteeship but the sale of a trusteeship for the pecuniary advantage of the trustee was set up, they would be disposed to hold that that circumstance alone would justify a decision that the custom was bad in law (*n*). Neither a hereditary dharmakarta nor shebait nor the head of a math has a right to alienate his office by sale, gift or will (*o*), nor can he appoint his successor, unless authorised to do so by the deed of endowment or by the usage of the institution (*p*).

(*k*) *Pramatha Nath* v *Pradyumna Kumar* (1925) 52 I A., 245, 52 Cal., 809, approving *Mitta* v. *Neerunjan* (1874) 14 B L.R, 166; *Mancharam* v. *Pranshankar* (1882) 6 Bom, 298, *Limba* v *Rama* (1889) 13 Bom, 548 But one of two shebaits cannot sue for his share of the royalty due to a deity under a lease. *Barabani Coal Concern Ltd* v *Gokul* (1934) 61 I.A, 35, 61 Cal, 313.

(*l*) *Rajah Vurmah* v *Ravi Vurmah* (1876) 4 I.A., 76, 1 Mad., 235, overruling *Ragunada* v *Chinnappa* 4 Mad Rev. Reg, 109, *Rama Varma* v. *Raman Nair* (1882) 5 Mad, 89, *Kannan* v. *Nilakundan* (1884) 7 Mad., 337, *Lakshmanaswami* v *Rangamma* (1903) 26 Mad., 31, *Sarkum Abu* v *Rahaman Buksh* (1897) 24 Cal., 83, *Gnanasambanda* v *Velu Pandaram* (1899) 27 I.A., 69, 23 Mad, 271; *Mahamaya Debi* v *Haridas Haldar* (1915) 42 Cal, 455; *Alasinga* v. *Venkata Sudarsana* (1936) 70 M.L J., 424, *Subramania* v *Natesa* (1938) 1 M L J, 517, *Ramlakhan Tiwari* v *Ramlagan* A I R 1933 Pat, 449, *Prayag Dass* v *Kriparam* (1907) 8 C.L.J., 499, *Gobinda Ramaney Das* v. *Ramacharan Ramaney Das* (1936) 63 Cal, 326 The right to receive offering, if independent of the right to render service, can be transferred *Balmukund* v. *Tula Ram* (1928) 50 All., 394 A *vritti* may be alienated as a matter of special local usage. *Manjunath* v. *Shankar* (1915) 39 Bom, 26, following *Rajaram* v *Ganesh* (1898) 23 Bom, 131 As to *yajman vritti* in Sind, see *Kanayalal* v. *Lalchand* A I R 1937 Sind, 237, *Ram Chand* v. *Uttam Chand* A.I.R. 1937 Sind., 147.

(*m*) *Durga* v. *Chanchal* (1881) 4 All., 81, *Rajaram* v. *Ganesh* (1899) 23 Bom, 131

(*n*) *Rajah Vurmah* v. *Ravi Vurmah* (1876) 4 I.A., 76, 1 Mad., 235 *supra*, *Subramaniam* v *Natesa* A I.R. 1938 Mad, 713.

(*o*) *Mahamaya Debi* v *Haridas Haldar* (1915) 42 Cal., 455, 472, *Rajeshwar Mullick* v. *Gopeshwar* (1908) 35 Cal., 226 dissenting from *Mancharam* v. *Pranshankar* (1882) 6 Bom., 298, *Puran Lalji* v. *Ras Bihari Lal* (1922) 44 All, 590.

(*p*) *Annaswami* v. *Ramakrishna* (1901) 24 Mad., 419; *Ranjit Singh* v. *Jagannath* (1886) 12 Cal., 375.

Alienation of a religious office.

§ 810. But an alienation by gift or will of a religious or secular office, without receiving any consideration, to a person standing in the line of succession and free from objections relating to the capacity of a particular individual to perform the worship of an idol or do any other necessary functions connected with it, may be valid (*q*). In the case of archakas, such an alienation when made in favour of one in the line of heirs of the alienor and when it is neither for consideration, nor in any way opposed to or inconsistent with the interests of the institution is valid (*r*). In such cases, the alienation of a religious office is in fact little more than a renunciation of the right to hold the office and it is always open to an officeholder to resign his office or to relinquish his rights under a compromise (*s*). It has been decided in Calcutta that a private endowment of a family idol may be transferred to another family, the idol being a part of the gift and the property continuing to be appropriated to its benefit as before (*t*).

Where the transfer is for value or in favour of a stranger, an alienation of the office is bad (*u*)

§ 810 A. An arrangement for the remuneration of archakas or pujaris in a temple by a share of the offerings or collections is a well known practice and is not invalid as a permanent alienation of trust property (*u*[1]). Even

(*q*) *Manicharam* v *Pranshankar* (1882) 6 Bom, 298, *Sitarambhai* v. *Sitaram* (1869) 6 Bom. H.C. (A.C J), 250, *Annasami* v. *Ramakrishna* (1901) 24 Mad, 219, *Nirad Mohini* v. *Shibadas* (1909) 36 Cal., 975, (1935) 68 M.L.J., 295 *infra*, see *Haridas Holdur* v. *Charu Chandra Sarkar* (1933) 60 Cal, 1351

(*r*) *Sri Mahant Prayag Doss* v *Govindacharlu* A.I.R. 1935 Mad., 220, 68 M.L.J., 295, 304-306 (custom of alienation).

(*s*) *Satnam Singh* v. *Bhagwan* A.I.R. 1938 P.C. 216 affg. A.I.R. 1935 All., 198, *Girls Chandra Saw* v. *Upendra Nath* (1931) 35 C.W.N., 768, A.I.R. 1931 Cal., 776, *Savitri* v *F A. Savi* (1937) 12 Pat., 359.

(*t*) *Khettur Chunder* v. *Hari Das* (1890) 17 Cal., 557.

(*u*) *Mahamaya* v. *Haridas Haldar* (1915) 42 Cal., 455, *Kuppa* v. *Dorasami* (1883) 6 Mad, 76 (sale to one not in the line of heirs, bad); *Narasimma* v. *Anantha* (1882) 4 Mad., 391; *Juggernath Roy* v. *Pershad Surmah* 7 W.R., 266; *Dubo Misser* v. *Srinivas* (1870) 5 B.L R., 617, *Narayana* v. *Ranga* (1892) 15 Mad., 183 (must be only to sole next heir); *Alagappa* v. *Sivaramasundara* (1896) 19 Mad., 211, *Rajam Bhatta* v. *Singarammal* (1919) 51 I.C., 979, 36 M.L.J., 355; *Raghunath Vithal* v. *Purnanund* (1923) 47 Bom., 529 (stranger), *Panchanan Banerjee* v. *Surendra Nath* A.I.R. 1930 Cal., 180 (stranger; pecuniary benefit); *Annadaprosad* v. *Mithilal* A.I.R. 1934 Cal., 650, 59 C L J, 514 (stranger), *Prosonna Deb* v. *Bengal Duars Bank Ltd.* A.I R. 1936 Cal., 744; *Kashinath* v. *Gangubai* A.I.R. 1931 Bom., 170.

(*u*[1]) (1935) 68 M.L.J., 295 *supra* distg. (1917) 40 Mad., 212 F.B. *supra*.

in the case of alienations of trust property, the Judicial Committee has not laid down a rule of absolute prohibition. In *Magniram Sitaram* v. *Kasturbhai* (*v*), the propriety of raising a presumption of legal origin, even in the case of such transactions, where they are ancient, provided of course such a legal origin is practicable and reasonably capable of being presumed without doing violence to the probabilities of the case, is recognised.

Founder's right

§ 811. Where a trust has been created, in default of evidence that he has disposed of it otherwise, the law will vest the trust in the founder and his heirs, unless there has been some usage or course of dealing or some circumstances to show a different mode of devolution (*w*), or unless such a mode would be inconsistent with the purpose of the foundation (*x*). Though a founder is competent to lay down rules to govern the succession to the office of shebait or manager, he cannot create any estate unknown or repugnant to Hindu law, such as an estate-tail (*y*). Where the founder has made

(*v*) (1921) 49 I A, 54, 46 Bom., 481, *Mazaffar al Musavi* v. *Jabeda Khatun* (1930) 57 I.A., 125, 57 Cal., 1293, *Alam Khan Saheb* v. *Karuppannaswami* (1937) 47 M L.W., 165, *Murugesa* v. *Manickavasaka* (1917) 44 I A., 98, 40 Mad, 102, *Sri Mahant* v. *Govindacharlu* (1935) 68 M L J, 295.

(*w*) *Gossamee* v *Ruman Lolljee* (1889) 16 I A, 137, 17 Cal., 3, *Jagadindra Nath* v *Hemanta Kumari* (1904) 31 I A, 203, 32 Cal, 129, *Jagannath Prasad* v *Runjit Singh* (1898) 25 Cal., 354, *Sheoratan* v. *Ram Pargash* (1896) 18 All, 227, *Sheo Prasad* v *Aya Ram* (1907) 29 All, 663, *Mohan Lalji* v *Madhsudan* (1910) 32 All, 461, *Meenakshi Achi* v *Somasundram Pillai* (1921) 44 Mad., 205, *Chandranath* v. *Jadabendra* (1906) 28 All., 689, *Kali Krishna Ray* v. *Makhan Lal* (1920) 50 Cal., 233, *Prakash Chandra Nag* v. *Subodh Chandra* [1937] 1 Cal, 515, *Gulab Dass* v. *Manohar Dass* A.I.R. 1937 Oudh, 490, *Radha Nath* v. *Shaktipado Mukerji* A.I.R 1936 All, 624, *Guropada* v *Mon Mohun* A I R 1936 Cal, 215, *Ramachar* v *Venkata Rao* 1938 M.W N., 175, A.I.R. 1938 Mad., 661, *Chandrika Baksh* v *Bhola Singh* A.I R 1937 Oudh, 373, *Ram Sundari Dassya* v. *Benode Behary* (1935) 39 C.W.N., 1264, *Pramatha Nath* v *Pradyumna* (1925) 52 I A, 245, *Gangacharan* v. *Ram Chandra* (1928) 50 All, 165. Persons furnishing additional contributions subsequent to the original endowment do not thereby become founders. *Appasami* v. *Nagappa* (1884) 7 Mad., 499, *Annasami* v *Ramakrishna* (1901) 24 Mad., 219, (1889) 16 I.A., 137, 17 Cal, 3 *supra*, *Ananda Chandra* v *Brija Lal* (1923) 50 Cal, 292, *Prasanna Deb* v *Bengal Duars Ltd* A.I R 1936 Cal, 744, where properties are purchased in the names of a mahant, in the absence of contrary evidence, they belong to the endowment. *Sitaram Dass Bavaji* v. *H R. E. Board, Madras* [1937] Mad., 197.

(*x*) *Mohan Lalji* v. *Gordhan Lalji* (1913) 40 I.A, 97, 35 All, 283; *Sri Sethuramaswamiar* v. *Sri Meruswamiar* (1910) 45 I.A., 1, 41 Mad, 296.

(*y*) *Gnanasambandha* v. *Velu Pandaram* (1899) 27 I.A, 69, 23 Mad., 271, *Gopal Chunder Bose* v. *Kartick Chunder Das* (1902) 29 Cal., 716, *Manohar Mukherjee* v. *Bhupendra Nath* (1933) 60 Cal., 452 F.B., overruling *Sreepati Chatterji* v. *Krishna Chandra* (1924) 41 C.L.J., 22, A I R 1925 Cal, 442, *Kandarpa Mohan Goswami* v. *Akshay Chandra Basu* (1934) 61 Cal., 106 reversing (1933) 60 Cal., 706 (where a gift of shebaitship was followed by a general power of appoint-

a disposition of the trusteeship outside his own family, but the succession to the office of trustee has wholly failed, it has been held that the right of management reverts to the heirs of the founder (*z*). A Full Bench of the Madras High Court has held that it is competent to the founder's heirs on such failure to create a frĕsh line of trustees (*a*). But where property has been dedicated to an endowment or trust by a donor and he has thereby divested himself of all interest in the property, then the line of succession of shebaits or managers laid down by him in the deed of endowment is binding even on him and he cannot afterwards alter that rule of succession, unless the deed of endownment reserves such right (*b*).

Cypres.

§ 812. Where a clear charitable intention is expressed, it will not be permitted to fail because the mode, if specified, cannot be executed, but the law will substitute another mode *cypres*, that is, as near as possible to the mode specified by the donor. But there can be no question of an application *cypres* until it is clearly established that the mode specified by the donor cannot be carried into effect and that the donor had a general charitable intention (*c*). The jurisdiction of the Courts to act on the *cypres* doctrine upon the failure of a specific charitable bequest arises whether the residue be given to charity or not, unless upon the construction of a will, a direction can be implied that the bequest, if it fails, should go to the residue (*d*).

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ment and by a gift over in default of appointment, the first gift was held as an absolute gift). *Ganesh Chunder Dhur* v. *Lal Behary Dhur* (1936) 63 I.A., 448 reversing A.I.R. 1935 Cal., 284, 39 C.W.N., 46 and affirming (1934) 61 Cal., 393; *Gangaram* v. *Dooboo Mania* A.I.R. 1936 Nag., 223. The donee may be an unborn person at the time of the gift provided he is one who must come into existence within the limits of the rule against perpetuities. §§ 753, 756.

(*z*) *Jai Bansi* v. *Chattar* (1870) 5 B.L.R., 181, 15 W.R., 396, *sub nomine*, *Peet Koonwar* v. *Chuttur*; *Hari Dasi* v. *Secretary of State* (1880) 5 Cal., 228; (1896) 18 All., 227 *supra*; (1907) 29 All., 663 *supra*; (1898) 25 Cal., 354 *supra*.

(*a*) *Baidyo Gauranga Sahu* v. *Sudevi Mata* (1917) 40 Mad., 612 F.B. approved in *Vaidyanatha Aiyar* v. *Swaminatha Aiyar* (1924) 51 I.A., 282, 292, 47 Mad., 884.

(*b*) *Gawrikumari Dasee* v. *Ramani Moyi Dasee* (1922) 50 Cal., 197, *Brindaban* v. *Sri Godamaji* [1937] All., 555; *Narayan Chandra Dutta* v. *Bhuban Mohini Basu* (1933) 38 C.W.N., 15; *Gurupada* v. *Manmohun* A.I.R. 1936 Cal., 215.

(*c*) 4 Hals., 2nd edn., pp. 175, 221; *Bhupati Nath* v. *Ram Lal* (1910) 37 Cal., 128, 159 F.B.; *Santona Roy* v. *The Advocate-General of Bengal* (1920) 25 C.W.N., 343; *Doraisami* v. *Sandanathammal* 1915 M.W.N., 478; *Muthukrishna* v. *Ramachandra* (1918) 37 M.L.J., 489.

(*d*) *The Mayor of Lyons* v. *The Advocate-General of Bengal* (1876) 3 I.A., 32, 1 Cal., 303. *In the matter of Hormasji Framji* (1908) 32 Bom., 214; *Malchus* v. *Broughton* (1885) 11 Cal., 591; on appeal (1886) 13 Cal., 193, 196; (1912) 36 Bom., 29; *Prayagdas* v. *Tirumala Sri Ranga Charyalu* (1905) 28 Mad., 319.

Jurisdiction of Courts.

§ 813. The Courts have jurisdiction to remove managers of public religious or charitable endowments, and, to make them accountable for breaches of trust. There is however no hard and fast rule that every manager of shrine who has arrogated to himself the position of owner should be removed from his trust; each case must be decided with reference to its circumstances (*e*). If the Court finds that a trustee in the exercise of his duties has placed himself in a position in which it thinks that the obligations of his office can no longer be faithfully discharged, that is sufficient ground for his removal (*f*). Where a trustee asserted his own ownership of temple properties and supported his claim by concocted accounts, the Privy Council held that it was not open on any sound principles of administration or of law to continue such a person as a trustee (*g*). Where the properties in question belong to a math the head of the math is answerable for maladministration as a trustee in a general sense, though he may not be an express trustee in the English sense (*h*).

A suit for the removal of a trustee or for the appointment of a new trustee or for settling a scheme or for other reliefs mentioned in section 92 of the Civil Procedure Code, 1908, is governed by that provision. That section, however, does not apply to suits for reliefs outside its scope (*i*). A suit under sec. 92 has to be brought by the Advocate-General or with his consent by two or more persons having an interest

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(*e*) *Damodar Bhatji* v. *Bhat Bhogilal* (1898) 22 Bom., 493, *Chintaman* v. *Dhondo* (1891) 15 Bom., 612, *Ram Parkash Das* v. *Anand Das* (1916) 43 I A, 73, 43 Cal, 707.

(*f*) *Peary Mohun Mukerji* v. *Manohur Mukerjee* (1915) 43 Cal., 1019, 1025, *Vaidyanatha* v. *Swaminatha* (1924) 51 I.A., 282, 47 Mad., 884.

(*g*) *Srinivasacharlar* v. *Evalappa Mudaliar* (1922) 49 I A, 237, 45 Mad., 565, *Annaji* v. *Narayan* (1897) 21 Bom., 556, *Damodar* v. *Bhat Bhogilal* (1898) 22 Bom., 493, *Sivasankara* v. *Vadagiri* (1890) 13 Mad., 6, *Prayagdas* v. *Srirangacharyalu* (1906) 34 I.A., 178, 30 Mad., 138, *Kashinath* v. *Gangubai* A.I.R. 1931 Bom., 170 (previous conduct, not proved, is no test), *Manohar Ganesh* v. *Lakhmiram* (1888) 12 Bom., 247; *Thackersey* v. *Hurbhum* (1884) 8 Bom., 432; *Sharat Chandra* v. *Dwarkanath* A.I.R. 1931 Cal., 558 (idol can sue by next friend in case of private religious trust). *Prayag Doss* v. *Tirumala* (1905) 28 Mad., 319, on appeal 34 I A., 178, 30 Mad., 138.

(*h*) *Nelliappa Achari* v. *Punnaivanam Achari* (1927) 50 Mad., 567.

(*i*) *Abdur Rahim* v. *Mahomed Barkat Ali* (1927) 55 I.A., 96, 55 Cal., 519, 529; *Budree Das* v. *Choonl Lal* (1906) 33 Cal., 789, 805; *Appanna Poricha* v. *Narasinga Poricha* (1922) 45 Mad., 113 F.B.; *Srinivasa* v. *Srinivasa* (1893) 16 Mad., 31, *Venkataramana* v. *Kasturi Ranga* (1917) 40 Mad, 212 F.B.; *Ghelabai* v. *Uderam* (1912) 36 Bom., 29; *Inayat Husain* v. *Faiz Muhammad* (1923) 45 All, 335, *Ganga Charan* v. *Ram Chandra* (1928) 50 All, 165; see *Vythilinga* v. *Temple Committee Tinnevelly* (1931) 54 Mad, 1011.

in the trust; outside the Presidency-Towns, the suit may also be brought by the Collector or with his consent (*j*).

Section 92 vests a very wide discretion in the Court. In giving effect to the provisions of the section and in appointing new trustees and settling a scheme, the Court is entitled to take into consideration not merely the wishes of the founder, so far as they can be ascertained, but also the past history of the institution and the way in which the management has previously been carried on in conjunction with other existing conditions that may have grown up since its foundation. It has also the power of giving any directions and laying down any rules which might facilitate the work of management, and, if necessary the appointment of trustees in the future (*k*).

Section 92 however does not apply to maths (*l*). Nor of course does it apply to private trusts or affect the individual rights of private persons who could bring suits to enforce such individual rights by an ordinary suit (*m*). Persons interested in a temple can sue under Or. I, r. 8 C. P. C. to set aside an alienation by the manager or committee as being one without necessity and as detrimental to the interests of the institution (*n*).

§ 814. Legislation has provided for safeguarding the maintenance of religious endowments and for their superintendence and has conferred rights on persons interested to move courts or special authorities in respect of breaches of Legislation.

(*j*) Persons worshipping regularly are interested in the trust, *Sojedur Raja Chowdhuri* v. *Gour Mohun* (1897) 24 Cal., 418, *Jugalkishore* v. *Lakshmandas* (1889) 23 Bom., 659; *Vaidyanatha* v *Swaminatha* (1924) 51 I.A., 282, 288 disapproving *Jan Ali* v. *Ram Nath* (1881) 8 Cal., 32. Bare possibility of resort is insufficient, *Ramachandra* v. *Parameswaran* (1919) 42 Mad., 360 F.B. Being descendants of the founder is sufficient, (1924) 54 I.A., 282 affg. (1920) 41 M.L.J., 20.

(*k*) *Mahomed Ismail Ariff* v. *Ahmed Moollah Dawood* (1916) 43 I.A., 127, 43 Cal., 1085, 1101, 1102, *Muthiah Chetti* v. *Periannan Chetti* (1916) 4 M.L.W., 228, *Venkatarama Chetti* v. *Damodaram Chetti* (1926) 51 M.L.J., 457; *Doraivelu* v. *Adikesavalu* (1922) M.W.N., 620.

(*l*) *Nataraja* v. *Kailasami* (1921) 48 I.A., 1, *Kailasami* v. *Nataraja* (1909) 33 Mad. 265 F.B.

(*m*) *Bimal Kishore Ghose* v. *Jnanendra* [1937] 2 Cal., 105.

(*n*) *Venkataramana* v. *Kasturiranga* (1917) 40 Mad., 212 F.B.; *Subramania* v. *Nagarathna* (1910) 20 M.L.J., 151. Compare *Chidambaranatha* v. *Nallasiva* (1918) 41 Mad., 124; *Veeramachaneni Ramaswamy* v. *Soma Pitchayya* (1920) 43 Mad., 410; *Rangaswami* v. *Krishnaswami* (1923) 44 M.L.J., 116. As to where there is no trustee, see *Vadlamudi Sastrulu* v. *Venkataseshayya* A.I.R. 1928 Mad., 614. The decision in *Kalimata Debi* v. *Nagendra* A.I.R. 1927 Cal., 244 is erroneous. The dictum in *Kunj Behari* v. *Shyam Chand* A.I.R. 1938 Pat., 394 that the remedy is by removal of the trustee is incorrect. The relief asked should have been for possession to the trustee.

trust and mismanagement of such institutions. Such enactments are the Religious Endowments Act (XX of 1863), the Charitable and Religious Trusts Act (XIV of 1920), the Madras Hindu Religious Endowments Act (II of 1927), the Bombay Act (II of 1863). A discussion of their provisions is outside the scope of this work.

The Madras Hindu Religious Endowments Act, 1927, has repealed the Religious Endowments Act, 1863, and the Madras Endowments and Escheats Regulation, 1817, so far as religious endowments are concerned and has constituted a Board of Hindu Religious Endowments in the Province. By virtue of sec. 73 (3) of that Act, section 92 of the Civil Procedure Code has ceased to have any application to any suit claiming any relief in respect of the administration or management of a religious institution. It further provides that no suit in respect of such administration or management shall be instituted except as provided therein. The Madras Act is virtually a complete code in itself. It does not apply to the city of Madras (*o*).

The Charitable and Religious Trusts Act, 1920, enables any person having an interest in any public religious or charitable trust to apply to the appropriate court for directions for the examination and auditing of the accounts of the trust for a period of three years and for directions to the trustee to furnish him with particulars relating to the trust.

(*o*) The Religious Endowments Act XX of 1863 also does not apply to the Presidency towns, *Annasami Pillai* v. *Ramakrishna* (1901) 24 Mad., 219, 231; *Panchcowrie Mull* v *Chumroolall* (1878) 3 Cal., 563.

CHAPTER XXIII

BENAMI TRANSACTIONS.

§ 815. The law of benami is in no sense a branch of Hindu law.

Benami system, a common practice.

The practice of acquiring and holding property or of carrying on business in names other than those of the real owners, usually called the benami system, is a common practice. There is nothing inherently wrong in it and it accords, within its legitimate scope, with the ideas and habits of the people (*a*). In *Bilas Kunwar* v. *Desraj Ranjit Singh*, Sir George Farwell, delivering the judgment of the Judicial Committee, observed with reference to a benami dealing: "It is quite unobjectionable and has a curious resemblance to the doctrine of our English law, that the trust of the legal estate results to the man who pays the purchase money, and this again follows the analogy of our common law, that where a feoffment is made without consideration the use results to the feoffor" (*b*). Transactions to defeat creditors or third parties are not peculiar to India (*c*).

And valid.

A benami transaction is a perfectly genuine transaction which is legally enforceable (*d*). So long therefore as a benami transaction does not contravene the provisions of law the courts are bound to give it effect (*e*).

Principles of benami.

§ 816. A benami transaction is one where one buys property in the name of another, or gratuitously transfers his property to another, without indicating an intention to benefit the other (*f*). The benamidar therefore has no beneficial interest in the property or business that stands in his name;

(*a*) *Gur Narayan* v. *Sheolal Singh* (1919) 46 I.A., 1, 9, 46 Cal., 566, 574.

(*b*) *Bilas Kunwar* v. *Desraj* (1915) 42 I.A., 202, 205, 37 All., 557, 565.

(*c*) *Venkatakrishnayya* v. *Venkataratnam* A.I.R. 1935 Mad., 947, 950.

(*d*) *Mawng Tun Pe* v. *Haldar* (1936) 14 Rang., 242, 251, F.B.; "Care should be taken not to regard the term benami as being equivalent to not genuine", per Page, C.J.

(*e*) *Gur Narayan* v. *Sheolal Singh* (1919) 46 I.A., 1, 46 Cal., 566; *Afiran Bibi* v. *Narimtulla* A.I.R. 1928 Cal., 666, 48 C.L.J., 135.

(*f*) See *Rangappa* v. *Rangaswami* A.I.R. 1925 Mad., 1005, (1925) M.W.N. 232 where the distinction between a sham and a benami transaction is explained; *Gnanabai* v. *Srinivasa* (1868) 4 M.H.C., 84.

he represents in fact the real owner and so far as their relative legal position is concerned, he is a mere trustee for him (*g*). In other words, a benami purchase or conveyance leads to a resulting trust in India, just as a purchase or transfer under similar circumstances leads to a resulting trust in England. The general rule and principle of the Indian law as to resulting trusts differs but little, if at all, from the general rule of English law upon the same subject (*h*).

The English rule is: where a person purchases property in the name of another or in the name of himself and another jointly, or gratuitously transfers property to another or to himself and another jointly, then, unless there is some further intimation or indication of an intention at the time to benefit the other person, the property is as a rule deemed in equity to be held on a resulting trust for the purchaser or transferor (*i*).

Presumption of advancement in English law.

§ 817. In England an exception is made to this rule where the person in whose name the conveyance is taken or made, is a child of the real owner, when the transaction is presumed to have been made by way of advancement or gift to the child. But this presumption is rebuttable (*j*). So too, a similar presumption is made in England where a husband purchases or transfers property in the name of his wife (*k*).

Not in Indian law.

But this presumption of advancement or gift in favour of the child or wife has not been extended to Hindus and Mahommadans in India. The ground of distinction is stated to be the widespread practice in India to make grants and transfers benami for no obvious reason or apparent purpose without the slightest intention of vesting in the donee

(*g*) *Gur Narayan* v *Sheolal Singh* (1919) 46 I A, 1, 9, 46 Cal., 566, 574, *Bindu Bashini Devi* v *Kashinath* (1931) 58 Cal, 1371. See *Pitchayya* v *Rattamma* A.I R 1929 Mad, 268, 55 M.L.J, 856 where it was pointed out that he was not a strict trustee, but he is not a mere alias.

(*h*) *Kerwick* v. *Kerwick* (1921) 47 I.A, 275, 278, 48 Cal., 260 263.

(*i*) 28 Hals. 1st ed, p 54, para 103, *Scottish Equitable Life Assurance Society, In re,* [1902] 1 Ch 282.

(*j*) 28 Hals. p. 55, para 105; *Kerwick* v. *Kerwick* (1921) 47 I.A., 275, 279, 48 Cal., 260.

(*k*) 28 Hals. p. 59, para 107; (1921) 47 I.A., 275, 48 Cal., 260 *supra.*

any beneficial interest therein (*l*). In *Gurun Ditta* v. *Ram Ditta* it was held that a deposit by a Hindu of his own moneys in bank in the joint names of himself and his wife, payable to 'either or survivor' does not on his death constitute a gift by him to his wife, but there is a resulting trust in his favour in the absence of proof of a contrary intention (*m*).

Though there may be no presumption of advancement in Indian law, 'very little evidence of intention is sufficient to turn the scale' (*n*).

Purchase money, the test.

§ 818. The rule is well established, that in all cases of asserted benami the best, though not the only, criterion is to ascertain from whose funds the purchase-money proceeded. Whether the nominal owner be a child, wife or a stranger, a purchase made with the money of another is *prima facie* assumed to be for the benefit of that other (*o*). Of course there may be cases where, although A purchases property with his own funds and puts it in the name of B, it is proved by evidence that it was intended to be a gift to B; such a transaction is not really benami at all (*p*). This

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(*l*) (1921) 47 I.A., 275, 278, 48 Cal., 260 *supra*; *Dhurm Das* v. *Sham Soonderi* (1843) 3 M.I.A., 229; *Gopeekrist* v. *Gunga Prasad* (1854) 6 M.I.A., 53; *Maulvi Sayyed* v. *Mt. Bebee* (1869) 13 M.I.A., 232.

(*m*) (1928) 55 I.A., 235, 55 Cal., 944; See also *Paul* v. *Nathaniel* (1931) 53 All., 633; *Mt. Latifunnisa* v. *Nazmuddin Shah* A.I.R. 1935 All., 856, 1935 All. L.R., 602. As it is not at all usual in a benami transaction to put property in the name of 'either or survivor', there would seem to be no good reason why the reference to 'survivor' should not be sufficient evidence of a contrary intention. In the Nattukottai Chetty community the fact that the entry in the bank's books is in the name of the husband does not show that the property is not the wife's stridhana· *Muthuraman* v *Periannan* A.I.R. 1934 Mad., 621.

(*n*) Per Sir George Lowndes in *Mohd Sadiq* v. *Fakir Jahan* (1931) 59 I.A., 1, 16, 6 Luck., 556; *Umah Pershad* v. *Gandharp Singh* (1887) 14 I.A., 127, 15 Cal., 20; *Kailash* v. *Jagarnatha* A.I.R. 1935 All., 886, 1935 A.L.J., 998 (evidence may be indirect).

(*o*) *Dhurm Das Pandey* v. *Shama Soondri Dibiah* (1843) 3 M.I.A., 229; *Pandit Ram Narain* v. *Maulvi Muhammad* (1899) 26 I.A., 38, 26 Cal., 227, *Gopeekrist* v. *Gunjapersaud* (1854) 6 M.I.A., 53; *Moulvie Sayyud* v. *Mt Bebee* (1869) 13 M.I.A., 232, 13 W.R. (P.C.), 1; *Bissessur* v. *Luchmessur* (1880) 6 I.A., 233, 5 C.L.R., 477; *Nagin-bhai* v. *Abdulla* (1882) 6 Bom., 717; *Ashabai* v. *Haji Tyeb* (1885) 9 Bom., 115; *Kerwick* v. *Kerwick* (1921) 47 I.A, 275, 48 Cal., 260; *Dharani Kant* v. *Kristo Kumari* (1886) 13 I.A., 70, 13 Cal., 181.

(*p*) *Ram Narain* v. *Md. Hali* (1899) 26 I.A., 38, 26 Cal., 227; *Ismail Mussajee* v. *Hafiz* (1906) 33 I.A., 86, 33 Cal., 773; *Md. Sadiq* v. *Fakir Jahan* (1931) 59 I.A., 1, 6 Luck., 556; *Manmohan Das* v. *Mt. Ramdei* A.I.R. 1931 P.C., 175, (1931) A.L.J., 550, *Thulasi Ammal* v. *Official Receiver, Coimbatore*, A.I.R. 1934 Mad., 671. 67 M.L.J., 541; *Mt Latifunnisa* v. *Najmuddin* A.I R 1935 All., 856, 156 I.C., 609; *Mt. Thakro* v. *Ganga Pershad* (1888) 15 I.A., 29, 10 All., 197.

is clear from Section 82 of the Indian Trusts Act and the observations of the Judicial Committee in *Bilas Kunwar* v. *Desraj Ranjit Singh* (*q*).

No presumption of benami.

§ 819. There is no presumption that what stands in the name of the wife belongs to the husband. Nor is there any presumption that, when property stands in the name of a female member of a Hindu family, it is the common property of the family (*r*). The correct rule is that if it is proved that the purchase money came from another source it is assumed until the contrary is shown that the person who supplied the purchase money is the owner of the property. All that *Soora Lakshmiah Chetty* v *Kothandaram Chetty* decided was that where a husband actually purchased property in the name of his wife, such a transaction standing alone and unexplained by other proved and admitted facts is to be regarded as a benami transaction (*s*). While the source from which the money came is undoubtedly a valuable test, it cannot be considered to be the sole or conclusive criterion. For, the question whether a particular transaction is benami or not, is one of intention and there may be other circumstances to negative the *prima facie* inference from the fact that the purchase money was supplied by or belonged to another (*t*). The position of the parties, their relation to one another, the motives which could govern their action and their subsequent conduct may well rebut the presumption (*u*).

Source of money not conclusive.

Onus of proof.

§ 820. Of course the onus is on the person who alleges a transaction to be benami, to make it out. The assertion that a transaction is not really what it professes to be will

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(*q*) (1915) 42 I A., 202, 37 All., 557; *Chittaluri Sitamma* v. *Saphar Sitapatirao* (1937) 2 M.L.J, 606.

(*r*) *Narayan* v. *Krishna* (1885) 8 Mad, 214, *Official Assignee of Madras* v *Nateşa Gramani* A I R 1927 Mad, 194, 98 I.C, 660 explaining (1925) 52 I A, 286, 48 Mad, 605, *Jnanendra* v. *The Official Assignee of Calcutta* (1927) 54 Cal, 251, 261, per Rankin, J., *Shanmuga Mudaliar* v *Kaveri Ammal* A I.R 1928 Mad., 708, *Syed Mahomed* v *Shasi Mouli* (1938) 67 C L.J., 188.

(*s*) (1925) 52 I A., 286, 48 Mad, 605 See this case explained in *Sri Shib Kumari* v *Sri Subudhi* A.I.R. 1932 Cal., 829, *Hiralal* v *Mt. Jumna* A.I R. 1934 All, 867

(*t*) *Md Sadiq* v. *Fakir Jahan* (1931) 59 I A., 1, 6 Luck., 556; *Ismail Musajee* v *Hafiz* (1906) 33 I.A., 86, 33 Cal, 773, 784, 785; *Azimet* v. *Hurdwaree* (1869) 13 M.I.A., 395; *Thulasi Ammal* v. *Official Receiver, Coimbatore*, A.I.R 1934 Mad., 671, *Devi Dayal* v. *Mt Indomati* A.I.R. 1935 Lah., 770; *Nawab Begum* v. *Husain Ali* (1937) 18 Lah., 149.

(*u*) *Ismail Mussajee* v. *Hafiz* (1906) 33 I.A., 86, 33 Cal., 773; *Man Mohandas* v. *Mt. Ramdei* A.I.R. 1931 P.C., 175; *Promode Kumar Roy* v. *Kali Mohon* (1923) 27 C.W.N., 305; *Dalip Singh* v. *Chaudhrain* (1908) 35 I.A., 104, 30 All., 258 (where a mortgage was alleged to be a benami transaction).

be regarded by the Courts with great suspicion and must be strictly made out by evidence (*v*). Where the motive alleged for a benami transaction itself suggests that the purpose in view would be served only by a genuine transfer and not by a benami transaction, the more reasonable inference is that the transfer was intended to be operative as a transfer of the beneficial interest and not as a mere benami transaction (*w*).

Effect given to real title.

§ 821. Where a transaction is once made out to be benami, the Courts in India, which are bound to decide according to equity and good conscience, will deal with it in the same manner as it would be treated by an English Court of Equity (*x*). The principle is that effect will be given to the real and not to the nominal title, unless the result of doing so would be to violate the provisions of a statute, or to work a fraud upon innocent persons (*y*). For instance, the real may sue the ostensible owner to establish his title, or to recover possession (*z*); and, conversely, if the benamidar attempts to enforce his apparent title against the beneficial owner, the latter may establish the real nature of the transaction by way of defence (*a*). Similarly, creditors, who are enforcing their claims against the property of the real owner, will have exactly the same rights against his property held benami as if it were in his real name (*b*); and conversely, if they seize his estate in execution of a decree

(*v*) *Maung Po Kin* v. *Maung Po Shein* (1926) 4 Rang., 518 P.C.; *Mohammad Hajee* v. *Vednath Singh* A.I.R. 1938 Rang., 28; *Bengal Coal Co.* v. *Sita Ram* A.I.R. 1935 Cal., 666; *Chittaluri Sitamma* v. *Saphar Sitapatirao* (1937) 2 M.L.J., 606; *Sreemanchunder* v. *Gopaulchunder* (1866) 11 M.I.A., 28, *Azimut* v. *Hurdwaree* (1870) 13 M.I.A., 395; *Faez Buksh* v. *Fakeeroodeen* (1871) 14 M.I.A., 234; *Uma Pershad* v. *Gandharp Singh* (1888) 14 I.A., 127, 15 Cal., 20; *Suleman Kadar* v. *Nawab Mehdi* (1898) 25 I.A., 15, 25 Cal., 473; *Nirmal Chunder* v. *Mahomed Siddick* (1899) 25 I.A., 225, 26 Cal., 11; *Ranga Aiyar* v. *Srinivasa Aiyangar* (1898) 21 Mad., 56. Oral evidence is sufficient, *Palaniyappa* v. *Arumugam* (1864) 2 M.H.C., 26; *Taramonee* v. *Shibnath* 6 W.R., 191; *Kumara* v. *Srinivasa* (1888) 11 Mad., 213.

(*w*) (1937) 2 M.L.J., 606 *supra*.

(*x*) *Ex parte Kahundas* (1881) 5 Bom., 154.

(*y*) *Gur Narayan* v. *Sheolal Singh* (1919) 46 I.A., 1, 46 Cal., 566; *In re Gobordhan* v. *Sm. Rai Kessori* (1916) 20 C.W.N., 554, 560 where all the cases are reviewed.

(*z*) *Thukrain* v. *Government* (1871) 14 M.I.A., 112.

(*a*) *Ramanugra* v. *Mahasundur* (1873) 12 B.L.R., 433 (P.C.).

(*b*) *Musadee* v. *Meerza* (1854) 6 M.I.A., 27; *Hemanginee* v. *Jogendro* 12 W.R., 236; *Gopi* v. *Markande* (1879) 3 Bom., 30; *Abdool Hye* v. *Mir Mahomed* (1883) 11 I.A., 10, 10 Cal., 616.

against the benamidar, the real owner will be entitled to set aside the execution (*c*).

Unless statute violated

§ 822. On the other hand, there are various statutes which provide that in sales under a decree of Court, or for arrears of revenue, the certified purchaser shall be conclusively deemed to be the real purchaser, and shall not be liable to be ousted on the ground that his purchase was really made on behalf of another (*d*). Such Acts, of course, bar the equitable jurisdiction of the Courts, but they will be strictly construed. Therefore, if the real owner is actually and honestly in possession, and the benamidar attempts to oust him by virtue of his nominal title, the statute will not prevent the Courts from recognizing the unreal character of his claim (*e*). Agreements made after the sale, though carrying out those made before the sale, are not affected, for instance, by section 66 of the Civil Procedure Code and the real owner can sue the benamidar to recover the property (*f*). And a purchase made by the manager of a Hindu family with the joint funds in his own name, as is usual, would not be considered as coming within the meaning of such statutes (*g*). It has also been held that these provisions are only intended to prevent the real owner from disputing the title of the certified purchaser, and that they do not preclude a third party from enforcing a claim against the true owner in respect of the property purchased as benami (*h*).

(*c*) *Tara Soonduree* v *Oojul* 14 W R., 111.

(*d*) Civil Procedure Code, V of 1908, Sec. 66 (Act XIV of 1882, Sec. 317), Bengal Land Revenue Sales Act XI of 1859, Sec 36 Section 82 of the Indian Trusts Act (II of 1882) expressly provides that its provisions shall not affect these two enactments Sec. 38 of the Madras Revenue Recovery Act, 1864, stands altogether on a different footing and benami purchases are not prohibited, *Narayanasami* v. *Govindasami* (1906) 29 Mad, 473 F.B. approving *Muthuvaiyan* v. *Sinna Samuvaiyan* (1905) 28 Mad, 526, *Venkatachalam* v. *Purushotama* (1909) 19 M.L.J, 270

(*e*) *Buhuns* v. *Lalla Buhooree* (1872) 14 M I.A., 496, *Lokhee* v. *Kalypuddo* (1875) 2 I.A. 154, *Abdul Jalil Khan* v *Obaidullah Khan* (1929) 56 I A, 330, 51 All, 675, *Govinda Kuar* v *Lala Kishun Prasad* (1901) 28 Cal, 370, but see *Umashashi Debi* v *Akrur Chandra* (1926) 53 Cal, 297, *Keshri Mull* v *Sukan Ram* (1933) 12 Pat., 616.

(*f*) *Ramathai Vadivelu* v *Perua Manicka* (1920) 47 I.A, 108, 43 Mad., 643 approving *Venkatappa* v *Jalayya* (1919) 42 Mad., 615.

(*g*) See *Tundun* v. *Pokh Narain* 13 W R., 347, *Bodh Singh* v. *Ganesh* 19 W.R., 356, 12 B.L R, 317 P C., *Ganga Sahai* v. *Kesri* (1916) 37 All, 545 P.C

(*h*) *Kanhizak* v *Manohur* (1886) 12 Cal, 204, *Chundra Kaminy* v *Ram Ruttun* (1886) 12 Cal, 302; *Suba Bibi* v. *Hara Lal* (1894) 21 Cal, 519, *Tirumalayappa* v. *Swami Naikar* (1895) 18 Mad., 469. This is given effect to in Sec. 66 (2) of the Code of the Civil Procedure (V of 1908).

Or opposed to public policy.

So also where the benami title has been created in order to conceal the fact that the real owner had effected a purchase which was absolutely illegal, either as being forbidden by statute or contrary to public policy, a suit by the real owner or his representatives to recover the property from the benamidar will fail, on the ground that he has no title, and section 82 of the Indian Trust Act of 1882 will not prevent this defence being set up. Of course the benamidar himself will have no better title, except from the fact that he is in possession. Such a possessory title will be good against all the world except against the true owner (*i*).

Where a police officer purchases property in the name of another, effect cannot be given to his real title as this would defeat the provision of the particular Police Act or section 23 of the Indian Contract Act (*j*).

Fraud on third parties.

§ 823. Even independently of statutory provisions, the Courts will not enforce the rights of a real owner where they would operate to defraud innocent persons. One familiar instance occurs, where the benamidar has sold, mortgaged or otherwise alienated for value the property of which he is the ostensible owner, to persons who had no knowledge that he was not the real owner. In such a case the Judicial Committee said: "It is a principle of natural equity, which must be of universal application, that where one man allows another to hold himself out as the owner of an estate, and a third person purchases it for value from the apparent owner in the belief that he is the real owner, the man who so allows the other to hold himself out shall not be permitted to recover upon his secret title, unless he can overthrow that of the purchaser, by showing either that he had direct notice, or something which amounts to constructive notice of the real title, or that there were circumstances which ought to have put him upon an enquiry that, if

(*i*) *Pahlwan* v. *Ram Bharose* (1905) 27 All., 169, *Sundar* v. *Parbati* (1890) 16 I.A., 186, 12 All., 51.

(*j*) *Sundrabai* v. *Manohar* A.I.R. 1933 Bom., 262, 35 Bom. L.R., 404; see also *In the goods of Tarunkumar Ghose* (1935) 62 Cal., 114. The taking of an assignment of a mortgage by a patwari is not a transaction opposed to public policy, *Bhagwan Dei* v. *Murarilal* (1917) 39 All., 51 F.B. overruling *Sheo Narain* v. *Mata Prasad* (1905) 27 All., 73, but see *Abdul Rahman* v. *Ghulam Muhammad* (1926) 7 Lah., 463. See also *Kamaladevi* v. *Gur Dayal* (1917) 39 All., 58 F.B.; *Dharwar Bank Ltd.* v. *Mahomed Hayat* A.I.R. 1931 Bom., 269.

prosecuted, would have led to a discovery of it" (*k*). This principle is contained in section 41 of the Transfer of Property Act, 1882. But, of course, notice of the trust may be implied as well as express, and if a man deals with another who is not in possession (*l*), or who is unable to produce the proper documents of title, these facts may amount to notice which will make his transaction subject to the real state of the title of the person with whom he deals (*m*). In such cases there is no deliberate intention on the part of the real owner to commit a fraud upon anyone. But if he deliberately places all the means of committing a fraud in the hands of his benamidar, equity will not allow him to assert his title to the detriment of a person who has actually been defrauded. Where, however, the fact that an ostensible owner is only a benamidar is known to the person who deals with him, and the transaction into which he enters is known and acquiesced in by the real owner, it becomes valid against him. as if he had been a party to it (*n*).

Fraud upon creditors.

§ 824. A still stronger case is that in which property has been placed in a false name. for the express purpose of defrauding creditors. As against the latter, of course, the transaction is wholly invalid. Where the fraudulent purpose has been in fact carried out either entirely or as to a substantial part, the real owner is not entitled to recover the property from the benamidar. Where however the purpose of the fraudulent conveyance is defeated, the alienor or his representative is entitled to recover the property and the benamidar who colluded with him cannot rely upon the contemplated fraud as an answer to the action. In *Petherpermal Chetty* v. *Muniandi Servai*, the Judicial Committee observed, "To enable

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(*k*) *Ramcoomar* v. *McQueen* (1873) I.A Supp. Vol. 40, 11 B.L.R., 46, 52, *Mir Mahomed* v *Kishori Mohun* (1895) 22 I.A., 129, 22 Cal., 909, *Luchmun Chunder* v. *Kallichurn* 19 W.R, 292 P.C. See, too, per Phear, J., in *Bhugwan* v. *Upooch* 10 W.R, 185. *Chunder Coomar* v. *Hurbuns Sahai* (1890) 16 Cal, 137; *Sundar Lal* v *Fakirchand* (1902) 25 All, 62; *cf. Sarat Chandra* v. *Gopal Chunder*, *ibid.*, 148, where it was held that the mere fact of a benami transfer did not amount to a representation which bound the real owner or his heirs as against a purchaser from the benamidar.

(*l*) *Vyankapacharya* v. *Yamanasami* (1911) 35 Bom., 269. See as to 'notice', sec. 3 of the Transfer of Property Act.

(*m*) *Hakeem* v. *Beejoy* 22 W.R, 8, *Mancharji* v. *Kongseoo* (1869) 6 Bom. H.C. (O C.J), 59; *Imambandi* v. *Kumleswari* (1887) 13 I.A., 160, 165, 14 Cal., 109. But see *Annada Pershad* v. *Prasannamoyi* (1907) 34 I.A, 138, 34 Cal., 711 and *Bindubashinee* v. *Kashinath* (1931) 58 Cal., 1371 where it was held that estoppel alone could prevent the true owner from disputing the acts of his benamidar.

(*n*) *Sarju Prashad* v. *Bir Bhaddar* (1893) 20 I.A., 108, 15 All., 304.

a fraudulent confederate to retain property transferred to him, in order to effect a fraud, the contemplated fraud must, according to the authorities, be effected. Then, and then alone, does the fraudulent grantor, or giver, lose the right to claim the aid of the law to recover the property he has parted with" (*o*). A Full Bench of the Madras High Court has recently held, overruling its earlier decisions which took a contrary view, that a mere fraudulent intention evidenced by the transaction is not sufficient to prevent a person who has been a party to the fraudulent transaction from setting up his own fraud. The intended fraud must have been effected either entirely or to a substantial extent (*p*). All the other High Courts have taken the same view (*q*).

Neither a gift in contemplation of insolvency nor a transfer by way of fraudulent preference is a benami transaction, as the transfer is really intended to take effect, and is not colourable (*r*). Whether the transfer is valid or not depends upon other considerations.

Right of benamidar to sue.

§ 825. On the question whether a benamidar who has no beneficial interest in the property which stands in his name could maintain an action in respect thereof, there was formerly considerable diversity of opinion (*s*). But it is now well

(*o*) (1908) 35 I.A., 98, 103, 35 Cal., 551, 559; See *Taylor* v. *Bowers* (1876) 1 Q.B.D. 291, 300, *Symes* v. *Hughes* (1870) 9 Eq., 475, 479. The observations of Fry, L.J., in *Kearley* v. *Thomson* (1890) 24 Q.B.D., 742 were not followed by Lord Atkinson in this case. See also *Venkataramayya* v. *Pullayya* (1936) 59 Mad., 998, 1018-9 F.B.

(*p*) (1936) 59 Mad., 998 F.B. *supra*, following *Muthuraman Chetty* v. *Krishna Pillai* (1906) 29 Mad., 72 and overruling *Kamayya* v. *Mamayya* (1916) 32 M.L.J., 484, *Subbaraya* v. *Subbaraya* (1926) 24 L.W., 500, *Ramaswami* v. *Alamelu* (1923) 46 M.L.J., 298; *Suryanara yana* v. *Butchaiah* (1915) 3 M.L.W., 111 and *Kotayya* v. *Mahalakshmamma* (1933) 56 Mad., 646. See also *Venkatakrishnayya* v. *Venkataratnam* A.I.R. 1935 Mad., 947.

(*q*) *Honapa* v. *Narsapa* (1899) 23 Bom., 406; *Girdharlal* v. *Manikamma* (1914) 33 Bom., 10; *Bai Devmani* v. *Ravishankar* (1929) 53 Bom., 321; *Shamlall Mitra* v. *Amarendra Nath* (1893) 23 Cal., 460; *Goberdhan* v. *Ritu Roy* (1896) 23 Cal., 962; *Jadu Nath* v. *Rup Lal* (1906) 33 Cal., 967; *Akhil Prodhan* v. *Manmatha Nath* (1913) 18 C.W.N., 1331, 1334; *Surya Mull* v. *Dwaraka Prasad* A.I.R. 1929 Pat., 127, 10 P.L.T., 138; *Vilayat Husain* v. *Misran* (1923) 45 All., 396 F.B.; *Qudir Baksh* v. *Hakam* (1932) 13 Lah., 713 F.B.; *Walaiti Ram* v. *Shadi Ram* (1935) 16 Lah., 27; *Ma Nan* v. *Ma E* (1926) 4 Rang., 429.

(*r*) *Gnanabhai* v. *Srinivasa* (1868) 4 M.H.C., 84.

(*s*) For older decisions against benamidar's right to sue which are no longer law, see: *Hari Gobind* v. *Akhoy Kumar* (1889) 16 Cal., 364; *Issur Chandra* v. *Gopal Chandra* (1898) 25 Cal., 98; *Baroda Sunderi* v. *Dinabundhu*, *ibid.*, 874; *Mohendra Nath* v. *Kali Proshad* (1903) 30 Cal., 265; *Atrabannessa* v. *Safatullah* (1916) 43 Cal., 504; *Kathapermal* v.

settled that a benamidar fully represents the real owner and can, as against third parties, maintain an action in his own name whether it is to recover possession of land or other property or one to enforce a contract. The beneficial owner need not be a party to it (*t*).

It has been held by a Full Bench of the Madras High Court that the person beneficially entitled under a negotiable instrument can sue the promisor and the benamidar for a declaration that the payee under the negotiable instrument is only a trustee or benamidar for him, though he could not directly sue the promisor on the note (*u*)

Effect of decree.

Accordingly in a proceeding by or against the benamidar, the person beneficially entitled is fully affected by the rules of *res judicata*. It is open to the latter to apply to be joined in the action; but whether he is made a party or not, a proceeding by or against his representative is fully binding on him (*v*).

Secretary of State (1907) 30 Mad., 245, *contra, Nand Kishore* v. *Ahmad Ata* (1896) 18 All, 69, *Yad Ram* v *Umrao Singh* (1899) 21 All, 380; *Bachcha* v *Gajadhar* (1906) 28 All., 44, *Kamta Prasad* v. *Indomati* (1915) 37 All, 414, *Ravji* v. *Mahadev* (1898) 22 Bom., 672, *Dagdu* v. *Balvant, ibid*, 820

(*t*) *Gur Narayan* v. *Sheo Lal Singh* (1919) 46 I.A., 1, 46 Cal., 566 (suit to recover property), *Vaitheswara Aiyer* v. *Srinivasa* (1919) 42 Mad, 348 F.B. (suit to enforce mortgage), *Narayan* v. *Kaji Ghulam* (1925) 49 Bom, 832 (suit on mortgage), *Afiran Bibi* v *Narimtulla* A I R. 1928 Cal, 666 (suit to recover possession); *Bhola Pershad* v *Ram Lall* (1897) 24 Cal, 34, *Sachitananda Mohapatra* v. *Baloram* (1897) 24 Cal., 644, *Yad Ram* v *Umrao Singh* (1899) 21 All, 380; *Ramanuja* v. *Sadagopa* (1905) 28 Mad, 205, *Subba Narayana* v *Ramaswami* (1907) 30 Mad, 88 F B (suit on a negotiable instrument), *Banwari Mukund* v *Ajit Kumar* (1938) 67 C L J, 320.

(*u*) *Venkatarama Reddi* v. *Valli Akkal* (1935) 58 Mad, 693 F.B., *Harkishore Barna* v. *Gura Mia* (1930) 58 Cal., 752 (the holder of a negotiable instrument alone can sue), *Ghanshyam Das* v. *Ragho Sahu* A I.R 1937 Pat, 100 F.B. (holder alone can institute a suit), *Jaswant* v. *Gobind Ram* (1933) 14 Lah., 19.

(*v*) *Gur Narayan* v. *Sheo Lal Singh* (1919) 46 I A., 1, 46 Cal, 566, *Gopinath* v. *Bhugwat* (1883) 10 Cal, 697, 705, *Baroda Kanta* v. *Chunder* (1902) 29 Cal, 682, *Afiran Bibi* v. *Narimtullah* A.I.R 1928 Cal, 666, 667; *Thakur Das* v. *Keshab Chandra* (1938) 42 C.W.N., 497; *Shangara* v *Krishnan* (1892) 15 Mad, 267; *Kaniz* v. *Wali Ullah* (1908) 30 All, 30, *Ravji* v. *Mahadev* (1898) 22 Bom, 672 It is however open to a third party to come in and show that a suit was really carried on for his benefit, *Lachman* v. *Patniram* (1877) 1 All, 510. But where judgment is given in an apparently hostile suit, neither of the parties can be heard to say that the fight was all a sham, for instance, the defendant cannot say that he was the plaintiff and that, so far from judgment having been recovered against him, he had really recovered judgment, *Bhowabul* v. *Rajendro* (1870) 13 W.R., 157, *Chenvirappa* v. *Puttappa* (1887) 11 Bom., 708.

APPENDIX I.

SECTION A.

The Samskaras laid down in the Smritis are:—

(1) The *Garbhadana* or the rite performed before the conception (*a*).

(2) The *Pumsavana* or the ceremony performed, to secure the birth of a son, in the third month of the pregnancy.

(3) The *Simantonnayana* or the ceremony of parting of the hair performed in the fourth, sixth, seventh or eighth month of a woman's first pregnancy.

(4) The *Jatakarma* or the ceremony performed for a male child before the navel string is cut. With the recitation of the sacred formula, the child must be fed with honey and butter after they had been touched with a piece of gold or a gold ring (*b*).

(5) The *Namakarana* or the ceremony of naming the child. The name must be indicative of the paternal or maternal grandfather and the rest or the family deity or it may be after the name of the month in which it is born or after the *guru* or the spiritual teacher. Baudhayana says: "The names may be either after those of *Rishis* or of *Devatas* or after one's ancestors". The names of girls should consist of uneven syllables, as Sri, Bharati and etc. (*c*).

(6) The *Nishkramana* or taking the child out of the house to see the moon in the third month or the sun in the fourth month or to bow to a *Devata* (*d*).

(7) The *Annaprasana* or the ceremony of the first feeding of the child with cooked rice in the sixth or the eighth month after the child's birth or when the child has cut its first teeth (*e*).

(*a*) Manu, II, 26, 27; Yajn., I, 11-12, Vidyarnava's trans., 19, 20; Smritichandrika, Samskarakanda, Mysore ed., 32-72, 177-190.

(*b*) Manu, II, 29; Asvalayana Grihyasutra, I, 15, 1; Paraskara, I, 16, 4, Gaut., VIII, 14-21; Vishnu, XXVII, 1-12, Yajn., I, 11-13; Vidyarnava's trans., 23 *sqq*; Dig., II, 301-302.

(*c*) Manu, II, 32-33; Asvalayana Grihyasutra, I, 15, 4-10; Paraskara, I, 17-1-4; Vidyarnava's trans., p. 37.

(*d*) Manu, II, 34; Asvalayana Grihyasutra, I, 16, Paraskara, I, 17, 5; Vidyarnava's trans., 39

(*e*) Asvalayana Grihyasutra, I, 16, Paraskara I, 19, 1-6; Mit., Vidyarnava's trans., 40.

(8) The *Chudakarana* or the ceremony of tonsure in the third or the fifth year or along with the *Upanayanam* (*f*).

(9 and 10) The *Upanayanam* and the *Savitri* are the ceremonies of investiture with the sacred thread and the initiation into the *Gayatri*. The student is brought near the preceptor who instructs him in the *Gayatri*, the sacred Vedic verse to make him fit to receive instruction in the Vedas (*g*). The *Upanayanam* is performed in the eighth year after conception for a Brahmin, in the eleventh for a Kshatriya and in the twelfth for a Vaisya. The maximum age for the performance of the *Upanayanam* rite for Brahmans, Kshatriyas and Vaisyas respectively is up to the sixteenth year, the twenty-second year and the twenty-fourth year (Yajn., I, 37).

(11) The *Samavartana* or the ceremony on the completion of studentship (*h*).

(12) The *Vivaha* or the ceremony of marriage (*i*). Complementary to the marriage ceremony is the ceremony (mentioned only in the later literature) of *Dwiragamana* or *gowna* of Bengal and Bihar or the *Ritusanthi* of the South. It is the second entrance of the bride from her father's house into her husband's house to take her abode with him (*j*).

SECTION B.

ORDER IN OBSEQUIES.

The order of persons competent to perform the funeral rites (*pretasraddha*) of a deceased person according

(*f*) Manu, II, 35; Asvalayana Grihyasutra, I, 17, 1, Paraskara II, 1. The ceremony of boring the ear is performed in the sixth, seventh, eighth, or twelfth month in order to secure prosperity, long life and health in the months of Kartika, Pausa, Chaitra and Phalguna. It is mentioned by Garga and Brihaspati but not by Manu or Yajnavalkya. (Vidyarnava's trans., 40) The rites commencing from Jatakarma to Chudakarana are performed for girls without mantras. Manu, II, 66, 67; Yajn., I, 13, Vidyarnava's trans., 54.

(*g*) Dig., II, 301-302; Manu, II, 36-40, Apas., I, 5, 8, 21, I, 22, 2-10, Gaut, I, 5, 14, Vas., II, 3, XI, 49-79, Baudh., I, 2, 3, 7-12; Yajn, I, 14, 37-38; Vidyarnava's trans., 55, Mandlik, page 161. For special reasons, *Upanayanam* can take place in the fifth year for a Brahmin, in the sixth year for a Kshatriya and in the eighth year for a Vaisya. Manu, II, 37.

(*h*) Manu, III, 4; Gaut., IV, 1; Vas., VIII, 1; Yajn., I, 52; Vidyarnava's trans., 91.

(*i*) Manu, III, 4-19, Apas., II, 1, 15, 16, Gaut., IV, 2-5, Vas., VIII, 1-2, Baudh., II, 1, 32-38, Vishnu, XXIV, 9-10, Yajn., I, 53.

(*j*) *Churaman Sahu* v *Gopi Sahu* (1916) 37 Cal, 1, 10, 11; *Vaikuntam* v. *Kallapiran* (1903) 26 Mad., 497.

to the Mitakshara school is: 1. the aurasa son (*k*)—the eldest or best of them present at the spot or the adopted son (*k*[1]); 2. the grandson; 3. the great-grandson; 4. the widow (or husband); 5. the daughter (*l*); 6. the daughter's son (*m*); 7. the brother; 8. the half-brother (*n*); 9. the brother's son; 10. the half-brother's son; 11. the father; 12. the mother; 13. the daughter-in-law; 14. the sister; 15. the sister's son; 16. the half-sister; 17. the half-sister's son; 18. the sapindas, samanodakas and sagotras of the father; 19. the maternal grandfather and his male issue, the other sapindas and samanodakas of the mother, in order (*o*); 20. the disciple; 21. the priest *(ritvik)*; 22. the preceptor; 23. the son-in-law; 24. a friend; and 25. the king (except in the case of a Brahmin).

According to the Dayabhaga School (*p*) the order is as follows:—the eldest son, the younger son, the grandson, the great-grandson, the sonless widow, the widow who is the mother of a son disqualified to perform the *sraddha*, the maiden daughter, the betrothed daughter, the married daughter, the daughter's son, the younger brother, the elder brother, the younger brother of the half-blood, the elder brother of the half-blood, the younger brother's son, the elder brother's son,

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(*k*) Gaut., XV, 13-14, Yajn., III, 16 Mit., Naraharayya's trans., 22-23, Nirnaya Sindhu (Bombay ed.), 284-290, Dharma Sindhu (Bombay ed.), Bk III, Ch iv, Vaidyanatha Dikshitiyam (Setlur's ed.), 571-575, Sarvadhikari, 2nd ed, 80-92; Bhattacharya, H L., 2nd ed., 656-660; Ghose, H L, I, 59-78

(*k*[1]) According to the Madana Ratna, the Kaladarsa, and some other works, the adopted son comes after the great-grandson. Nirnaya Sindhu, 285.

(*l*) The married daughter comes first and then the unmarried daughter, but it is otherwise under the Bengal school

(*m*) The daughter's son performs the funeral rites only if he takes the property and comes after the daughter. According to the Vishnu Smriti, the daughter's son comes before the wife and daughter. Yajnavalkya places him after the daughter (II, 135-136). Vaidyanatha Dikshitiyam states both the views without indicating its preference. (Setlur, II, 573)

(*n*) According to the Nirnaya Sindhu, both the half-brother and his son come after the full brother's son, Nirnaya Sindhu, 284-290; Sarvadhikari, 2nd ed., 96; Bhattacharya, H.L., 2nd ed., 659.

(*o*) According to the extract from Dharma Sindhu as given by Dr. Sarvadhikari (2nd edn., 87) "On failure of the maternal grandfather and his male issue, come in order the sons of the father's and mother's sisters. On failure of them, the bandhus of the father, *viz.*, grandfather's and grandmother's sister's sons and grandmother's brother's sons. In like manner, on failure of them, the mother's bandhus, viz., the mother's father's sister's son, and mother's mother's sister's son, the mother's mother's brother's son."

(*p*) Sarvadhikari, 2nd ed., 92-94; Bhattacharya, H.L, 2nd ed., 659.

the younger half-brother's son, the elder half-brother's son, the father, the mother, the daughter-in-law, the grand-daughter-in-law, the maiden grand-daughter, the betrothed grand-daughter, the married grand-daughter, the great-grand-son's widow, the maiden, the betrothed and the married great-grand-daughters in order, the grandfather, the grandmother, the paternal uncle and the sapindas, samanodakas and sagotras, the mother's father, the mother's brother, the sister's son, the maternal sapindas and samanodakas, the widow of a different caste, the unmarried woman kept as a wife, the father-in-law, the son-in-law, the grandmother's brother, the disciple, the priest, the preceptor, the friend, the father's friend, the neighbour.

Ordinarily, the parents should not perform the funeral rites of their son, nor the elder brother, of the younger; but if there is no other person, they can perform it (*q*).

(*q*) Vaidyanatha Dikshitiyam citing Baudhayana and Devala. Setlur II, 574-575.

APPENDIX II.

MALE BANDHUS IN ORDER OF SUCCESSION ACCORDING TO THE MITAKSHARA.

See §§ 516, 521, 524, 552.

(The numbers are the same as in Table B.)

I. Cognate descendants of the deceased owner:—(1) Son's daughter's son; (2) Daughter's grandson (30 Mad., 406; 11 Mad., 287; 17 All., 523); (3) Daughter's daughter's son (58 Mad., 238; 30 Mad., 406; 31 All., 454; 32 All., 640); (4) Grandson's daughter's son; (5) Son's daughter's grandson; (6) Daughter's great-grandson; (7) Son's daughter's daughter's son; (8) Daughter's son's daughter's son; (9) Daughter's daughter's grandson; (10) Daughter's daughter's daughter's son (*a*). **Atmabandhus.**

II. Cognate descendants of deceased owner's father:—(11) Brother's daughter's son (10 Beng. L.R., 341); (12) Sister's grandson (20 Mad., 342); (13) Sister's daughter's son (6 Cal., 119); (14) Nephew's daughter's son; (15) Brother's daughter's grandson; (16) Sister's great-grandson; (17) Brother's daughter's daughter's son; (18) Sister's son's daughter's son; (19) Sister's daughter's grandson; (20) Sister's daughter's daughter's son.

III. Cognate descendants of the paternal grandfather; the maternal grandfather and his descendants:—(21) Maternal grandfather (15 Mad., 421); (22) Maternal uncle [65 I.A., 93; 48 I.A., 349, 44 Mad., 753; 23 I.A., 83; 5 Bom., 597]; (23) Paternal aunt's son [65 I.A., 93; A.I.R. 1937 Mad., 967; 58 I.A.. 372, 59 Cal., 576; 37 Cal., 214]; (24) Maternal uncle's son [48 Mad., 722 dissenting from 33 Mad., 439; 38 All., 416]; (25) Maternal aunt's son (28 Bom., 453); (26) Paternal uncle's daughter's son (18 Mad., 193; 1 Lah., 588); (27) Maternal uncle's grandson; (28) Maternal uncle's daughter's son; (29) Paternal aunt's grandson (48 I.A., 349; 47 All., 172); (30) Paternal aunt's daughter's son (29 Mad., 115; 19 Bom., 681); (31) Maternal aunt's grandson (48 I.A., 86); (32) Maternal aunt's daughter's son; (33) Paternal

(*a*) Nos. 1-10 are nearer than the sister's son who came in only as No. 11 before the Act; *e.g.*, No. 2 was preferred to sister's son in 58 Mad., 238. While his position is now fixed by the Act amongst sapiṇḍas, they remain postponed to samanodakas.

uncle's son's daughter's son; (34) Maternal uncle's son's daughter's son; (35) Paternal uncle's daughter's grandson; (36) Paternal aunt's great-grandson; (37) Paternal uncle's daughter's daughter's son; (38) Paternal aunt's son's daughter's son (49 Mad., 652; *contra* 54 All., 698 F.B.); (39) Paternal aunt's daughter's grandson; (40) Paternal aunt's daughter's daughter's son; (41) Maternal uncle's great-grandson; (42) Maternal uncle's daughter's grandson; (43) Maternal aunt's great-grandson; (44) Maternal uncle's daughter's daughter's son; (45) Maternal aunt's son's daughter's son, (46) Maternal aunt's daughter's grandson; (47) Maternal aunt's daughter's daughter's son; (48) Maternal uncle's great-great-grandson; (49) Maternal uncle's great-great-great-grandson.

Pitrubandhus. IV. Cognate descendants of the paternal great-grandfather, the father's maternal grandfather and his descendants:—(50) Father's maternal grandfather, (51) Father's maternal uncle (12 M I.A., 448); (52) Paternal grandaunt's son (23 I A, 83); (53) Father's maternal uncle's son; (54) Father's maternal aunt's son; (55) Paternal granduncle's daughter's son (47 All, 10); (56) Paternal grandaunt's grandson (12 Mad, 155; 23 I.A, 83; 28 Bom., 453); (57) Paternal grandaunt's daughter's son; (58) Father's maternal uncle's grandson, (59) Father's maternal uncle's daughter's son, (60) Father's maternal aunt's grandson; (61) Father's maternal aunt's daughter's son, (62) Paternal granduncle's son's daughter's son (40 P L.R, 37); (63) Paternal granduncle's daughter's grandson; (64) Paternal grandaunt's great-grandson, (65) Paternal granduncle's daughter's daughter's son; (66) Paternal grandaunt's son's daughter's son; (67) Paternal grandaunt's daughter's grandson, (68) Paternal grandaunt's daughter's daughter's son; (69) Father's maternal uncle's great-grandson; (70) Father's maternal uncle's son's daughter's son; (71) Father's maternal uncle's daughter's grandson; (72) Father's maternal aunt's great-grandson; (73) Father's maternal uncle's daughter's daughter's son; (74) Father's maternal aunt's son's daughter's son; (75) Father's maternal aunt's daughter's grandson; (76) Father's maternal aunt's daughter's daughter's son; (77) Father's maternal uncle's great-great-grandson; (78) Father's maternal uncle's great-great-great-grandson.

V. Then come the other pitrubandhus (Nos. 79 to 165), namely, the cognate descendants of the paternal great-grandfather's father, grandfather and great-grandfather; and the grandfather's maternal grandfather, and the father's

maternal great-grandfather and the father's mother's maternal grandfather and their descendants. Their succession is not of much practical importance. The great-great-grandfather's grandson's daughter's son (91) was recognised as a bandhu in 17 Cal., 518.

VI. Maternal great-grandfather, mother's maternal grandfather, and their descendants:—(166) Maternal great-grandfather (11 Mad., 287); (167) Mother's maternal grandfather; (168) Maternal great-grandfather's son; (169) Mother's maternal uncle; (170) Maternal great-grandfather's grandson; (171) Maternal great-grandfather's daughter's son (48 I.A., 86); (172) Mother's maternal uncle's son; (173) Mother's maternal aunt's son; (174) Maternal grandfather's brother's grandson (8 Cal., 302 P.C.); (175) Maternal great-grandfather's son's daughter's son; (176) Maternal great-grandfather's daughter's grandson (58 M.L.J., 562); (177) Maternal great-grandfather's daughter's daughter's son (22 Cal., 339); (178) Mother's maternal uncle's grandson (5 Mad., 69); (179) Mother's maternal uncle's daughter's son (22 Cal., 339); (180) Mother's maternal aunt's grandson; (181) Mother's maternal aunt's daughter's son; (182) Maternal great-grandfather's great-great-grandson (58 M.L.J., 562); (183) Maternal great-grandfather's grandson's daughter's son; (184) Maternal great-grandfather's son's daughter's grandson; (185) Maternal great-grandfather's daughter's great-grandson; (186) Maternal great-grandfather's son's daughter's daughter's son; (187) Maternal great-grandfather's daughter's son's daughter's son; (188) Maternal great-grandfather's daughter's daughter's grandson; (189) Maternal great-grandfather's daughter's daughter's daughter's son; (190) Mother's maternal uncle's great-grandson; (191) Mother's maternal uncle's son's daughter's son; (192) Mother's maternal uncle's daughter's grandson; (193) Mother's maternal aunt's great-grandson; (194) Mother's maternal uncle's daughter's daughter's son; (195) Mother's maternal aunt's son's daughter's son; (196) Mother's maternal aunt's daughter's grandson; (197) Mother's maternal aunt's daughter's daughter's son; (198) Maternal great-grandfather's great-great-great-grandson; (199) Maternal great-grandfather's great-great-great-great-grandson; (200) Mother's maternal uncle's great-great-grandson; (201) Mother's maternal uncle's great-great-great-grandson. Matrubandhus.

VII. Then come the other matrubandhus (Nos. 202 to 273), namely, the maternal grandfather's paternal and maternal grandfathers and their descendants, and the mother's

mother's father's father and the mother's mother's mother's father and their descendants. Their succession is not of much practical importance. The maternal great-great-grandfather's grandson (206) [49 Mad., 658] and the maternal great-great-grandfather's great-great-grandson (218) [17 Cal., 518] are recognised as bandhus.

APPENDIX III.

MARUMAKKATTAYAM AND ALIYASANTANA LAW.

Marumakkattayam law, mainly customary.

1. Marumakkattayam law as administered by the Courts is a body of customs and usages which have received judicial recognition and may be taken to be well settled on most matters. Within the last forty years, the Madras Legislature has modified the law so as to bring it into conformity with the growing needs and aspirations of a progressive community. Marumakkattayam law prevails among the castes who form a considerable section of the people inhabiting the West Coast of South India, *viz.*, the Indian States of Travancore and Cochin and the districts of Malabar and South Kanara which formed the ancient kingdom of Kerala. In South Kanara, the system is known as Aliyasantana. The literal meaning of the word 'Marumakkattayam' is inheritance through nephews and nieces and its Kanarese equivalent means much the same. Marumakkattayam is followed by the Navar community; and it obtains also among several other Non-Brahmin Hindu castes in Malabar, Cochin and Travancore. The Thiyyas and other cognate castes in North Malabar and South Kanara are also governed by the system. The chief castes in Kanara that follow the Aliyasantana law are the Bants, the Billawas and the non-priestly class among the Jains. Among the Nambudiri Brahmins of North Malabar, a particular sub-sect known as Payyannur Gramam which originally consisted of sixteen illoms or families but has now become reduced to about half a dozen, are also followers of Marumakkattayam law.

As already stated, it is essentially customary law (*a*); Sundara Iyer, J., however, suggested that "Malabar law is really only a school of Hindu law. It is true that there are no sacred writings which are authoritatively binding on the followers of the Marumakkattayam system but the Marumakkattayis are undoubtedly a class of Hindus whose system of holding property is similar to that of other Hindus and who have a system of heirs of their own as other Hindus have" (*b*). This view overlooks the fundamental difference

(*a*) *V. K. K. V. Gopala Nair* v. *V. K. V. Raghava Nair* A.I.R. 1925 Mad., 460, 462, 21 M.L.W., 215, 219; *V. P. Krishnan* v. *Payankalath Narayanan* (1938) 1 M.L.J., 715, 719; S.A., 457/30.

(*b*) *T. Krishnan Nair* v. *T. Damodaran Nair* (1915) 38 Mad., 48, 64.

between the two systems; the Marumakkattayam law is founded on the matriarchate while all the schools of Hindu law are founded upon the agnatic family. It is also opposed to the observations of the Privy Council in *Thiruthipalli Raman Menon* v. *Raman Menon:* "The litigation is between Nayars in South Malabar and has to be decided according to the laws and usages of those persons. These laws and usages are very peculiar; some of them are so well established as to be judicially noticed without proof. But others of them are still in that stage in which proof of them is required before they can be judicially recognised and enforced" (*c*). The customary law of the Marumakkattayis has been very materially altered by the enactments of the Madras Legislature and also by the Regulations of the Indian States of Travancore and Cochin in the respective areas of their jurisdiction. The British Indian Acts are, the Malabar Marriage Act (IV of 1896), the Malabar Wills Act (V of 1898), the Madras Marumakkattayam Act, 1932 (XXII of 1933). While in a Mitakshara joint family the members claim their descent from a common ancestor, the members of the family constituting a Marumakkattayam tarwad are descended from a common ancestress; in other words, the descent according to the system of Marumakkattayam is in the female line

Legislative enactments.

Descent from a common ancestress.

2. 'Tarwad' is the name given to the joint family consisting of males and females, all descended in the female line from a common ancestress (*d*). A tarwad may consist of two or more branches known as *thavazhies;* each tavazhi or branch consisting of one of the female members of the tarwad and her descendants in the female line.

Tarwad and tavazhi.

Every tarwad in its initial stage must have consisted of a mother and all her children, male and female, living in commensality with joint rights in property. And as it expands, the tarwad is added to by the descendants, both female and male, of the female members thereof (*e*). The Madras Marumakkattayam Act [XXII of 1933, Section 3, subsection (i)] defines a tarwad as a "group of persons form-

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(*c*) (1901) 27 I.A, 231, 24 Mad, 73, 79

(*d*) Mr. Logan says, "A Malayalee tarwad corresponds pretty closely to what the Romans call a *gens* with this important distinction however, that whereas in Rome all the members of the *gens* trace their descent in the male line from a common ancestor, in Malabar, the members of a tarwad trace their descent in the female line from a common ancestress." (Logan's Malabar Manual, Vol. I, pp. 152, 153)

(*e*) The children of the male members do not belong to their father's tarwad, but to the tarwad of their mother. *Pakkaran* v. *Pathumma Umma* A I.R. 1930 Mad., 541.

ing a joint family with community of property governed by the Marumakkattayam law of inheritance" and a tavazhi used in relation to a female as "the group of persons consisting of that female, her children and all her descendants in the female line" and a tavazhi used in relation to a male as "the tavazhi of the mother of that male" [S. 3 (j) i and ii] (*f*).

Karnavan and karnavathi.

The seniormost male member in the Marumakkattayam tarwad, the *karnavan* and in the absence of any adult male member, the seniormost female member who would be called the *karnavathi* is entitled to carry on the management of the family. According to the Aliyasantana system, the seniormost member, whether male or female, known respectively as the *ejaman* or *ejamanthi* of the family carries on the management. Except to this extent the rules of Aliyasantana law are generally the same as those of the customary Marumakkattayam law. Of course the latter has been modified by statute which does not affect the rules of Aliyasantana law. The Malabar Wills Act still applies to cases governed by Aliyasantana law.

Ejaman.

Constitution of a tarwad.

A tarwad is a family corporation, and every member of a tarwad has equal rights in the property by reason of his or her birth in the tarwad (*g*). On the death of any member, his or her interest in the tarwad property devolves on the other members of the tarwad by survivorship.

A tarwad or a tavazhi cannot be created by act of parties (*h*). As both males and females have equal rights in tarwad property, the limited estate of a Hindu woman, so familiar in Mitakshara law, is unknown to the Marumakkattayam or the Aliyasantana system (*i*).

Right to partition.

3. It was laid down by a course of judicial decisions by the middle of the nineteenth century that one or more members of a tarwad could not claim partition and separate possession of their share of the tarwad property without the consent or

(*f*) The meaning of the terms 'tavazhi' and 'tarwad' have been discussed at great length in the decisions in *Kenath Puthen Vittil Tavazhi* v. *Narayanan* (1905) 28 Mad., 182 (F.B.); *Chakkra Kannan* v. *Kunhi Pokker* (1916) 39 Mad., 317 (F.B.); *Imbichi Beevi Umma* v. *Raman Nair* (1919) 42 Mad., 869; *Moithiyan Kutty* v. *Ayissa* (1928) 51 Mad., 574; *Ambu Nair* v. *Utha Amma* 1937 M.W.N., 1254.

(*g*) *Kalliani Amma* v. *Govinda Menon* (1912) 35 Mad., 648; *Kabakandi Koma* v. *Siva Sankaran* (1910) 20 M.L.J., 134.

(*h*) (1928) 51 Mad., 574 *supra.*

(*i*) *Uthe Amma* v. *Mani Amma* (1935) 68 M.L.J., 372.

concurrence of all the members thereof (*j*). This rule was accepted as settled law and acted upon ever since till the recent Act (*k*). A suggestion, however, was thrown out by Sankaran Nair, J., that the majority of the adult members or even a minority, when it was in the interests of the tarwad, could enforce a partition so as to be binding upon the others (*k*[1]); but it was not given effect to As a tarwad usually consists also of minor members, a question has often arisen as to whether a partition entered into by all the adult members will be binding on the minors. Such a partition has been held binding on the minors if the arrangement is fair, just and *bona fide* and if due regard has been paid to the interests of the minors (*l*).

The mode of partition, whether it ought to be *per stirpes* or *per capita*, has been the subject of conflicting judicial opinion (*m*). The accepted view is that partition should be *per capita* and this has been affirmed by section 10 of the Madras Marumakkattayam Act. Owing to the absence of a right of compulsory partition, and the consequent increase in the number of members and the impossibility of living together under one roof, instances have often arisen where branches of a tarwad have lived separate for long, enjoying the properties of the tarwad separately. How far such a state of things would, after the lapse of considerable time, give rise to an inference of partition has been discussed in some decisions and the view that has found favour is that separate residence, separate assessment, separate management, etc., are *prima facie* evidence of an intention to divide (*n*). The result of

(*j*) 1 Mad. Sudd. Dec, 118, A S. No. 28 of 1814 and S A No. 4 of 1857; Mad Sudd Dec. (1857), 120.

(*k*) *Puthisseri Maniyannoor* v *Thozukat Pullamiyil* (1917) 32 M.L.J., 489, *Sulaiman* v. *Biyaththumma* (1917) 21 C.W.N., 553, 32 M.L.J, 137, P C ; *Vasudevan* v *Sankaran* (1897) 20 Mad, 129, 141 (F.B.), *Arayalprath Kunhi Pocker* v. *Kanthilath Ahmed Kuti Haji* (1906) 29 Mad, 62; *Thiruthipalli Raman Menon* v. *Variangattil Palisseri Raman Menon* (1900) 27 I A., 231, 24 Mad, 73, *Narainkutti Amma* v. *Achuthankutti Nair* (1919) 42 Mad., 292.

(*k*[1]) *Veluthakal Chirudevi* v. *Veluthakal Tarwad Karnavan* (1916) 31 M.L.J., 879.

(*l*) (1906) 29 Mad., 62 *supra*, (1916) 31 M.L.J, 879 *supra; Govindan Nair* v. *Madhavi* (1932) 62 M L.J, 712, *Sreedevi Nethiar* v. *Peruvunni Nair* (1934) 67 M.L.J., 771.

(*m*) (1917) 21 C.W.N., 553, 32 M.L.J., 137, P.C. *supra;* (1934) 67 M.L.J, 771 *supra, Narainkutti Amma* v. *Achuthankutti Nair* (1919) 42 Mad., 292.

(*n*) *Nanu* v. *Puvayil Theyyan* (1911) 1 M.W.N., 281; (1917) 21 C.W.N., 553, 32 M.L.J., 137, P.C. *supra, Appa* v. *Kachai Bayyan Kutti* A.I.R. 1932 Mad., 689, 35 M.L.W., 444.

an agreement entered into by all the members of a tarwad to have a partition of the properties would seem to be that the incident of impartibility attaching to the property as tarwad property would no longer hold good and the members thereafter would hold the properties as tenants-in-common. The coparcenary is thereby disrupted and severance in status takes place (*o*). When the major portion of the family estate has been divided and a small portion is kept as joint property, the family corporation is regarded as completely dissolved (*o*[1]).

Conversion.

4. As under the Mitakshara law, so under the Marumakkattayam system, conversion of any member of a tarwad from Hinduism to any other religion creates a dissolution of the tie which bound him to the tarwad; the rights and obligations incident to his status as a member of the tarwad therefore cease to exist (*p*). The Caste Disabilities Removal Act, however, preserves to him the rights which he had at the time of conversion. But it does not enlarge the rights of the convert and give him greater rights than what he possessed before; for instance, it does not entitle him to sue for partition of tarwad property (*q*). Reunion among the members of the tarwad who have already become divided is not a feature of the Marumakkattayam system though there is one instance of reunion being recognized among the Aliyasantana community.

Statutory right to partition.

5. The customary and judge-made law as regards partition has, like other topics of the Marumakkattayam system, been radically changed by the Madras Marumakkattayam Act, chapters VI and VII. By this enactment, which applies only to Hindus governed by the Marumakkattayam law of inheritance, tavazhies represented by the majority of their major members have been given the right to claim partition (S. 38). This provision is also made applicable to tavazhies possessing separate properties (S. 41). The ascertainment of the shares at partition is *per capita* and not *per stirpes* (S. 40). The Act schedules a number of tarwads to which its provisions relating to partition have not been made applicable. But two-thirds of the major members of any such tarwad can get

(*o*) *Govindan Nair* v. *Madhavi* (1932) 62 M.L.J., 712, 716 *supra*; S.A. 1739 of 1918.

(*o*[1]) See S.A. 1815 of 1911.

(*p*) *Kunhichekkan* v. *Lydia Arucanden* (1912) M.W.N., 386; 11 M.L.T., 232; *Adam Haji* v. *P. Kunkan* A.I.R. 1938 Mad., 242, 46 M.L.W., 772.

(*q*) *Pathumma* v. *Raman Nambiar* (1921) 44 Mad., 891, F.B.

it registered as partible by a petition to the Collector under the statute. (Ss. 42, 45 and 47). The Act also enables a tarwad to be registered as impartible by the Collector on the application of two-thirds of its major members and also to obtain cancellation of such registration at any time (Ss. 43 and 44). Section 39 of the Act provides for compulsory partition in case of change of religion of any member. As a necessary corollary to the acquisition of the right of partition under the Marumakkattayam Act, 1932, a severance of the joint status among the members is effected by a unilateral declaration of intention to divide or by the filing of a suit or by a notice demanding a share (*r*). It has been laid down that the share of a tavazhi in a tarwad which is liable to compulsory partition can be attached and sold by a creditor in execution of a decree against a tavazhi or an individual who is a tavazhi under the Act (*r*[1]). And registration of the tarwad as impartible under section 43 of the Act cannot take away the rights of the attaching creditors (*s*). These doctrines, depending as they do, not upon any principle of Hindu law but upon general principles of equity and good conscience have been applied to the solution of problems arising out of the provisions of the Marumakkattayam Act.

Succession.

6 Next, as to the system of inheritance among those governed by the Marumakkattayam law. Questions of inheritance can only arise in respect as to individual property or of property left by an extinct tarwad. As early as 1864, the question of the devolution of the self-acquired property of male member of a tarwad came before the Madras High Court and it was held that, by the law of Malabar, all acquisitions of any male member of a tarwad, which he had not disposed of in his life time, lapsed to the tarwad on his death and formed part of its property. The right of the acquirer to mortgage or sell his self-acquisitions was also recognised (*t*). This decision has been affirmed by a majority of the Full Bench in *Govindan Nair* v. *Sankaran*

(*r*) *Kunchi Amma* v. *Minakshi Amma* (1936) 59 Mad., 693, 70 M.L.J., 114.

(*r*[1]) *Subramanyan Tirumurupu* v. *Narina Tirumuruppu* (1938) 1 M.L.J., 710.

(*s*) *Krishnan* v. *Narayanan Nayar* (1938) 1 M.L.J., 715.

(*t*) *Kallati Kunju Menon* v. *Palat Erracha Menon* (1864) 2 M.H.C.R, 162.

Nair (*u*) and has been followed in later cases (*v*) though it was felt that the law enunciated therein was opposed to the consciousness of the people (*w*). A Full Bench of the Madras High Court has held, with regard to the self-acquisition of a female member, that it descends to her tavazhi, in other words to her own issue; and in their default, it devolves on her mother and her descendants (*x*).

Under the Aliyasantana law, there is no such distinction as regards the devolution of self-acquired property belonging to a member of the tarwad, such property whether of a male or female, goes to the nearest branch, and, where there are more branches than one standing in the same degree of relationship, they inherit jointly (*y*). The Madras Marumakkattayam Act has altered the law as laid down by the Full Bench decisions in *Govindan Nair* v. *Sankaran Nair* and in *Krishnan* v. *Damodaran* (*z*), so far as Marumakkathayi Hindus are concerned.

Sections 19 to 24 prescribe rules of intestate succession to property left by a Marumakkathayi male. The nearest preferential heirs to the property left by a male member are his mother, widow and children; and any part of the property can be inherited by the tavazhi of the deceased only in cases where the intestate has left neither mother nor children nor lineal descendants in the female line. Provision is also made for the succession of the intestate's father in certain contingencies. Sections 25 to 28 provide for the succession to the property of a female. The nearest heirs are the children and lineal descendants in the female line. Next in order comes the mother's tavazhi and, in default, the husband and the maternal grandmother's tavazhi, take in moieties; in default of either, the whole is taken by the other.

Testamentary power.

The right of testamentary disposition has been recognised in the Marumakkattayam system. The Malabar Wills Act (V of 1898) provides rules for the execution, attestation,

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(*u*) (1909) 32 Mad., 351 F.B.

(*v*) *Abuvakkar* v. *Kunhi Kuttiyali* (1922) 16 M.L.W., 768; *Chathu Nambiar* v. *Sekharan Nambiar* (1924) 47 M.L.J., 695; *Paramesvara* v. *Narayana* A.I.R. 1928 Mad., 172, S.A. 76/35.

(*w*) *Vishnu Nambudri* v. *Akkamma* (1911) 34 Mad., 496, *Chakkra Kannan* v. *Kunni Pokker* (1916) 39 Mad., 317 F.B.; *Abdureheman* v. *Hussein Kunhi* (1919) 42 Mad., 761.

(*x*) *Krishnan* v. *Damodaran* (1915) 38 Mad., 48 F.B., distinguishing *Govindan Nair* v. *Sankaran Nair* (1908) 32 Mad., 351 F.B.

(*y*) *Mangappa Ajei* v. *Marudai* (1916) 39 Mad., 12; *Antamma* v. *Kaveri* (1884) 7 Mad., 575; *Timma* v. *Daramma* (1887) 10 Mad., 362.

(*z*) (1908) 32 Mad., 351, F.B.; (1915) 38 Mad., 48 F.B.

alteration, revocation and revival of wills of persons governed by the Marumakkattayam and Aliyasantana laws of inheritance. Similar provisions regarding testamentary disposition are contained in the Nayar regulations of Cochin and Travancore.

Attaladakkam.

7. There is a form of succession known as *Attaladakkam* which literally means "taking on extinction". It is defined as the right of succession by virtue of distant relationship to a divided branch of a tarwad when that branch becomes extinct. The *attaladakkam* heir intercepts an escheat to the Crown. He succeeds only to such of the properties of a tarwad as have not been disposed of by its last members (*a*). How far an *attaladakkam* heir who succeeds to the property of an extinct tarwad can question an alienation by the karnavan of such tarwad is a moot point and conflicting opinions have been expressed on the subject (*b*). Whenever a tarwad becomes extinct, the other tarwads who are divided from that tarwad are entitled to succeed as *attaladakkam* heirs. But which of the tarwad or tarwads have the preferential claim, whether it is the tarwad which is most nearly related in blood or the tarwad which divided last is not yet finally settled (*c*). When the succession opens in favour of a number of tarwads which have become divided from the extinct tarwad simultaneously, the division of the properties is *per capita* amongst the total number of members of all the tarwads in whose favour the succession opened (*d*). It may also be mentioned that tarwad property in the hands of the last surviving member of the tarwad is on the same footing as his self-acquisition (*e*). Certain persons, who were not heirs before, have been recognised by the recent legislation as heirs taking before the *attaladakkam* heir.

Marriage.

8. Marriage as an institution out of which inheritance necessarily followed was not recognised by the customary law before the Malabar Marriage Act, 1896. This was an inevitable corollary of the matriarchal system of

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(*a*) *Thayyil Mammad* v. *Purayil Mammad* (1921) 44 Mad., 140.

(*b*) (1921) 44 Mad., 140 *supra*, *Secy. of State* v. *Dugappa Bhandary* A.I.R. 1926 Mad., 921.

(*c*) A.I.R. 1926 Mad., 921 *supra*, *Gopala Nair* v. *Raghava Nair* A.I.R. 1925 Mad, 460, 21 M L.W., 215, *Sankunni* v. *Rama Panikker* A.I.R. 1929 Mad., 346.

(*d*) *Sreedevi Nethiar* v. *Peruvunni Nair* (1934) 67 M.L.J., 771.

(*e*) *Thunga* v. *Nanikutty Amma* A.I.R. 1927 Mad., 371; *Alami* v. *Komu* (1889) 12 Mad., 127.

holding property which gave the wife and children rights in the tarwad of their origin. By Act IV of 1896, the Madras Legislature conferred statutory rights of inheritance on the widow and children of any male following the Marumakkattayam or Aliyasantana law of inheritance if his marriage was registered under the provisions of the Act. The Act made elaborate provisions regarding registration of marriages, divorce and dissolution, maintenance, guardianship and succession to the property of a married woman dying intestate. The Malabar Marriage Act, 1896, so far as Hindus following the Marumakkattayam law are concerned has been repealed by section 2 of the Madras Marumakkattayam Act, 1932, which recognises the validity of marriages in customary forms and provides for their registration and dissolution (*f*). It contains provisions for the maintenance of wives and minor children as well as for the guardianship of minor wives and children (*g*). Similar provisions in the Nair Regulations have also altered the customary law in the two Indian States. The Madras Marumakkattayam Act, unlike Hindu law, enforces strict monogamy.

Adoption

9. Adoption as a mode of perpetuating any tarwad which is likely to become extinct, has been recognised under the Marumakkattayam and Aliyasantana systems from early times. The reasons and objects of an adoption are wholly secular and not religious (g^1). The adoptive tarwad in the two systems takes the place of the adoptive father under the Mitakshara law. There are no ceremonies prescribed, the non-observance of which would in any way invalidate an adoption. As the object is the perpetuation of tarwad, females are, very often though not invariably among the adoptees. More than one individual can be adopted at the same time and adults as well as minors are capable of being adopted. The absence of a female among the adoptees will not make the adoption invalid (*h*). The adoptees usually belong to the same *vamsom* which more or less corresponds to the gotra or clan. The Privy Council have held that the

(*f*) Chapter II of Madras Act, 1932 (XXII of 1933).

(*g*) Chapter III of Madras Act, 1932 (XXII of 1933).

(g^1) The *sraddhs* for the female ancestors are performed by their lineal descendants in the tarwad and those of the male members, by the junior male members. The persons adopted into a tarwad perform, like the anandravans, the *sraddhs* of the deceased members of the adoptive tarwad. The expenses of the above sraddhs are tarwad expenses.

(*h*) *Subramanyan* v. *Paramaswaran* (1888) 11 Mad., 116; *Secy. of State* v. *Santaraja Shetty* (1913) 25 M.L.J., 411.

karnavan alone cannot adopt at his own discretion without the consent of the other members of the tarwad in the absence of a custom to the contrary (*i*). The last surviving member of a tarwad can make a valid adoption by himself. The right to interdict an adoption is one of the recognised rights of a member of a tarwad. As instances of adoption are rare, the rights and obligations of the adoptee in relation to the tarwad of his birth have not come up for decision frequently and cannot be said to be settled (*j*). In the State of Travancore, the prevalent view seems to be that where an entire tarwad is adopted into another tarwad, the adoptees retain the ownership of the properties belonging to the tarwad of their origin. But where only a few members of a tarwad are adopted into another, the adoptees lose their rights in their natural family. The adoptee acquires all the rights in the family of adoption just as if he was born into it and the subsequent birth of a child in the adoptive family to an original member thereof does not take away the rights of members adopted into it (*k*).

Position and powers of the karnavan.

10. The term 'karnavan' has been defined in the Madras Marumakkattayam Act as "the oldest male member of a tarwad or tavazhi, as the case may be, in whom the right to manage its properties vests, or, in the absence of a male member, the oldest female member or where by custom or family usage the right to such management vests in the oldest female member, such female member" (*l*). This definition corresponds to the older customary connotation of the term. An exception to the ordinary rule of management by the eldest male in Malabar tarwad is to be found in the Kovilagams composing the Zamorin's family, the Walluvanad Raja's family etc Some of the older writers on the Malabar law were of opinion that the Marumakkattayam system vested the ownership of tarwad property in the females and it might probably have been due to that of state of things that contentions were put forward that *streeswothu* (women's property)

(*i*) *Raman Menon* v *Raman Menon* (1910) 27 I A, 231, 24 Mad, 73

(*j*) See *Andale* v *Secy of State* (1893) 3 M L J, 242, S.A. 1585 of 1894, S.A. 666/1930.

(*k*) The ruling family of Travancore would have long ago become extinct but for the successive adoptions in the 13th century, in 1684, in 1724 and 1857, and more recently about a quarter of a century back.

(*l*) Act XXII of 1933, Section 3.

tarwads, in which women alone are entitled, exist even now (*m*). The prevalent view is that such tarwads have become obsolete. Even in an ordinary tarwad, there is nothing to prevent the members agreeing to or acquiescing in the management being in the senior female and if the evidence is sufficient to establish such consent or acquiescence, there would be nothing illegal in such an arrangement which can also be established by proof of a special custom (*n*). The position of a karnavan as head of the family comes to him by birth. It cannot be created by contract and it is not analogous to that of a mere trustee, officer of a corporation or the like (*o*). "In him (karnavan) is vested actually (though in theory in the females) all the property movable and immovable belonging to the tarwad. It is his right and duty to manage alone the property of the tarwad, to take care of it, to invest it in his own name (if securities or by purchasing in his own name, lands) and to receive the rents of lands. Apart from any question of necessity, he can by himself grant *kanoms* (customary usufructuary mortgages for twelve years) or *melchaiths* (*kanoms* given to a stranger to redeem an earlier *kanom*) or an *otti* (a usufructuary mortgage with a right of preemption). In the same way, he can also grant leases for a limited period. He is not accountable to any member of the tarwad in respect of the income nor can a suit be maintained for an account of tarwad property in the absence of fraud on his part. He is entitled in his own name to sue for the purpose of recovering or protecting property of the tarwad. Some of his acts in relation to the above matters cannot be legally questioned by the tarwad if he has acted *bona fide*. If any of his acts have been done *mala fide*, they can be questioned by the member of the tarwad and he may be removed for *mala fides* in his acts, or for incompetency to manage and other causes. He is interested in the

Right of management.

(*m*) *Muhammad Kunhi* v. *Packkrichi Amma* (1923) 46 Mad., 650 F.B.; *Bivi Umah* v. *Keloth Cheriyath Kutti* (1910) M.W.N., 693; *Chattu Soopi* v. *Kannan Nayar* A.I.R. 1930 Mad., 418, (1929) M.W.N., 873. Strong and cogent evidence must be given to establish a custom entitling the seniormost female member to manage in preference to senior male, *Krishnan Nair* v. *Kambi* (1937) M.W.N., 299, A.I.R. 1937 Mad., 544.

(*n*) A.I.R., 1930 Mad., 418 *supra*, A.I.R. 1937 Mad., 544 *supra*

(*o*) *Eravanni Revivarman* v. *Ittapa Revivarman* (1876) 1 Mad., 153; *Vasudevan* v. *Sankaran* (1897) 20 Mad., 129, 133, 141, F.B.; *Kenath Puthan Vittil* v. *Narayan* (1905) 28 Mad., 182, 186, F.B. As to the powers of a Karnavan, see *Kunhamod Kajee* v. *Kuttiath Hajee* (1880) 3 Mad., 169; *Narayani* v. *Govinda* (1884) 7 Mad., 352; *Moyidikutti* v. *Krishnan* (1887) 10 Mad., 322, F.B.; *Kalliani Amma* v. *Govinda Menon* (1912) 35 Mad., 648; *Govindan Nair* v. *Narayanan Nair* (1912) 23 M.L.J., 706.

property of the tarwad as any member of it and to the same extent as each of the other members. All the members including the karnavan are entitled to maintenance out of the tarwad property. His management may not be as prudent or beneficial as that of another manager might be; but unless he acts *mala fide* or with reckless or utter incompetency he cannot be removed from management" (*p*).

A karnavan has two capacities, a temporal and a spiritual one (*q*): in the latter capacity he officiates at family ceremonies. He is the guardian of the minor members of the family (*r*) He has to protect, educate and give maintenance to the other members (*s*) Large as his powers are, they are essentially powers of management (*t*). Even though a karnavan is not ordinarily accountable, in a suit for his removal, the junior members can ask for appropriate reliefs including the rendering of account (*u*) S 32 of the Marumakkattayam Act makes it obligatory on the karnavan to maintain and give inspection of accounts once a year to the junior members and also to allow them to take copies.

Fully represents the tarwad

In the words of Holloway, J, "A Malabar family speaks through its head, the karnavan, and in Courts of justice, except in antagonism to that head, can speak in no other way". It has therefore been held that it is only under very special circumstances that a junior member of a tarwad can maintain a suit on behalf of the tarwad (*v*). But where the karnavan has made an improper alienation, Courts will interfere at the instance of a junior member (*w*). When a

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(*p*) *Varanakot Narayan* v *Narayanan* (1888) 2 Mad., 328, 330.

(*q*) *Krishnan Kidaru* v *Raman* (1916) 39 Mad., 918

(*r*) *Ukkandam Nair* v. *Unikumaran* (1896) 6 M.L.J., 139.

(*s*) *Kallianı Amma* v *Govinda Menon* (1912) 35 Mad., 648.

(*t*) *Raman Menon* v *Raman Menon* (1902) 27 I.A., 231, 237, 24 Mad., 73 P.C.

(*u*) *Karunakara* v *Kuttikrishna* (1917) 5 M.L.W., 511, 38 I.C., 666; *Manavedan* v. *Sreedevi* (1927) 50 Mad., 431.

(*v*) *Vasudevan* v *Sankaran* (1897) 20 Mad., 129, 133, F.B., *Soopi* v. *Maryoma* (1919) 43 Mad., 393, *Kunnath Packi* v. *Kunnath Muhammad* (1925) 49 M.L.J. 513, *Cheri Pangi* v *Unnal Achan* (1916) 32 M.L.J., 323: *Raja of Arakal* v *Churia Kunhi* (1915) 29 M.L.J., 632, *Abdulla Koya* v. *Eacharan Nair* (1918) 35 M.L.J., 405; *Kunhi Kutti Ali* v *Muhammad Haji* (1931) 54 Mad., 239, 60 M.L.J., 450

(*w*) *Unni* v *Kunchi Amma* (1891) 14 Mad., 26, *Anantan* v. *Sankaran* (1891) 14 Mad., 101, *Bikutti* v *Kalandan* (1891) 14 Mad., 267; *Vattavatta Nair* v. *Kuppasan Menon* (1919) 36 M.L.J., 630; *Kunhi Pokker* v. *Valia Bappotty* (1919) 37 M.L.J., 544.

karnavan refuses to file an appeal from a decree against the tarwad, the junior members are entitled to file the appeal (w^1). After some conflict of opinion, it was finally settled in *Vasudevan* v. *Sankaran* (x) that a decree against the karnavan in a suit in which he is joined as a defendant in his representative capacity, which he honestly defends, is binding on the other members of the family, though not actually made parties. It is not necessary however that the karnavan should have been impleaded as such. In determining whether a decree was obtained against the karnavan as representing the tarwad, Courts have not insisted upon any particular form of words in the frame of the suit but have attached more importance to the nature of the debt and the substance of the claim (y). Where a decree was allowed to be obtained against a karnavan as representing the tarwad owing to the negligence of the karnavan, it can be set aside by proper proceedings at the instance of the junior members (z). An *ex parte* decree against the karnavan is just as binding on the tarwad as any other decree. The decrees passed against the karnavan bind the junior members but they are not parties in the sense that they are bound to put forward any individual right of theirs, which may be adverse to the tarwad, in execution under section 47 of the Civil Procedure Code (a).

Exceptional rights of junior members.

(w^1) *Kalliani Amma* v. *Sankaran Nair* (1919) 10 M.L.W., 220.

(x) (1897) 20 Mad., 129, F.B.

(y) *Pappi Amma* v. *Rama Aiyar* A.I.R. 1937 Mad., 438; *Rayappan Nair* v. *Kumaran* (1918) 35 M.L.J., 51; *Vesu* v. *Kannamma* (1926) 51 M.L.J., 282; *Vishnu* v. *Udayavarma* (1934) 67 M.L.J., 638; *Narayani* v. *Sankunni* (1936) 71 M.L.J., 545; *Manakat Velanma* v. *Ibrahim Lebbe* (1904) 27 Mad., 375.

(z) *Thenju* v. *Chimmu* (1884) 7 Mad., 413; *Moyidikutti* v. *Krishnan* (1887) 10 Mad., 322; *Narayani* v. *Sankunni* (1936) 71 M.L.J., 545; but see *Madhavaiya* v. *Keralavarma* (1903) 13 M.L.J., 68 where a strict view regarding the avoidability of a decree obtained against a karnavan has been taken that unless the decree is the result of fraud and collusion between the karnavan and the opposite party it cannot be vitiated. Where a decree against a karnavan is a decree on an alienation by him it is not sufficient to say that the alienation was fraudulent in order to get the decree set aside for any fraud which vitiated the alienation was a matter in issue in the suit leading to the decree (S.A. 703 of 1931). The view expressed by Ramesam, J., in *Durgamma* v. *Kechanimayya* (1925) 48 M.L.J., 351 is opposed to this.

(a) *Narayana Nambudri* v. *Theva Amma* (1928) 51 Mad., 46 F.B. dissenting from *Kamal Kutti* v. *Ibrayi* (1901) 24 Mad., 658 and *Marivittil Mathu Amma* v. *Pathram Kunnot Cherukot* (1907) 30 Mad., 215.

Power to alienate.

11. Like the manager of an infant heir, a karnavan has only a limited power of alienation. A distinction has been made between his powers of alienation over movable and immovable property. He has absolute powers of disposition over movables and properties in the nature of movables as well as the right to realise the debts due to the family in any manner he likes (*b*). This absolute power over movables must, it would seem, be limited only to such disposals as would be necessitated by the customary mode of enjoyment of property (*c*). With respect to alienations of immovable property, there seems to be a recognised distinction between sales on the one hand and other kinds of alienations on the other. From very early times, the law has been laid down that a pre-requisite of a valid sale of tarwad property is that all the members should assent to it though a capricious dissent may be ignored (*c*[1]) As regards other alienations of a limited character and the creation of simple debts, the rule is the same as laid down in the case of a guardian of an infant (*d*). Imperative necessity or benefit to the tarwad is the *sine qua non* of a valid alienation of property or the contracting of an unsecured debt on behalf of the tarwad. The lender is bound to enquire into the necessities for the loan and to satisfy himself that the manager is acting, in the particular instance, for the benefit of the estate; but he is not bound to see to the application of the money (*e*). The fact that the money borrowed was utilised for a tarwad purpose is not by itself sufficient to protect the lender (*f*).

Simple loans.

It must be shown that credit was given to the karnavan as such (*g*). Where the ordinary borrowing powers of a karnavan have been curtailed by means of a family agreement, any

(*b*) *Subramania Pattar* v. *Krishna Embranderi* (1920) 39 M.L.J., 590; *Krishnan* v *Govindan* (1921) 41 M.L.J., 381.

(*c*) *Govinda Panikker* v *Karthiyayini* (1931) 61 M L.J., 35.

(*c*[1]) *Edathil Etti* v. *Kopashon Nayar* (1862) 1 M H C.R., 122; *Kondi Menon* v *Sranginreagatta Ahammada* (1862) 1 M H.C R, 248, *Varankot Narayanan Nambudri* v *Varankot Narayanan* (1880) 2 Mad, 328; *Kunhamod Hajee* v. *Kuttiah Hajee* (1881) 3 Mad., 169; *Kombi* v. *Lakshmi* (1882) 5 Mad., 201; *Vasudeva* v. *Narayana* (1883) 6 Mad., 121; *Kalliani* v *Narayana* (1886) 9 Mad, 266, *Vasudevan* v. *Sankaran* (1897) 20 Mad, 129, F.B.

(*d*) *Vatavatta Nair* v *Kenath Puthen Vittil Kuppassen Menon* (1919) 36 M.L.J, 630

(*e*) *Hanooman Pershad's* case (1856) 6 M I.A., 393

(*f*) S.A, 268/16, S A, 877/11, S A. 67/21, A.S., 70/11, C.R P., 232/06; C R.P, 1070/16

(*g*) *Paramal* v. *Narayan* A.I.R. 1932 Mad., 701, 35 M.L.W., 452.

borrowing in derogation of it will not be binding on the tarwad if the creditor has notice of the same (*h*).

In the absence of necessity, the karnavan cannot ordinarily grant a *melcharth* or renew an old *kanom*, long in advance of the expiry of the prior term, but it has been held that such transactions are not void but only voidable. If in all other respects it is good and the karnavan who granted it is in office at the expiry of the prior term and does not disavow the transaction, it is valid (*i*). Where an alienation of tarwad property is made by the karnavan acting in conjunction with the seniormost anandiravan, such fact is ordinarily sufficient evidence of the assent of the family (*j*). Where the alienation is made by all the adult members, there is a presumption in favour of the propriety of the alienation as being supported by benefit or necessity to the tarwad. But this presumption is a rebuttable one and it is open to the minor members to challenge the transaction by adducing proof to the contrary (*k*).

Alienation.

12. The onus of proving the validity of alienations by karnavans has been held to be the same as it is in the case of an alienation by a manager of a Hindu family. It lies primarily on the creditor to prove the validity of the alienation (*l*). A karnavan cannot start a trade or embark in speculation so as to bind the family (*m*); but it has been held that he can validly start a kuri or a chit fund for the benefit of the tarwad or become a subscriber to a kuri, on behalf of the tarwad, started by others. If the tarwad has had the benefit of the kuri money, it is bound to repay the same out of the tarwad funds (*n*).

Onus of proof.

(*h*) *Rama Vadhyar* v. *Krishnan Nair* A.I.R. 1926 Mad., 398, 23 L.W., 186, 125 I.C., 65, and S A., 67 of 1921, S.A., 681/25; *Ambu Nair* v. *Uthamma* (1937) M.W.N., 1254, A.I.R. 1938 Mad., 202.

(*i*) *Trivikrama Konuraya* v. *Sankaranarayana Varhunavar* (1932) 63 M.L.J., 743 F.B.

(*j*) *Kombi* v. *Lakshmi* (1882) 5 Mad., 201; *Meloth Kannan Nair* v. *Kodath Kammaran Nair* (1914) 1 L.W., 102; *Pappi Amma* v. *Rama Iyer* A.I.R. 1937 Mad., 438.

(*k*) *Chalil Krishnan* v *Rama Maran* A.I.R. 1935 Mad., 38; (1935) 40 M.L.W., 541.

(*l*) *Vattavatta Nair* v. *Kenath Puthen Vittil* (1919) 36 M.L.J., 630; *Subramaniyam Pattar* v. *Kizhakkara Uthanathil Raman* (1923) 44 M.L.J., 596; *Hajee* v. *Hajee* (1881) 3 Mad., 169; *Kutti Mannadiyar* v. *Payanu Muthen* (1881) 3 Mad., 288.

(*m*) *Abdureheman Kutti Haji* v. *Hussain Kunhi Haji* (1919) 42 Mad., 761.

(*n*) *Narayanan Nambudri* v. *Sundara Iyer* A.I.R. 1936 Mad., 463; *Anantha Pattar* v. *Padmanabha* (1938) 1 M.L.J., 79.

Madras Marumakkattayam Act, 1932.

Sections 33 and 34 of the Madras Marumakkattayam Act, 1932, have modified the customary common law regarding the karnavan's powers to a certain extent. Section 33 says:

Section 33.

"(1) Except for a consideration and for tarwad necessity or benefit and with the written consent of the majority of the major members of the tarwad, no karnavan shall sell immovable property of the tarwad or mortgage with possession or lease such property for a period exceeding twelve years

(2) No mortgage with possession or lease with premium returnable wholly or in part, of any such property executed by a karnavan for a period not exceeding twelve years, shall be valid unless such mortgage or lease is for consideration and for tarwad necessity or benefit.

(3) Nothing contained in this section shall be deemed to restrict the power of the karnavan to grant, in the usual course of management, for a period not exceeding twelve years, any lease without premium returnable wholly or in part, or the renewal of an existing kanom"

Section 34.

Section 34 enacts that "no debt contracted or mortgage without possession executed by a karnavan shall bind the tarwad unless the debt is contracted or the mortgage is executed for tarwad necessity".

In order that a promissory note executed by a karnavan should bind the estate, it is not necessary that the signature should purport to be as karnavan. It is sufficient if it is executed in his character as karnavan and that is made clear somewhere in the note (*o*).

A karnavan cannot, by his own will, delegate his powers of management so as not to be able to resume it at will (*p*).

Karar.

13. Ordinarily the members of a tarwad are, when they all consent and are of one opinion, entitled to regulate the karnavan's agency and to limit his authority (*q*). A *karar* or agreement relating to the management of the family to which the karnavan and the majority of the adult members of the tarwad are parties is binding on the tarwad When they are not all agreed the *karar* is not binding on the dis-

(*o*) *Pappi Amma* v *Rama Iyer* A I R. 1937 Mad, 438.

(*p*) *Krishna Menon* v *Krishnan Nair* (1921) 40 M.L J., 338; *Karunakara Menon* v *Kuttikrishna Menon* (1917) 5 M.L.W, 511; *Raman Kutti* v. *Beevi Umma* A.I.R. 1929 Mad., 266.

(*q*) *Cheria Pangi Achan* v. *Unnal Achan* (1917) 32 M.L.J., 323; *Sankunni Mannadiar* v. *Krishna Mannadiar* (1928) 51 Mad., 320; *Pangi Achan* v. *Bheeman* (1916) 32 I.C., 501.

sentient members only to the extent of not depriving them of their right to succeed as karnavan or their right to maintenance (*r*). A karnavan confirmed by a karar can be removed just like any other karnavan (*s*). The effect of such karars is generally only to limit the powers of a karnavan in office at the time and they cannot therefore bind the successor's authority unless it was expressly or impliedly settled in the karar that it should be binding on the successors as well and they themselves consented to it (*t*).

14. A karnavan can renounce his office of karnavanship (*u*). Section 36 of the Madras Marumakkattayam Act provides that any karnavan may, by registered instrument, give up his rights as karnavan. Where a karnavan renounces his rights or is removed by a decree of Court, the senior anandiravan without any kind of appointment *ipso facto* becomes karnavan (*v*).

Removal of karnavan.

15. A karnavan can be removed from the management by a decree of Court. The theory underlying such removal is that the institution of karnavanship is for the benefit of the tarwad and the continuance of a karnavan in office is dependent on a proper discharge by him of his obligations to the family. When he fails to do his duty and when his retention in office becomes injurious to the interests of the tarwad he forfeits his office (*w*). The Court adopts the remedy of removal as necessary to protect the interests of the tarwad. It is not every failure to perform his obligations that will lead to the removal of karnavan, but only such misconduct as would make it necessary in the interests of tarwad to have him removed (*x*).

(*r*) *Kunhammeyan* v *Kunhiso* A.I.R. 1933 Mad., 169; (1917) 32 M.L.J., 323 *supra.*

(*s*) *Chindan Nambiar* v. *Kunhi Raman Nambiar* (1918) 41 Mad., 577, F.B., but see *Manavedan* v. *Manavedan* A.I.R. 1936 Mad., 817

(*t*) *Sankaran* v. *Sreedharan* (1925) 48 M.L.J., 691; (1928) 51 Mad., 320 *supra*, 65 I.C., 805 *supra;* 32 I.C., 501 *supra*

(*u*) *Kenath Puthen Vittil Thavazhi* v. *Narayanan* (1905) 28 Mad., 182.

(*v*) (1928) 51 Mad., 320 *supra; Valia Kaimal* v. *Velluthadatha Shamu* (1871) 6 M.H.C.R., 401; *Nemmanna Kudre* v *Achmu Hengsu* (1920) 43 Mad., 319.

(*w*) (1920) 43 Mad., 319 *supra.*

(*x*) *Kunhan* v. *Sankara* (1891) 14 Mad., 78, 80; *Thimmakke* v. *Akku* (1911) 34 Mad., 481 (karnavan's improper refusal to dispute unjust alienations); *Kunhanna Shetty* v. *Timmaju* (1914) 27 M.L.J., 60 (adverse claim to tarwad's property and alienation of the same —karnavan removed); *Cheria Pange Achan* v. *Unnal Achan* (1917) 32 M.L.J., 323 (violation of terms of karar—removed).

16. Neither leprosy nor blindness is a disqualification to be a karnavan; but if the blindness or the leprosy is shown to have led to gross incompetency, he may be removed. A minor or lunatic can never hold the office of karnavan till the minority ceases or the lunacy is cured (*y*). The rules of disqualification from inheritance recognised by Hindu law have no application to the Marumakkattayam or the Aliyasantana law (*z*).

Rights of junior members.

17. A junior member of a Marumakkattayam or an Aliyasantana tarwad is a co-owner or co-proprietor of the family properties with the other members thereof. He is entitled (1) to be maintained by the karnavan, (2) to object to unauthorised alienations of the tarwad property, (3) to become the karnavan on becoming the seniormost male member of the family; (4) to a share on a partition; and (5) to object to an adoption (*a*). Of these rights, the most important are the right to maintenance and the right to resist improper alienations. The right to maintenance is the mode in which a junior member enforces his right of co-proprietorship in the tarwad properties (*b*). It was at one time thought that the right of a member was only to be maintained in the family house and that he had no right to maintenance if he resided elsewhere. It is now settled that if the residence outside the family house is for a justifying cause, the junior member is entitled to separate maintenance (*c*). Under Section 35 of the Marumakkattayam

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(*y*) *Govindan Nair* v *Narayanan Nair* (1912) 23 M.L.J., 706. In removing a karnavan the Court can make a declaration regarding the persons next in order of seniority who are unfit to succeed; (1920) 43 Mad., 319 *supra*, when a karnavan is removed the Court can make provision for his future maintenance

(*z*) *Chandu* v. *Subba* (1890) 13 Mad, 209 (leprosy), *Sanku* v. *Puttamma* (1891) 14 Mad, 289 (insanity).

(*a*) *Seshappa Shetty* v *Devaraja Shetty* (1926) 49 Mad, 407; *Kunnigaratu* v *Arrangaden* (1864) 2 M.H.C.R., 12, *Moidin Kutti* v. *Krishnan* (1887) 10 Mad, 322, *Chandu* v *Subba* (1890) 13 Mad, 209, *Ibrayan Kunhi* v *Komamatti Koya* (1892) 15 Mad., 501.

(*b*) (1926) 49 Mad., 407 *supra*, *Maradevi* v. *Pammakka* (1913) 36 Mad., 203, *Muthu Amma* v *Gopalan* (1913) 36 Mad, 593, *Ammani Amma* v *Padmanabha Menon* (1918) 41 Mad, 1075

(*c*) (1913) 36 Mad. 203 *supra*, (1913) 36 Mad. 593 *supra*, (1918) 41 Mad., 1075 *supra*, *Chekkutti* v *Pakki* (1889) 12 Mad., 305. The following have been held to be good causes, a married lady leaving tarwad house for living with her husband, *Kunhikrishnan* v *Kunhikavamma* (1918) 35 M.L.J., 565; a male member living outside with his wife and children, *Govindan Nair* v. *Kunju Nair* (1919) 42 Mad., 686 *supra;* a junior member living outside pursuing any profession, trade or calling, *Ammalukutti* v. *Ramunni Menon* (1934) 67 M.L.J., 470; insufficient accommodation in the family house, *Kunchi* v *Ammu* (1913) 36 Mad., 591; *Kunhalikutti* v. *Kunha Mayan* (1923) 46 Mad., 567.

Act, every member of a tarwad, whether living in the tarwad house or not, is entitled to maintenance, consistent with the income and the circumstances of the tarwad.

The possession of separate funds by a junior member is by itself no impediment to claim maintenance from the tarwad when the family income is sufficient to provide a suitable subsistence to all the members of the tarwad (*d*). Where, however, the tarwad income is not sufficient, the possession of private income by a junior member can be taken into consideration in awarding a lesser maintenance to him (*e*). A member of a tavazhi is entitled to maintenance both from the tarwad and from the tavazhi properties (*f*).

The term 'maintenance' includes not only the bare necessaries of life but also what is usually called in Malayalam the *'menchilavu'*. The term 'maintenance' has been held to include the reasonable and legitimate expenses of junior members, such as expenses of the medical treatment, marriages, pilgrimages, defence in criminal cases, etc. (*g*).

In determining the quantum of maintenance, the rule of law is that the junior members should be allowed for their maintenance what is reasonable and proper, having regard to their needs and having regard to the position, affluence and status of the family. What is reasonable and proper will depend on the circumstances of each case and the decision of the karnavan in such a matter would not be lightly interfered with by the Courts (*h*). Allotments for maintenance made from time to time by the karnavan are however liable to revision when there is a material change of circumstances (*i*), but where land is given in lieu of maintenance to the junior

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(*d*) *Ammalu Kutti* v *Ramunni Menon* (1934) 67 M.L.J., 470; *Naku Amma* v. *Raghava Menon* (1915) 38 Mad., 79.

(*e*) *Karnavan* v. *Govindan* A.I.R. 1933 Mad, 265.

(*f*) *Naku Amma* v. *Raghava Menon* (1915) 38 Mad., 79.

(*g*) *Govindan Nair* v. *Kunjan Nair* (1919) 42 Mad., 686; *Parvati* v *Kumaran* (1883) 6 Mad., 341; (1934) 67 M.L.J., 470 supra; *Valia Konekkal* v. *Lakshmi Nettyar* (1913) 1 M.W.N., 379; *Devaraja* v. *Seshappa* (1926) 49 Mad., 407; but see *Ravanni Achan* v. *Thankunni* (1919) 42 Mad., 789. In questions of maitenance the practice of the Courts is to treat, as a matter of convenience, two minors as equal to an adult but this is not a rule of law, (1934) 67 M.L.J., 470 supra.

(*h*) *Kunhali Kutti Haji* v. *Kunhamayam* (1923) 46 Mad., 567.

(*i*) (1919) 46 Mad., 567 supra; *Thayu* v. *Shunkunni* (1882) 5 Mad., 71: *Sara Umma* v. *Kunhammad* A.I.R. 1926 Mad., 810, 23 M.L.W., 584.

members of the tarwad, it cannot be set aside by the karnavan unless some other suitable arrangement is made (*j*).

As regards the rate of maintenance, a junior member is not entitled to claim an aliquot share of the net income of the tarwad (*k*).

Neither mere delay in claiming maintenance nor omission to demand it will constitute a waiver or an abandonment (*l*). Where the karnavan is shown to have misappropriated the tarwad income, he can be made personally liable for arrears of maintenance (*m*); but ordinarily a decree for maintenance will be only against the tarwad properties and the income thereof in the hands of the karnavan and special circumstances are necessary to justify a personal decree against the karnavan (*n*)

18 A junior member may sue for a declaration that an alienation by the karnavan is not binding on the tarwad or its properties on the ground that it was improper or was not justified by legal necessity (*o*) A junior member is entitled to bring a suit on behalf of the tarwad to protect its interests when there has been an infringement of the rights of the tarwad or when the karnavan is disabled by his own conduct or otherwise from suing or is acquiescing in it (*p*).

(*j*) *Ramaswami Pattar* v *Gopalan* (1917) 32 M L J, 97, *Kunhammad* v. *Sara Umma* (1925) 49 M L J, 121 (reversed on another point in A.I R 1926 Mad, 810), *Krishna Kurup* v. *Razhukkath Pokki* A.I R 1936 Mad, 598.

(*k*) *Kunigaratu* v. *Arangaden* (1864) 2 M H.C R., 12; *Thayu* v. *Shunguni* (1882) 5 Mad., 71, *Maiyan Kutti* v. *Kadiri* A.I R. 1925 Mad., 441; *Sridevi Nethiar* v *Peruvunni Nayar* (1934) 67 M.L J., 771, 778.

(*l*) *Ammalukutti* v. *Ramunni Menon* (1934) 67 M.L.J., 470.

(*m*) (1934) 67 M L.J., 470 *supra*, *Vasudevan* v *Govindan* (1932) M W.N., 1203

(*n*) *Kunhalikutti Haji* v *Kunha Mayan* (1923) 46 Mad, 567, *Chandu* v *Raman* (1888) 11 Mad, 378 (maintenance regarded as charge on tarwad property); *Govindan* v *Kunnappu* (1936) 71 M.L.J., 514, (arrears assignable and transferable) Suits for maintenance are governed by articles 127 and 132 of the Limitation Act, *Narayana* v. *Thirumampu Valia Govinda*, A I R 1936 Mad, 573, 43 M.L.W. 711.

(*o*) *Unni* v *Kunchiamma* (1891) 14 Mad., 26, *Chappan* v *Raru* (1914) 37 Mad, 420, *Padamma* v *Themana Amma* (1894) 17 Mad, 232, *Kunhi Pokker* v. *Malikaimal* (1919) 37 M.L.J., 544.

(*p*) *Raja of Arakal* v. *Churia Kunhi Kannan* (1915) 29 M.L.J., 632; *Kanna Panikker* v *Nanjan* (1924) 46 M L J., 340, *Kunhikutti* v *Muhamed Haji* (1931) 60 M L.J., 450, *Rama Kurup* v. *Shekara Kurup* (1911) 21 M.L.J., 87; *Chappan* v. *Raru* (1914) 37 Mad., 420, *Abdulla Koya* v. *Echaran Nair* (1917) 35 M.L.J, 405; *Kizhakkumbrath* v *Koyambrath* (1927) 108 I C, 738; *Ammalu Amma* v. *Narayana Nair* (1928) 51 Mad., 549; *Kalliani Amma* v. *Sankaran Nair* (1919) 10 M.L.W., 220 (to file a suit or appeal when karnavan refuses).

In the case of leases and other acts of ordinary management, the junior member is not entitled to impeach them in the absence of fraud (p^1).

Gifts.

19. In the matter of gifts, the question has often arisen whether a gift is made to a tavazhi as such or whether the donees take as tenants-in-common. The ordinary presumption is that when properties are given by way of gift to a woman and her children, or her children alone following the Marumakkattayam or Aliyasantana law, the property is taken by the donees with the incidents of tarwad property (q). Some only of the members of a tavazhi cannot hold the property with the incidents of tarwad property; hence when a gift is made to them, they will take it as tenants-in-common unless there are circumstances to justify the inference that they took it on behalf of the entire tavazhi (r). When property is given to the mother alone, when there are children, the presumption that she takes it on behalf of the tavazhi is rebutted. Now section 48 of the Marumakkattayam Act provides that "where a person bequeaths or makes a gift of any property to, or purchases any property in the name of, his wife alone or his wife and one or more of his children by such wife together, such property shall, unless a contrary intention appears from the will or deed of gift or purchase or from the conduct of the parties, be taken as tavazhi property by the wife, her sons and daughters by such person and the lineal descendants of such daughters in the female line; provided that in the event of partition of the property taking place under Chapter VI, the property shall be divided on the stirpital principle, the wife being entitled to a share equal to that of a son or daughter".

Acquisitions by karnavan.

20. The ordinary presumption is that property acquired by a karnavan, while in management, is tarwad property. But this presumption may be rebutted by showing that the family had not an adequate nucleus or that the acquisition was made with the karnavan's own funds, or possibly even by showing that the karnavan had funds which were adequate for the purpose (s). A similar presumption applies when a junior

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(p^1) 60 M.L.J., 450, 108 I.C., 738.

(q) *Kunhacha Uma* v. *Kutti Mammi Hajee* (1893) 16 Mad., 201 F.B.; *Chakkra Kannan* v. *Kunhi Pokker* (1916) 39 Mad., 317 F.B.; *Adam Haji* v. *P. Kunkan* A.I.R. 1938 Mad., 242, 46 M.L.W. 772.

(r) *Moithiyan Kutty* v. *Ayissa* (1928) 51 Mad., 574.

(s) *Kunhanna* v. *Timmaju* (1914) 27 M.L.J., 60; *Chathu Nambiar* v *Sekhaian Nambiar* (1924) 47 M.L.J., 695; *Chathu Nair* v. *Sekaran Nair* (1910) 33 Mad., 250; *Ahmad* v. *Manha Mammad* A.I.R 1926 Mad., 643, 23 M.L.W., 575; *Govinda Panikker* v. *Nani* (1930) 36 Mad., 304.

member is in possession of the tarwad funds (*t*). But there can be no presumption in favour of the tarwad when a junior member, who is not in possession of its funds, makes an acquisition (*u*). When a junior member has no property of his own but is in management of the tavazhi funds, the proper presumption will be that his acquisitions came out of the tavazhi funds (*v*). But where one and the same person is the karnavan of a tarwad as well as of a tavazhi and has in his hands the funds belonging to both the entities, no presumption can be made in favour of either the tarwad or the tavazhi; in such a case the decision will have to depend upon the source of the acquisition. Where the karnavan or the manager mixes his private funds with the tarwad funds, the doctrine of blending applicable to a joint Hindu family would be applicable.

Stanom.

21. Some of the aristocratic Hindu families in the West Coast have attached to their families an office called *'Stanom'*, meaning literally station, rank, or dignity. The holder of a *stanom* is called a *Stani*. The incidents of the institution are now well settled. Usually the seniormost member of the family male or female attains the stanom, and there can be more than one stanom in the same family (*w*). Separate properties appertion to each stanom and they vest in the holder of the office for the time being and descend to the successors in office. One important feature is that when a person attains a stanom, he ceases to have any interest in the property of his tarwad, and the members of his tarwad have in their turn only reversionary rights to the stanom properties (*x*).

(*t*) *Iswaran* v. *Vishnu* (1931) 60 M L J, 467

(*u*) *Subramania Pattar* v *Krishna Embranderi* (1920) 39 M.L.J. 590; *Dharnu Shetti* v. *Dejemma* (1916) 5 M L W., 259.

(*v*) *Chathu Nair* v *Sekaran Nair* (1910) 33 Mad, 250, As to a case where a karnavan has large private acquisitions, see S.A., 435 of 1926.

(*w*) In the Zamorin's family there are five stanoms, so too, in many aristocratic families, there is more than one stanom.

(*x*) As regards the nature of the incidents of stanom, see *Chattan Raja* v. *Rama Varma* (1915) 28 M L J. 669; *Gavuredevamma Garu* v *Raman Dara Garu* (1870) 6 M.H C.R., 105; *Muppil Nair* v. *Ukona Menon* (1876) 1 Mad., 88; *Veera Royan* v. *Valia Rani* (1881) 3 Mad., 141; *Venkateswara Iyan* v. *Shekhari Varma* (1881) 3 Mad. 384 P.C.; *Manavikraman* v. *Sundaram Pattar* (1882) 4 Mad., 148. The dictum, "A stani is a corporation sole" is open to criticism; *Vidyapurna* v. *Vidya Nidhi* (1904) 27 Mad, 435.

Though the estate taken by a stani is a limited one, it is not a mere life estate. He is absolutely entitled to the income accruing during his tenure of office. He can also encumber or alienate the stanom properties for legal necessity just like any other limited owner. The acquisitions made by a stani devolve not on his successor in office but on his personal heirs. But it is open to the stani to incorporate his immovable acquisitions with the *stanom* property so as to subject them to all the incidents of stanom property. When a stanom ceases to exist by the extinction of the tarwad, the members of which were entitled to succeed to the office, the property passes by escheat to the Crown, and the last holder's personal heirs cannot take the property by inheritance. The Madras Marumakkattayam Act does not apply to *stanoms*.

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