See Book I., Ch. II., Sec. 11, Q. 4. They may form a united family with their legitimate half-brothers. *See* Book I., Ch. II., Sec. 3, Q. 12.

The rule given by Yâjñavalkya in favour of the illegitimate son of a Śûdra, though separated in the Mitâkharâ by a long commentary on the preceding ślokas, yet in the original immediately follows them as part of a complete statement of the succession of sons according to their rank. Next follows the statement of heirs to one who leaves no male issue, that is, none of the sons just enumerated. (*a*) What Yâjñavalkya obviously meant therefore was that in the absence of an auras son and of a daughter's son, a Śûdra's son by his slave should succeed. The daughter's son is the one just before specified as equal to a son, though there is a slight variance of expression owing to the term putriká suta first used not being in strictness applicable to the offspring of a Śûdra. (*b*) Hence the word duhitra suta is substituted. By Yâjñavalkya the daughter as well as the wife is brought in after the sons of all classes. (*c*) It is only by interpretation on the part of the commentators that the daughter herself having been first allowed to be an appointed son has been placed before her son under texts probably intended to meet the case of no son of the enumerated classes surviving, nor any son or grandson of such a son. (*d*) If Yâjñavalkya had intended to give to the Śûdra's daughter a place before his illegitimate son, he would not in the next line have placed the widow below that son and the daughter below the widow. The texts quoted in the Mitâkharâ Chap. II., Sec. II., para. 6 from Manu and Vishnu (apart from Bâlambhaṭṭa's gloss) show that on failure of descendants in the male line both the

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(*a*) Mitâkharâ Chap. II., Sec. I., paras. 2, 39. The term is aputra= sonless.

(*b*) *See* Viramitrodaya p. 121. *Infra* Bk. I., Ch. II., S. 3, Q. 12, 13.

(*c*) *See* too Mitâkharâ Chap. II., Sec. I., para. 17.

(*d*) *See* Mitâkharâ Chap. II., Sec. II., paras. 2, 6.

Rishis prescribed the succession of the daughter's son and not without appointment (*a*) of the daughter herself, who came in at a later stage. (*b*) This makes it the more probable that the daughter's son but not the daughter was intended to precede the illegitimate son, though the precedence assigned to him by some commentators over his own mother in ordinary cases is to be rejected, as Mitramiśra says, on account of the specification by Yâjñavalkya of the daughter and not of her son, as an heir. (*c*) In the case below Book I., Chap. II., Sec. 3, Q. 8, the illegitimate son of a Mâli is preferred to the widow. The widow could claim recognition, but she is postponed by the Śâstri to the illegitimate son through the operation of Yâjñavalkya's text (*d*) and Vijñâneśvara's comment, (*e*) which provides for the daughter's son and daughter but not for the widow. (*f*)

It seems anomalous that the widow should be thus postponed to the illegitimate son, and her own daughter and the daughter's son. But according to the recognized rule of construction (*g*) the text of Yâjñavalkya can be controlled only by another not reconcilable with its literal sense. Then the passages from Vishnu and Manu quoted Mit. Ch. II., Sec. II., para. 6 show that at one stage of the development of the Hindû Law, the daughter's son and even the daughter were made equal to a man's own son, while the widow was still unprovided for, or reduced to a lower place. (*h*) Yâjñavalkya's text belongs to this stage : so little progress had been

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(*a*) Vîramitrodaya, Transl. p. 121.

(*b*) *Bhâu Nânâji* v. *Sundrâbai*, 11 Bom. H. C. R. 274. *See infra* Book I., Ch. II., Sec. 3., Q. 10.

(*c*) Vîramitrodaya, Transl. p. 184.

(*d*) Mitâkshará Chap. I., Sec. XII., para. 1.

(*e*) Mitâkshará Chap. I., Sec. XII., para 2.

(*f*) So too the Vîramitrodaya, Transl. pages 130, 176.

(*g*) *See* Vîramitrodaya, Transl. p. 236.

(*h*) *See* Manu Chap. IX., 130, 146, 147. Vishnu Ch. XV., 4, 47. Compared with Gautama XXVI., 18, ss., and Âpastamba II. VI., 14 ; Nârada XIII., 50, 51.

made that the Rishi does not even name the daughter's son except in this place; but this mention is enough.

It is to the patnî only that the sacred texts assign a right of inheritance. (*a*) The English translation "wife" fails to indicate the distinction between the wife sharing her husband's sacrifices and the wife of an inferior order. (*b*) The Śûdra having no sacrifices to celebrate like the twice-born has no "patnî" to share them. The Ásura marriage being a purchase gave to the wife no higher status than that of a "dási" or concubine. (*c*) But this or some even lower form was the appropriate one for Śûdras: (*d*) the higher forms were not allowable until custom in some measure made them so, (*e*) and the different consequences of marriage according to the different forms (*f*) are traceable to a time and a custom in which community of property between the married pair was not recognized. (*g*) Under such a system it is not at all surprising that the wife's right of inheritance should not be admitted. Nor is it strange that the development of the purely Brahminical law by which widows in the higher castes benefited should not have embraced in its full extent the degraded Śûdras. As to the wives in this caste the expanding law left them as it found them, while it readily adopted an existing custom in favour of illegitimate

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(*a*) *See* below Book I., Ch. II., Sec. 6 A, Q. 6 and above Introd. *See* too Vîramitrodaya, Transl. p. 173.

(*b*) Mit. Ch. I., Sec. XI. 2. Dá. Bhág. Ch. XI., Sec. I., 48. Vîramitrodaya, Transl. p. 132.

(*c*) Smriti Chand, 150; Vîramitrodaya, loc. cit.

(*d*) Baudháyana makes mere sexual connexion a lawful form of union for Vaiśyas and Śûdras, "for," he says, "Vaiśyas and Śûdras are not particular about their wives." Shortly afterwards he says: "A female who has been bought for money is not a wife. She cannot assist at sacrifice offered to the gods or the manes. Kâsyappa has pronounced her a slave." Baudh., Tr. p. 207.

(*e*) Cf. *Vijiyárangam* v. *Lukshuman*, 8 B. H. C. R. 255–56 O. C. J.

(*f*) Mitâk. Chap. II., Sec. XI., 11.

(*g*) *See* the Chapter on Strîdhan.

sons, which appeared reasonable to those whose own heirs might be sons irregularly contributed to their families, and who looked on the Śûdra marriages as virtually no more than licensed concubinage.(*a*)

The express provision in Yâjñavalkya's text in favour of the daughter's son may not improbably be traced in reality to a time when this kind of descent afforded the better assurance of a real connexion of blood. But it may be really an adoption for the Śûdras of a rule much repeated, though not intended for that caste. The advantageous position assigned to the daughter's son is traced by Jîmûta Vâhana to his identification with the son of the appointed daughter, (*b*) in whose favour only, Jîmûta Vâhana says, the texts expressly pronounce. He cites Baudhâyana's text (*c*) that the "Putrika Sutam" is to offer the pindas and apparently excludes the mere "dauhitra" from this right, which is assigned to him also however by Manu. (*d*) The introduction of the daughter as well as her son may be due to a similar course of thought. The daughter appointed *as* a son being once recognized as a regular heir, (*e*) the daughter not appointed gained a place, (*f*) and in the passages cited as well as in Brahaspati (*g*) is mentioned without any mention of the wife. The texts were so far admitted as to the

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(*a*) See Gautama Ch. XIX.; Baudhâyana, II., 2.

The Roman law furnishes an analogy in the case of slaves: "quas vilitates vitae dignas observatione legum non credidit," and whose unions, even under the Christian system, remained mere concubinage in law until late in the 9th century. *See* Milman Hist. of Latin Christianity, vol. II., p. 15; Lecky, History of European Morals, II. 67.

(*b*) Dáya Bhága Chap. XI., Sec. II., 21.

(*c*) At 1 W. & B. (1st Ed.) 310, 315.

(*d*) Cf. also Sankha and Likhita. Stokes' H. L. B. 411.

(*e*) Mit. Chap. I., Sec. XI., para. 3.

(*f*) Manu Chap. IX., 130; Nârada Chap XIII., 50.

(*g*) Dáya Bhága Chap. XI., Sec. II., 8.

Śûdras, but those specially favouring the wife as an heir, bearing only on the "patnî," were not. (*a*)

§ 3 *B.* (4) WIDOWS.—*On failure of the three first descendants in the male line, of adopted sons, and in the case of Śûdras of illegitimate sons, a faithful widow inherits the estate of a separate householder, and the separate estate of a united coparcener.*

See Book I., Chap. II., Sec. 6, and for Authorities, *see* Book I., Chap. I., Sec. 2, Q. 4; Chap. II., Sec. 6 A, Q. 11; Vyav. May.-Chap. IV., Sec. VIII., p. 1, seq.

Under the strict Hindû law only such a widow inherits who was a dharmapatnî, "a wife taken for the fulfilment of the law," who was lawfully wedded, and able to assist in the performance of the sacrificial rites. (*b*) As only a female married as a virgin could occupy such a position, the females who had been widowed and remarried (by Pâṭ) were excluded from the succession to their second husband's property. By Act XV. of 1856 this disability has been removed, and the legal relation of wife to a husband, whether

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(*a*) *See* Book I., Ch. II., S. 6, A. Q. 6, and the instance at Book I., Ch. V., S. II., Q. 1 and 2.

The Salic and Burgundian laws excluded women from inheritance to land. The Wisigoths more influenced by the Roman law admitted the daughter's succession, and this was in part adopted by the Franks. In England boc-land was heritable by females, but in the folc-land they could take no share. Hence possibly their exclusion by custom in some manors, *see* below.

(*b*) "A wife of the same class is indicated by the term 'patnî' itself, which signifies union through sacrifice." Vîramit., Transl. p. 152. A wife of a rank below a "patnî" would be entitled only to maintenance according to the Smṛiti Chandrika Ch. XI., and comments in Vîramit., Tr. p. 133, 153; to succession only on failure of the wife of equal class, and that by analogy only, the texts giving the right only to the "patnî," to whom the Smṛiti Chandrikâ, loc. cit. paras. 11, 25, confines it. As to the relative rank of wives the first married has precedence. *See* Steele, L. C. 170.

she is technically a patnî or not, is recognized as giving a right of inheritance to the woman and legitimacy to the children.(*a*)

If a householder leaves more than one widow they share the estate equally. *See* Book I., Chap. II., Sec. 6A, Q. 35 and 36.

Two or more widows are usually regarded as taking a joint estate; but this, though established by judicial decision in Madras and Bengal, does not appear to be the doctrine of the Mitâksharâ or of the Vyavahâra Mayûkha.(*b*) In Madras it has been thought that the interest of one only of the widows could not be sold.(*c*)

Proved adultery bars the succession of a widow to her deceased husband's estate. But if she has once obtained it, subsequent unchastity does not afford a reason for depriving her of it. *See* Book I., Chap. VI., Sec. 3, Q. 6, Remark.

During the widow's survival no right vests in her husband's brothers or the other heirs. Her life with respect to the subsequent inheritance of heirs sought amongst her husband's relatives is as a prolongation of his. (*d*) Succession on the widow's death opens to the husband's qualified heirs then in existence. (*e*)

(*a*) *See* Vyav. May. Chap. IV., Sec. VIII., para. 3.; Steele, Law of Castes, 168, 169, 175, and the answers of the Śâstris below, Bk. I., Ch. II., Sec. 6A.

(*b*) *Bulákhidas Govindas* v. *Keshavlal Chhotalal*, B. H. C. P. J. for 1881, p. 320; *Kotarbasapa* v. *Chanverova*, 10 Bom. H. C. R. 403. Comp. *Rindamma* v. *Venkata Ramappa et al.*, 3 Mad. H. C. R. 268.

(*c*) *Kathaperumal* v. *Venkabai*, I. L. R. 2 Mad. 194; *Gajapathi Nilmani* v. *Gajapathi Radhamani*, 1 Ib. 300; *Bhugwandeen Doobey* v. *Myna Baee*, 11 M. I. A. 487.

(*d*) *Roodur Chunder* v. *Sumbhoo Chunder*, 3 Cal. S. D. A. R. 106; *Musst. Jymunee Dibiah* v. *Ramjoy Chowdree*. Ibid. 289.

(*e*) *Laxmi Narayan Singh et al.* v. *Tulsee Narayan Singh et al.*, 5 Sel. S. D. A. R. 282 (Calc.); *Nobin Chunder* v. *Issur Chunder et al.*, 9 C. W. R. 508 C. R.; *Bhâskar Trimbak* v. *Mahâdev Râmjee et al.*, 6 Bom. H. C. R. 14, O. C. J.; P. C. in *Bhoobun Moyee Debia* v. *Ram Kishore Acharjee*, 10 M. I. A. 279.

The duties and rights attached to the married state are governed by the customary law of the class or caste (*a*) which regulates the form of the ceremony as well as the relations arising from it. (*b*) The law of the caste has been more or less subordinated in cases of disagreement to the general Hindû law, (*c*) and private agreements are not allowed to control the customary law so as essentially to modify the obligations which it imposes, (*d*) as by making the union dissoluble which the law regards as indissoluble.

The heritable rights of the widow are mainly derived from a moral unity existing between her and her deceased husband. (*e*) The domestic fire must be maintained as a primary duty, and in its maintenance and the performance of the household rites the Hindû wife must take part with her husband. (*f*) Thus, as the Mahâbhârat says: (*g*)—"A wife is necessary to the man who would celebrate the family sacrifices effectually." Hence the husband comes for some purposes to be regarded as "even one person with his wife" (*h*)

(*a*) *Ardaseer Cursetjee* v. *Perozebái*, 6 M. I. A. 348, 390; *Moonshee Buzloor Ruheem* v. *Shumsoonissa*, 11 *Ib.* 551, 611; *Skinner* v. *Orde*, 14 M. I. A. 309, 323; *Rádhi* v. *Govind valad Tejá*, I. L. R. 1 Bom. 97, 116; *Reg.* v. *Sambhu Raghu*, *Ibid.* 347; *Mathurá Náikin* v. *Esu Náikin*, I. L. R. 4 Bom. 545, at 565 ss.

(*b*) *Gatha Ram Mistree* v. *Moohita Kochin Atteah Domoonee*, 14 Beng. Law. Rep. 298; *Rajkumar Nobodip Chundro Deb Burmun* v. *Rajah Bir Chundra Manikya*, 25 C. W. R. 404, 414.

(*c*) *Reg.* v. *Karsan Gojá*, 2 Bom. H. C. R. 117, 125. Comp. Gaut. XI. 20; Manu II., 12, 18.

(*d*) *Seetaram* alias *Kerra Heerah* v. *Mussamut Aheeree Heeranee*, 20 C. W. R. 49.

(*e*) Kâtyâyana cited in M. Williams' In. Wis. 160; Bṛihaspati in the Smṛiti Chandrikâ, Ch. XI., Sec. 1, para. 4; Manu, IX., 45.

(*f*) Manu III., 18; Baudhâyan, Transl. p. 193.

(*g*) Manu III., 67; II., 67; IX., 86, 87, 96; Âpast. 99, 125, 126; Coleb. Dig. B. IV., T. 414; Smṛiti Chandrikâ, Ch. XI., Sec. 1, para. 9.

(*h*) Manu IX., 45; Bṛihaspati, quoted by Kullûka on M. IX., 187.

As under the Roman Law, *"Nuptiæ sunt divini juris et humani communicatio."* The wife's gotra becomes that of her husband; (*a*) her complete initiation is effected by her marriage; she renounces the protection of her paternal manes and passes into the family of her husband. (*b*) The connexion being thus intimate there should be no litigation between the married pair, (*c*) and according to Âpastamba (*d*) there can be no division between them. Any property which the married woman may acquire is usually her husband's. (*e*) A thing delivered to her is effectually delivered to the husband, and what is received from her is as if received

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(*a*) Steele 27 (*n*); *infra* B. I., Ch. IV. B., Sec. 6, II. (b), Q. 3; *Lallubhoy* v. *Cásibhái*, L. R. 7 I. A. at p. 231.

Under the Teutonic laws which recognized the birth-law of each as permanently adhering to him, there were exceptions (1) in the case of a married woman whose coverture brought her under the birth-law of her husband, and (2) in that of a priest who came under the Roman law. *See* Saviguy's History of the Roman Law, Chap. III.

(*b*) 2 Str. H. L. 61; *Śri Raghunadha* v. *Śri Brozokishore*, L. R. 3 In. A. 191. So amongst the Romans. Dio. Halic. II., 25.

(*c*) 2 Str. H. L. 58. Co. Di. B. III. Ch. I., T. 10. Conjugal rights were refused to the husband where the lower courts thought that compelling the wife to go to his house would be dangerous to her personal safety. *Uká Bhagván* v. *Bái Helá*, Bom. H. C. P. J. File for 1880, p. 322.

(*d*) *See* Hârîta in Smriti Chan., Ch. II., Sec. 1, para. 39. Viramit., Trans. p. 59. Âpastamba, Transl. p. 135.

(*e*) Vyav. May., Ch. IV., Sec. 10, para. 7; Coleb. Dig. Book III. Ch. I., T. 10; Nârada II., XII. 89; Apast. 156; Manu VIII. 416; 1, Str. H. L. 26. Kâtyâyana quoted in Smriti Chandrikâ, Ch. IX., Sec. 1, para. 16. But see also Mit. Ch. II., Sec. 11. *Rámasámi Padeiyátchi* v. *Virasámi Padeiyátchi*, 3 Mad. H. C. R. 272. She is liable in her stridhan only for a contract made jointly with her husband, while a woman contracting as a widow remains subject generally to the liability after her remarriage. *Narotam* v. *Nánká*, I. L. R. 6 Bom. 473. *Náhálchand* v. *Bái Shivá*, *Ibid.* 470. S. A. 261 of 1861; S. A. 467 of 1869. When living separate without necessity she is fully liable for her debts. *Nathubhái Bhálal* v. *Javher Raiji*, I. L. R. 1 Bom. 121.

from him.(*a*) Her full ownership of her stridhan is subject to the qualification that her husband may dispose of it in case of distress, and that her own power to alienate it is subject to control by him with the exception of the so-called Saudâyakam, the gifts of affectionate kinsmen. (*b*) *See* the Chapter on Stridhan.

The identity between the married pair being thus complete, Jagannâtha cites Datta (*c*) to the effect that "wealth is common to the married pair"; but this he explains as constituting in the wife only a secondary or subordinate property. Her right in the husband's estate is not mutual like the co-extensive rights of united brethren. It is dependent on the husband's and ceases with its extinction. (*d*) Her legal existence is thus, in some measure, absorbed during her coverture in that of her husband. (*e*) His assent is specially necessary to her dealings with land according to Nârada, Part I., Ch. III., p. 27–29. (*f*) In case of unauthorized transactions she is liable in her stridhan, but not in her person. (*g*) On her decease she shares in the benefit of

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(*a*) Col. Dig. B. V. Ch. VII., T. 399 Comm. Her authority would, however, be revoked perhaps by adultery as under the English law. (See *R.* v. *Kenny*, L. R. 2 Q. B. D. 307), and the Indian Penal Code § 378, illus. (o) assumes that her authority is limited by the extent of delegation from her husband. Comp. *R.* v. *Hanmanta*, I. L. R. 1 Bom. at p. 622. As to household expenses *see* Âpast., Tr. p. 135.

(*b*) *Reg.* v. *Náthá Kalyán et al.*, 8 Bom. H. C. R. 11 Cr. Ca.; *Tukárám* v. *Gunájee*, *Ibid.* 129 A. C. J.; Vyav. May., Ch. IV., Sec. 10, pl. 8 and 10; Coleb. Dig., B. II., Ch. IV., T. 55; Bk. V., T. 478; Vîramitrodaya, quoted below; Manu II., 199; Smriti Chandrikâ, Ch. IX., Sec. 2, para. 12; 2 Macn. H. L. 35.

(*c*) Coleb. Dig. B. V. T. 415. *See* also the Smriti Chandrikâ, Ch. IX., Sec. 2, para. 14.

(*d*) Vîramit., Transl. 165.

(*e*) *See* Manu IX., 199, as construed by the Mayûkha and Viramitrodaya.

(*f*) *See* also *D. Rávapparáz* v. *Mallapudi Rávudu et al.*, 2 M. H. C. R. 360.

(*g*) *Nathubhái* v. *Javher Ráiji et al.*, In. L. R. 1 Bom. 121.

her husband's sacred fire, (*a*) her exequial ceremonies, according to the Mitâkharâ and the Nirṇayasindu, are to be performed by her husband, and in his absence by the members of his family, not by those of her own family of birth. Surviving her husband, and thus in a manner continuing his existence, (*b*) she procures benefits for his manes and those of his ancestors. (*c*) It is on her competence in this respect that according to the Smṛiti Chandrikâ (Trans. p. 151) her right to inherit depends. Devânda Bhaṭṭ therefore restricts the right to the "patni," refusing it to the wives of an inferior order, (*d*) and in the Vîramitrodaya (*e*) it is said that "a wife espoused in the ásura or the like form has no right to the property when there is another espoused in an approved form," because "a woman purchased is not to be deemed a patnî, since she cannot take part in a sacrifice to the gods or the manes; she is regarded as a slave," and "a sonless wife other than a patnî is entitled only to maintenance even where the husband was separated."(*f*)

The Mitâkharâ also, Chap. II., Sec. 1, pl. 29, 6, (*g*) restricts the heritable right to the "patnî," the "wedded wife who is chaste." Vijñâneśvara allows this right to operate in favour of the widow only of a divided coparcener

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(*a*) Vîramit., Transl. 133.

(*b*) P. C. in *Bhoobun Moyee Debia* v. *Ram Kishore Acharjee*, 10 M. I. A. 279, 312. *Manîram Kolita* v. *Kerry Kolitany*, In. L. R. 5 Calc. 776.

(*c*) Manu IX., 28. Vîramit., Tr. p. 133. Kâtyâyana quoted in M. Williams In. Wis. p. 169. Manu and Bṛihaspati, quoted in Smṛiti Chandrikâ, Ch. XI., Sec. I., paras. 14, 15.

(*d*) So Varadrâja (Burnell's Trans. p. 55) says, inheritance is prescribed by the texts in which "patnî" is used; maintenance only by those in which words of inferior dignity are employed. *See* Dâya Bhâga, Ch. XI., Sec. 1, p. 49 (Stokes, H. L. B. 318); Vyav. May., Ch. IV., Sec. 8, p. 2.

(*e*) Trans, p. 132.

(*f*) Trans. p. 193.

(*g*) Coleb. Dig. B. V., T. 399; and *see* Smṛiti Chandrikâ, Ch. XI., Sec. 1, para. 4.

(*Ibid.* pl. 30), but thus inheriting she obtains an ownership of the property (*Ibid.* Ch. I., Sec. 1, pl. 12), notwithstanding her general dependence (Ch. II., Sec. 1, pl. 25), (*a*) extending even to a reversion vested in her husband (*b*) which enables her, as contended in the Vyav. May., above quoted, to deal with the estate for some purposes by way of alienation or incumbrance. (*c*) She has an estate in her late husband's property, not a mere usufruct, (*d*) and not the less by reason of her being authorized to adopt. (*e*) Her husband's estate

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(*a*) *See* also Vîramitr., Trans. p. 136, and Smriti Chandrikâ, Ch. XI., Sec. 1, paras. 19, 28.

(*b*) See *Hurrosoondery Debea* v. *Rajessuri Debea*, 2 C. W. R. 321.

(*c*) Steele's Law of Caste, 174, ss. Vîramitr. loc. cit.

(*d*) "Assuming her (the widow) to be entitled to the zamindâri at all, 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 would not be ascertained who would be entitled to succeed," P. C. in *Katama Naichiar* v. *Rajah of Shivaganga*, 9 M. I. A. at p. 604.

In *Moniram Kolita* v. *Keri Kolitani* (I. L. R. 5 Cal. 776, S. C. L. R. 7 I. A. 115) the Privy Council say at p. 789: "According to the Hindû law, a widow who succeeds to the estate of her husband in default of male issue, whether she succeeds by inheritance or survivorship—as to which see the Shivaganga case (9 M. I. A. 604) does not take a mere life-estate in the property. 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. (*Ibid.* 604.) The succession does not open to the heirs of the husband until the termination of the widow's estate. Upon the termination of that estate the property descends to those who would have been the heirs of the husband if he had lived up to and died at the moment of her death." The case was one under the Bengal law.

(*e*) *Umasunduri Dabee* v. *Sourobince Dabee*, I. L. R. 7 Cal. 288.

completely vests in her by way of inheritance, (*a*) not as a trust. (*b*) Her position has been assimilated to that of a tenant-in-tail; (*c*) though for the purposes of alienation it has been said that she "has only a life interest in immoveable property whether ancestral or no." (*d*) She represents the estate so that under a decree against her for arrears of rent due by her husband (*e*) and a sale in execution the whole interest passes, though, as is afterwards said, (*f*) the widow was in the particular case sued as representative of her son, and it was intended that the son's interest should be sold. (*g*) "In a suit brought by a third person, the object of which

(*a*) *Bhala Nahana* v. *Parbhu Hari*, Ln. L. R. 2. Bom. 67. Vîramitr., Trans. p. 134; *Lálchand Rámdayál* v. *Gumtibái*, 8 Bom. H. C. R, 156, O. C. J.

(*b*) *Bhaiji Girdhur et al.* v. *Bai Khushal*, S. A. No. 334 of 1872 (Bom. H. C. P. J. F. for 1873, No. 63); *Hurrydoss Dutt* v. *Shreemutty Uppoornah Dossee et al.*, 6 M. I. A. 433.

(*c*) *Katama Natchiar* v. *The Rajah of Shivaganga*, 9 M. I. A. 569. See *The Collector of Masulipatam* v. *Cavaly Vencata Narrainappah*, 8 M. I. A. at p. 550. A widow retains without security proceeds of land taken by a Railway Company, *Bindoo Bassinee* v. *Bolie Chund*, 1 C. W. R. 125 C. R. She may claim a definition of her share (*Jhunna Kuar* v. *Chain Sukh*, I. L. R. 3 All. 400) when her husband has been separate, but not when she has been assigned his portion by way of maintenance in an undivided family. *Bhoop Singh* v. *Phool Kooer*, N. W. P. H. C. R. for 1867, p. 368.

(*d*) *Vishnu Ganesh* v. *Náráyan Pándurang*, (Bom. H. C. P. J. F. for 1875, p. 212); *Bamundoss Mookerjea et al.*, v. *Musst. Tarinee*, (7 M. I. A. 169). *See* also, however, *Lakshmibái* v. *Gunpat Moroba*, 5 Bom. H. C. R. 128 O. C. J.; and *Doe Dem Goluckmoney Dabee* v. *Digambar Day*, 2 Boulu. 193; *Girdharee Singh* v. *Kolahut*, 2 M. I. A. 397.

(*e*) *Kámávadhani Venkata Subbaiya* v. *Joysa Narasingappa*, 3 M. H. C. R. 116; *Náthá Hari* v. *Jamni*, 8 Bom. H. C. R. 37 A. C. J. But *see* L. R. 2 I. A. 281 below. (*g*)

(*f*) *The General Manager of the Raj Durbhunga* v. *Maharajah Coomar Ramaputsing*, 14 M. I. A. 605.

(*g*) *Baijun Doobey et al.* v. *Brij Bhookun Lall*, L. R. 2 In. A. 281. The extent of the interest of the widow sold in execution thus depends on the nature of the action. *Jotendro Mohun Tagore* v. *Jogul Kishore*, I. L. R. 7 Cal. 357.

is to recover or to charge an estate of which a Hindú widow is proprietress, she will as defendant represent and protect the estate as well in respect of her own as of the reversionary interest." (*a*) "She would," as said in another case, "completely represent the estate, and under certain circumstances, the statute of limitations might run against the heirs to the estate, whoever they might be." (*b*) Those "heirs," as pointed out in *Musst. Bhagbutti Dull* v. *Chowdry Bholanath Thakoor et al.*, (*c*) have not, during the widow's life, "a vested remainder" according to the language of the English law, "but merely a contingent one." The "reversioner," therefore, as he is in some places called, cannot, during a widow's life, obtain a declaration that he is entitled next in succession. (*d*) Nor can his contingent right be sold in execution. But the widow may, with the consent of first reversioners, relinquish her right in favour of

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(*a*) *Seetul Pershad* v. *Musst. Doolhin Badam Konwur et al.*, 11 M. I. A. 268. "The rule that a decree against a widow binds the reversioner is subject to this qualification that there has been a fair trial in the former suit." Markby, J., in *Brammoye Dossee* v. *Kristo Mohun Mookerjee*, I. L. R. 2 Cal. at p. 224. The widow must protect the estate as well as represent it. *Nogender Chunder Ghose* v. *Sreemutty Kaminee Dossee*, 11 M. I. A. 241; cf. *Jenkins* v. *Robertson*, L. R. 1 Sc. App. at 122.

(*b*) *Tarinee Churn Gangooly et al.* v. *Watson & Co.*, 12 C. W. R. 413; *Nobinchunder et al.* v. *Guru Persad Doss*, B. L. R. 1008 F. B.: *Nand Kumar et al.* v. *Radha Kuari*, In. L. R. 1 All. 282. *Raj Bullubhsen* v. *Oomesh Chunder*, I. L. R. 5 Cal. 44; *Noferdos Roy* v. *Modhusoondari*, I. L. R. 5 Cal. 732 referring to *Shama Soonduri* v. *Surut Chunder Dutt*, 8 C. W. R. 500, and *Gunga Pershad Kur* v. *Shumbhoo Nath Burmon*, 22 C. W. R. 393.

(*c*) L. R. 2 In. A. 261: see also *Amritolal Bhose* v. *Rajonee Kant Mitter*, Ibid. 113; and *Doe Dem Goluckmoney Dabee* v. *Diggumber Day*, 2 Boulu. 193; *Rooder Chunder* v. *Sumbhoo Chunder*, 3 C. S. D. A. R. 106; *Musst. Jymunee Dibiah* v. *Ramjoy Chowdree*, Ibid. 289; 2 Tayl. and Bell 279.

(*d*) *Pranputty Koer* v. *Lalla Fulteh Bahadur Singh*, 2 Hay, 608; *Shama Soondaree et al.* v. *Jumoona*, 24 C. W. R. 86.

second. (*a*) He may however protect the estate against an improper alienation or waste. (*b*) That the widow and the "immediate reversionary heir" together may deal as they please with the property, is a proposition (*c*) that must now be read as qualified by the language of the Privy Council, "a transaction of this kind may become valid by the consent of the husband's kindred, but the kindred in such a case must be understood to be all those who are likely to be interested in disputing the transaction." (*d*) A suit against the widow is not open indiscriminately to every one in the line of succession. The nearest heir is the proper person to sue; remoter heirs must assign a sufficient reason for their claim to sue. (*e*)

The Hindû law does not, it would seem, recognize vested or contingent remainders or executory devises (*f*) in the

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(*a*) *Protap Chunder Roy* v. *S. Joymonee Dabee Chowdhrain et al.*, 1 C. W. R. 98.

(*b*) *Bhikâji Apâji* v. *Jagannâth Vithal*, 10 Bom. H. C. R. 351. *Chottoo Misser* v. *Jemah Misser*, I. L. R. 6 Cal. 198; *Rani Anund Kunwar* v. *The Court of Wards*, I. L. R. 6 Cal. 764, 772. "The mere concurrence of a female relation," it was said, "albeit the nearest in succession, cannot be regarded as affording the slightest presumption that the alienation was a proper one." *Varjivan* v. *Ghelji Gokaldas*, I. L. R. 5 Bom. 563. The concurrence was that of the daughter, who, failing the widow, would take absolutely whether as heir to her mother or to her father. *Infra* Bk. I., Ch. II., § 14, I. A. 1 A. 3. *See* article on Strîdhan. In *Sia Dasi* v. *Gur Sahai*, I. L. R. 3 All. 362 it was held that a remoter reversioner who had assented to a particular disposal by a widow and the heir next interested could not afterwards question the transaction. *See* also *Raj Bullubh Sen* v. *Oomesh Chunder Rooz*, I. L. R. 5 Cal. 44.

(*c*) *S. Jadomoney Dabee* v. *Saroda Prosono Mookerjee et al.*, 1 Boulu. 120; *Mohunt Kishen Geer* v. *Busgeet Roy and others*, 14 C. W. R. 379.

(*d*) *Raj Lukhee Debia* v. *Gokool Chandra Chowdhry*, 13 M. I. A. 228. *See* also *Koover Goolab Sing* v. *Rao Kuran Singh*, 14 M. I. A. 176 S. C. I. L. R. 2 All. 141.

(*e*) *Rani Anand Koer* v. *The Court of Wards*, L. R. 8 I. A. 14.

(*f*) See *Musst. Bhoobun Moyee Debia* v. *Ram Kishore Acharjee Chowdhry*, 10 M. I. A. 279.

exact sense of the English law. (*a*) It assigns to the widow either an ownership of the property merely for use, as in Bengal, (*b*) with a special power in case of absolute necessity to mortgage or sell it for her subsistence or other approved purposes; (*c*) or else, as under the Mitâkshará law, an ownership fully vested subject only to restrictions on alienation, (*d*) at least of immoveables, (*e*) arising from her dependence or the recognition of interests that the estate must provide for.

(*a*) *See* Col. Dig. B. v.-T. 76. Com. *ad fin.* A devise to several sons with cross remainders in favour of the survivors is good under Hindû law, but the testamentary power as to "contingent remainders and executory devises is not to be regulated or governed by way of analogy to the law of England, which law applies to the wants of a state of society widely differing from that which prevails amongst Hindûs in India." Willes, J., in the Tagore case, L. R. S. I. A. at p. 70, quoting *Bhoobun Moyee Debia* v. *Ram Kishore Chowdry*, 10 M. I. A. 279. In the case in question the interest of the heir expectant is a mere contingency not saleable. *Ramchandra Tantra Dás* v. *Dharma Náráyan Chuckerbutty*, 7 Beng. L. R. 34.

(*b*) Dâya Bhâga, Ch. XI., Sec. 1, pl. 56. Thus it is, perhaps, that in Bengal the limited character of her right being emphasized a surrender by a widow to the then next heirs immediately vests the property in them in possession as if she had then died. *Noferdoss Roy* v. *Modhu Soonduri Burmonia*, I. L. R. 5 Cal. 732.

(*c*) Dâya Bhâga, Ch. XI., Sec. 1, pl. 62; *Chundrabulee Debia* v. *Brody*, 9 C. W. R. 584; *Lakshman Ramchandra Joshi and another* v. *Satyabhámábái*, I. L. R. 2 Bom., at p 503 et ss. *See* the opinion of Sir W. Macnaghten in *Doe Dem Gunganarain* v. *Bulram Bonnerjee*, East's Notes No. 85, 2 Morley's Digest at p. 155, but also the judgment of East, C. J., in *Cossinaut Bysack et al.* v. *Hurroosoondry Dossee et al.*, No. 124, at p. 198 of the same volume, with which may be compared the remarks of H. H. Wilson in vol. V. of his works, pp. 1 ss.

(*d*) *See* the judgment of Sir M. Westropp, C. J., in *Bhâlá Naháná* v. *Parbhu Hari*, above quoted; Vyav. May. Ch. IV., Sec. 10, pl. 8; Mit. Ch. II., Sec. 1, pl. 31, 32; Colebrooke, in 2 Str. H. L. 272, 407; and Ellis, *ibid.*, 208.

(*e*) Viramit., Transl. p. 138 ss. *Bhaiji Girdhur et al.* v. *Bái Khushal*, Bom. H. C. P. J. F. 1873 No. 63; *Ram Kishen Singh* v. *Cheet Bannoo*, C. W. R. Sp. No. 101; *Doorga Dayee* v. *Poorún Dayee*, 5 C. W. R. 141; *Mussamut Thakoor Dayhee* v. *Rai Balack Ram*, 10 C. W. R. 3 P. C.

The analogy of the law of partition is applied by the Mitâkshará, Ch. II., Sec. 1, and by the Subodhini, to the determination of her estate. (*a*) She may sell or incumber the property principally, besides payment of her husband's debts and her own necessary subsistence, (*b*) for two objects, the fulfilment of religious duties and the grant of charitable donations. (*c*) Gifts in Krishnârpan have been looked on with much favour by the Bombay Śâstris, who say that the property may be disposed of for necessaries, for charity, and for the maintenance of the husband's business. (*d*) A pilgrimage may be undertaken at the cost of the estate, (*e*) and a daughter may be portioned out of it. (*f*) The gift of one-half of the property in "Krishnârpan" (*g*) would now hardly be sanctioned, and the right assumed in some instances by a mother to fulfil in this way a supposed duty to the deceased, would certainly be disallowed. (*h*) Nor can the mother strip the

(*a*) *See* below Partition; Coleb. Dig. B. v. T. 87, Comm.; 2 Str. H. L. 383.

(*b*) *Sakhárám* v. *Jánkibái*, Bom. H. C. P. J. File for 1878, p. 139.

(*c*) Nârada, Pt. I., Ch. III., Ślokas 29, 30, 36, 44; *Raj Lukhee Debia* v. *Gokool Chandra Chowdhry*, 13 M. I. A. 209; Vyav. May. Ch. IV., Sec. 8, p. 14.

The separation of the estates of spouses contemplated by the Teutonic Codes was sometimes prevented by mutual donation which they allowed, and by which the survivor took the usufruct of the whole for life. This was accompanied by a right to alienate for an urgent necessity or for pious uses according to the Ripuarian Laws Tit. 48, 49.

(*d*) *See* below, Ch. II., S. 14, I. A. 4, Q. 10; and *Kupoor Bhuwanee* v. *Sevukram Sooshunker*, 1 Borr. 448.

(*e*) *Mutteeram Kowar* v. *Gopaul Sahoo*, 11 B. L. R. 416.

(*f*) Nort. L. C. 638; Steele L. C. 176.

(*g*) As in Ch. II., Sec. 14, I. A. 4, Q. 10; *see* Ellis in 2 Str. H. L. 408, 410; *Kartick Chunder* v. *Gour Mohun Roy*, 1 C. W. R. 48 (a Bengal case).

(*h*) Q. 726, 727 MSS. Surat, A. D. 1847. Custom seems in many instances to have assigned to the surviving mother a position superior to that of her son's widow. Examples are to be found in Borradaile's Caste Rules, and *see* Steele L. C. 175. Nârada, Transl.

widow of the estate by an adoption to the deceased's father.(*a*) In Bengal the Courts have given effect to a widow's resignation of the succession in exchange for an annuity,(*b*) and to her relinquishment with consent of first "reversioner" in favour of second. (*c*)

A widow may borrow money on the estate for its effectual cultivation.(*d*) But she has no authority to waste the property. "Although according to law of the Western Schools(*e*) the widow may have a power of disposing of moveable property inherited from her husband, (*f*) which she has not under the law of Bengal, she is by the one law as by the other restricted from alienating any immoveable property

p. 19. The very early age at which a Hindû wife joins her husband enables the mother-in-law to assert a supremacy which in many cases is retained for life, even after the husband's death. Inheritance by the mother does not under such circumstances appear unreasonable, especially when the widow is still very young. "Sharpe remarks of ancient Egypt that 'here as in Persia and Judaea the king's mother often held rank above his wife.' In China.....there exists the supremacy of the female parent second only to that of the male parent, and the same thing occurs in Japan." H. Spencer in *Fortnightly Review* No. 172 N. S., p. 528.

(*a*) *Bhoobun Moyee Debia* v. *Ram Kishore Acharjee*, 10 M. I. A. 279. If a widow and a mother adopt different boys, the one adopted by the widow takes the estate, Q. 1761, MSS. *See* below Ch. II., Sec. 6 A., Q. 22.

(*b*) *Shama Soondaree et al.* v. *Shurut Chunder Dutt et al.*, 8 C. W. R. 500; *Lalla Koondu Lall et al.* v. *Lalla Kalee Pershad et al.*, 22 *Ibid.* 307; *Gunga Pershad Kur* v. *Shumbhoonath Burmun et al.*, 22 *Ibid.* 393.

(*c*) *Protap Chunder Roy* v. *S. Joymonee Dabee Chowdhrain et al.*, 1 C. W. R. 98.

(*d*) *Koor Oodey Singh* v. *Phool Chund et al.*, 5 N. W. P. R. 197.

(*e*) *Munsookrám* v. *Pránjeevandás et al.*, 9 Harr. 396; *Oojulmoney Dossee et al.* v. *Sagormoney Dossee*, 1 Taylor and Bell, 370; *Hurrydoss Dutt* v. *Rungunmoney Dossee et al.*, 2 *Ibid.* 279; *Goluckmoney Dabee* v. *Diggumber Day*, 2 Boulu. 201; *Bhálá Náháná* v. *Parbhu Hari*, I. L. R. 2 Bom. 67.

(*f*) *See* Nârada I., III., 30; *Pránjeevandás et al.* v. *Dewcoorbái et al.*, 1 Bom. H. C. R. 130.

which she has so inherited,"(*a*) alienating, that is, without a special justification. Thus she cannot, as against the collateral heirs, alienate by a mere deed of gift. (*b*) A sale made by her without authority may, according to several decisions, endure for her own life, but any one proposing to take a greater interest is bound to prove a necessity for the sale, or at least a *primâ facie* case of necessity. (*c*) If however the purchaser acts in good faith, the transaction is not wholly vitiated by some excess of the widow's powers as rigorously construed, and he is not bound to see to the application of the purchase-money. (*d*)

(*a*) *Musst. Thakoor Deyhee* v. *Rai Baluk Ram*, 11 M. I. A. 176, cited in *Brij Indar Bahadur Singh* v. *Rání Janki Koer*, L. R. 5 I. A. 15. Colebrooke and Ellis in 2 Str. H. L. 407 ss.; and *Bái Ambá* v. *Dámodar Lálbhái et al.*, S. A. No. 217 of 1871, decided 11th August 1871 (*see* Bom. H. C. P. J. F. for 1871). Steele L. C. 175. *Bhugwandeen Doobey* v. *Myna Bái*, 11 M. I. A. 487.

(*b*) *Keerut Sing* v. *Koolakul Sing et al.*, 2 M. I. A. 331.

(*c*) *Gorya Halya* v. *Undri et al.*, S. A. No. 455 of 1873 (Bom. H. C. P. J. F. for 1874, p. 125); *Bháu Venkobá* v. *Govind Yeswant*, Bom H. C. P. J. for 1878, p. 60; *Kamesvar Prasad* v. *Run Bahadur Singh*, I. L. R. 6 Cal. 843 (P. C.); *Mayúrám* v. *Motárám*, 2 Bom. H. C. R. 313; *Melgirappa* v. *Shivappa*, 6 Bom. H. C. R. 270, A. C. J.; *Musst. Bhagbutti Daee* v. *Chowdry Bholanath Thakoor et al.*, L. R. 2 In. A. 261; *Govind Monee Dossee* v. *Sham Lal Byeack et al.*, C. W. R., F. B. R. 165; *The Collector of Masulipatam* v. *Cavaly Vencata Narrainappah*, 8 M. I. A. 529; *Cavaly Vencata Narrainappah* v. *The Collector of Masulipatam*, 11 M. I. A. 619; *Raj Lukhee Debia* v. *Gokool Chandra Chowdhry*, 13 M. I. A. 209; *Koer Goolab Singh et al.* v. *Rao Kurun Sing*, 14 M. I. A. 176; *Bhaiji Girdhur et al.* v. *Bái Khushal*, Bom. H. C. P. J. F., 1873 No. 63. A widow can dispose only of her widow's estate in her deceased husband's property, "and that estate would determine either upon her death or upon her second marriage," per *Westropp*, C. J., in *Gurunáth Nilkanth* v. *Krishnáji Govind*, I. L. R. 4 Bom. 462, 464, S. C. Bom. H. C. P. J. for 1880, p. 59.

(*d*) *Phoolchund Lall* v. *Rughoobun Subaye*, 9 C. W. R. 108. Compare *Hunoomanpersaud Panday* v. *Musst. Baboyee Munraj Koonweree*, 6 M. I. A. 393. *See* also *Kamikhaprasad et al.* v. *Srimati Jagadamba Dasi et al.*, 5 B. L. R. 508. The creditor must enquire as to the purpose and must explain the instrument to the widow. *Baboo Kameswar Prasad* v. *Run Bahadur Singh*, L. R. 8 I. A. at pp. 10, 11.

One of the causes justifying an alienation of the estate is payment of the husband's debts. The widow is bound to discharge them. (*a*) Not, however, if barred by limitation, according to a *dictum* of the Bombay High Court, (*b*) though she is not bound to avail herself of that plea, (*c*) any more than is a managing member in the case of an ancestral debt. Yet *his* acknowledgment would not, it has been said, revive the barred debt, except as against himself. (*d*) A restriction of the power to pay debts out of the estate might however be regarded perhaps as trenching in some degree upon the religious law of the Hindûs. How strong the obligation is which that imposes may be seen from Bk. I., Ch. II., Sec. 6 A., Q. 7, and Nârada, Pt. I., Ch. III., 18. The mere recital in a widow's deed of sale of the object is not enough to prove it. There should be a concurrence of the relatives interested. (*e*) For her own debts the estate after her death is not answerable. (*f*)

The widow's powers of alienation are not enlarged by there being no heirs to take on her death. The State then succeeds; and the restrictions are inseparable from her estate. (*g*) The rule applies to the widow of a collateral

(*a*) *Gopeymohun* v. *Sebun Cover et al.*, East's Notes, case No. 64.

(*b*) *Melgirâppâ* v. *Shivâppâ*, 6 Bom. H. C. R. 270 A. C. J., *supra*.

(*c*) *Bhâlâ Nâhânâ* v. *Parbhu Hari*, I. L. R. 2 Bom. 67 *supra*.

(*d*) *Gopalnarain Mozoomdar* v. *Muddomutty Guptee*, 14 B. L. R. 49.

(*e*) *Raj Lukhee Debia* v. *Gokool Chandra Chowdhry*, 3 B. L. R. 57 P. C.

(*f*) *Chundrabulee Debia* v. *Brody*, 9 C. W. R. 534; *Chottoo Misser* v. *Jeniah Misser*, I. L. R. 6 Cal. 198.

(*g*) *The Collector of Masulipatam* v. *Cavaly Vencata Narrainappah*, 8 M. I. A. 500. For the grounds which have been deemed to justify a widow's alienation of property see *Umrootram* v. *Narayandas*, 2 Borr. R. 223; *Gopal Chunder* v. *Gour Monee Dossee et al.*, 6 C. W. R. 52; *Raj Chunder Deb* v. *Sheeshoo Ram Deb et al.*, 7 *Ibid.* 146; *Runjeet Ram* v. *Mohamed Waris*, 21 *Ibid.* 49; as to the burden of proof, *Munsookrâm Munkisordâs* v. *Pránjeevandâs et al.*, 9 Harr. R. 396. Ratification of a lease by a widow, *Mohesh Chunder Bose et al.* v. *Ugrakant Banerjee et al.*, 24 C. W. R. 127 C. R.

succeeding in default of nearer heirs. (*a*) It will be seen below, Bk. I., Chap. II., Sec. 9, Q. 7, that the restriction is applied to a mother inheriting from a son, though such property is commonly reckoned as strîdhan. (*b*) On this point see further in the Chapter on Strîdhan.

Two or more Hindû widows of the same man, according to the general doctrine, inherit from him a joint estate; (*c*) and though they enjoy separately, the estate still remains joint according to the later decisions, (*d*) so that grandsons, through a daughter of one widow, who had been awarded a separate enjoyment of a moiety, were excluded by the co-widow. (*e*) A right to partition as between two widows does not, it has been said, exist in ordinary cases, (*f*) but the Vyavahâra Mayûkha (Ch. IV., Sec. 8., pl. 9,) says, "If more than one, they are to divide." (*g*) So too the Vîramitrodaya, Transl. p. 153: "Wives of the same class with the husband shall take the estate dividing it amongst them." This, which is the doctrine of the Mitâkshará also, Ch. II., Sec. 1, para. 5, though omitted by Colebrooke, seems to have been recognized as the law in Bombay, (*h*) and the

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(*a*) *Bharmangavdá* v. *Rudrapgavdá*, I. L. R. 4 Bom. 181.

(*b*) *Vináyek Anandráo et al.* v. *Lukshmibái et al.*, 1 Bom. H.C.R. 117.

(*c*) *Bhugwandeen Doobey* v. *Myna Bái*, 11 M. I. A. 487; each an equal share according to *Thakurain Ramanund Koer* v. *Thakurain Raghunath Koer and another*, L. R. 9 I. A. 41.

(*d*) *Shri Gajapâthi Nila Mani Patta Mahadevi Garu* v. *Shri Gajapathi Radhamani Patta Maha Devi Garu*, L. R. 4 I. A. 212; S. C. I. L. R. 1 Mad. 290.

(*e*) *Rindamma* v. *Venkataramappa et al.*, 3 M. H. C. R. 268; *see* Bk. I., Ch. II., Sec. 6 A., Q. 39, 40.

(*f*) *Jijoyiamba Bayi et al.* v. *Kamakshi Bayi et al.*, 3 M. H. C. R. 424; *Kathuperamul* v. *Venkabai*, I. L. R. 2 Mad. 194.

(*g*) *See* Stokes' H. L. B. 86, 52 and note (*a*). To the same effect is the Smriti Chandrikâ, Ch. XI, Sec. 1, pl. 57. So 2 Str. H. L. 90.

(*h*) *Rumea* (applicant) v. *Bhagee* (caveatrix), 1 Bom. H. C. R. 66, where cases are cited from Bengal and the N. W. Provinces. *See* below, Bk. I., Ch. II., Sec. 14, I. A. 1, Q. 3, where the answer

right by survivorship of one of two widows was not apparently recognized in the case of *Raj Lukhee Debia* v. *Gokool Chandra Chowdhry*; (*a*)*see* Bk. I., Ch. II., Sec. 6 A., Q. 35, 36.

On the death of a widow the Bengal law gives the inherited property to the then existing next heir of the last male owner. In Bombay the succession varies, as it is governed by the law of the Mitâkharâ or of the Vyavahâra Mayûkha. These authorities agree to a certain point and then diverge widely. *See* below, Bk. I., Ch. IV., and the chapter on Strîdhan. The widow of the nearest male sapiṇḍa of a pre-deceased husband, there being no male lineal descendant in the nearest collateral line, was, in *Bái Ambá* v. *Dámodar Lálbhái*,(*b*) pronounced on that ground to be the heiress of a Hindû widow deceased.

§ 3 *B.* (5) DAUGHTERS.—*On failure of the first three descendants in the male line, of adopted sons, and of a widow, a daughter inherits the estate of a separate householder, and the separate property of a united coparcener. An unmarried daughter has the preference over a married one, and a poor married one over a rich married one.*

See Book I., Chap. II., Sec. 7; and for authorities, *see* Book I., Chap. I., Sec. 2, Q. 4; Chap. II., Sec. 7, Q. 19. Mit. Chap. II., Sec. 2, pp. 1 to 4; Sec. XI. para. 13.; and Vyav. May., Chap. IV., Sec. 8, p. 10 ss.

If there are several daughters living in the same condition, *i.-e.* being all unmarried, or all married and poor, or all

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implies a succession to separate interests by the two widows, and above p. 89. The equal widows not having an independent joint ownership along with their husbands as in the case of undivided sons would not be subjects of unobstructed inheritance according to Vijñâneśvara's idea, but rather of an ownership descending on each as to her own portion, which implies at least a mental partition.

(*a*) 13 M. I. A. 209.

(*b*) *See* Bom. H. C. P. J. F. 1871, S. A. No. 217 of 1871.

married and rich, they share the estate of their father equally. *See* Book I., Chap. II., Sec. 7, Q. 19. The circumstance of having or not having a son is in Bombay indifferent.(*a*)

In *Srimati Uma Devi* v. *Gokulanand Das Mahapatra* (*b*) the Judicial Committee adopted the statement of the Benares law given in 1 Macn. H. L. 22, "that a maiden is in the first instance entitled to the property; failing her, that the succession devolves on the married daughters who are indigent, to the exclusion of the wealthy daughters; that, in default of indigent daughters, the wealthy daughters are competent to inherit; but no preference is given to a daughter who has or is likely to have male issue, over a daughter who is barren or a childless widow."

The preference of the unmarried daughters over the married ones seems to be founded on the principle that, before all, a suitable provision for the marriage of daughters must be made. For the historical origin of the daughter's right of succession see *Bhâu Nânâji Utpât* v. *Sundrâbâi*,(*c*) *Simmani Ammâl* v. *Muttammâl*, (*d*) and above p. 84. (*e*)

Regarding the case where a Śûdra leaves a daughter and an illegitimate son, *see* § 3 *B.* (3), above p. 81 ss.

In the case of *Amritolal Bose* v. *Rajoneekant Mitter*,(*f*) the Privy Council say, "There is a great analogy between the case of widows and that of daughters, though the pretension of daughters is inferior to that of widows." Daughters in

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(*a*) *Bâkubâi* v. *Manchâbâi*, 2 Bom. H. C. R. 5; *Poli* v. *Narotum Bapu et al.*, 6 Bom. H. C. R. 183, A. C. J.

(*b*) 9 M. I. A. at p. 542.

(*c*) 11 Bom. H. C. R. 249, 273.

(*d*) I. L. R. 3 Mad. 265, 267.

(*e*) The very gradual establishment of daughter's rights of succession in Ireland and other countries in Europe is shown in O'Curry's Lectures, Introd. by Dr. Sullivan, p. 170 ss.

(*f*) L. R. 2 In. A. 113.

Bombay, however, occupy a position superior to widows, according to the prevailing doctrine as to the restrictions on a widow's estate, as they may freely dispose of the property of their fathers, which they have taken by inheritance, their estate being regarded as absolute.(*a*) They take, moreover, in the Bombay Presidency, separate interests excluding the right of survivorship (*b*) contrary to the rule applied in Bengal (*c*) and Madras. (*d*) Nor have they in Bombay been regarded hitherto as mere life-tenants,(*e*) as to some extent they appear to be in Madras (*f*) and Bengal. (*g*)

(*a*) See *Haribhat* v. *Dámodarbhat*, I. L. R. 3 Bom. 171, and the cases there cited, and *Bábáji* v. *Bálaji*, I. L. R. 5 Bo. 660; *Strimuttu Muttu Vizia Ragunada Rani* v. *Dorasinga Tevar*, 6 Mad. H. C. R. p. 310. *See*, however, *Mutta Vaduganadha Tevar* v. *Dorasinga Tevar*, L. R. 8 I. A. 99, 108, a Madras case.

(*b*) *Bulákidás* v. *Keshavlál*, I. L. R. 6 Bom. 85, referring to I. L. R. 3 Bom. 171 *supra*.

(*c*) *Amritolal Bose* v. *Rajoneckant Mitter*, L. R. 2 I. A. 113.

(*d*) 6 Mad. H. C. R. 310 *supra* (*a*).

(*e*) *See* I. L. R. 3 Bom. 171, and the cases there cited.

(*f*) *Simmani Ammál* v. *Muttammál*, I. L. R. 3 Mad. at p. 268.

(*g*) *Dev Pershad* v. *Lujoo Roy*, 20 C. W. R. 102; *Dowlut Koer* v. *Burma Deo Sahoy*, 22 C. W. R. 55, C. R. quoting *The Collector of Masulipatam* v. *Cavaly Vencata Narrainappah*, 8 M. I. A. 551, and *Mussumat Thakoor Deyhee* v. *Rai Baluk Ram*, 11 M. I. A. 172. But in 1 Str. H. L. 139, 2nd ed., (pp. 160-161, 1st ed.) it is said: "According to one opinion, not only the sons of daughters, but the daughters of daughters also inherit, in default of sons, but this does not appear to have been sustained; on the other hand, where there are sons, their right of succession is postponed to that of other daughters of the deceased; and, where such sons are numerous, when they do take, they take *per stirpes* and not *per capita*. Authorities postponing still further their right have been denied; but the succession in the descending line from the daughter proceeds no further, the funeral cake stopping with the son; which is an answer to the claim of the son's son, grounded on the property having belonged to his father. Neither, according to Jîmûta Vâhana, on failure of issue, does the inheritance, so descending on the daughter, go, like her strîdhana, to her husband surviving her, but to those who would have

Barrenness is not as in Bengal a cause of exclusion, (*a*) the theory on which the daughter is admitted in Bombay being essentially different.

§ 3 *B.* (6) DAUGHTER'S SONS.—*On failure of the three first descendants in the male line, of adopted sons, of widows, and of daughters, a daughter's son inherits the estate of a separate grihastha, and the separate property of a united coparcener.*

See Book I., Chap. II., Sec. 8; and for Authorities, *see* Book I., Chap. II., Sec. 8, Q. 1 and 5.

Regarding the case where a Śûdra leaves an illegitimate son, and a daughter's son, *see* above § 3 *B.* (3), pp. 85, 86.

If a separate householder leaves two daughters, one of whom dies after her father, but before the division of his estate has been effected, leaving at the same time a son, this son, according to the doctrine of the Bombay Śâstris, will inherit the share which would have fallen to her. *See* Remarks to Book I., Chap. II., Sec. 7, Q. 1 and 3. This view is supported by the analogous case of the "brother and the brother's sons," regarding which the Mitâkshará, Chap. II., Sec. 4, para. 8, states expressly as follows:—

"In case of competition between brothers and nephews, the nephews have no title to the succession, for their right

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succeeded, had it never vested in such daughter; but by the Southern authorities, it classes as strîdhana, and descends accordingly. And, upon the same principle, the husband is precluded during her life from appropriating it, unless for the performance of some indispensable duty, or under circumstances of extreme distress. Whereas the daughter's own power over it is greater than that of the widow of the deceased, whose condition is essentially one of considerable restraint." And the Privy Council recognize a possible difference in favour of the daughter,* though this is now superseded by what is said in Muttu Vaduganadha Tevar's case† against women's transmitting to their own heirs property which they take by inheritance.

(*a*) *Simmani Ammál* v. *Muttammál*, I. L. R. 3 Mad. 265.

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* *Hurrydoss Dutt* v. *Sreemutty Uppoornah Dossee*, 6 M. I. A. 445.

† L. R. 8 I. A. 99, 109.

of inheritance is declared to be on failure of brothers (*see* Sec. 1, p. 2.) However, when a brother has died leaving no male issue (nor other nearer heir), and the estate has consequently devolved on his brothers indifferently, if any of them die before a partition of their brother's estate takes place, his sons do in that case acquire a title through their father."(*a*)

That the principle laid down in this passage is applicable also to the case of the daughters and daughters' sons follows from the maxim of interpretation, according to which a rule given for a special case is applicable to all analogous cases, though no indication to that effect may have been given. For, the Hindû law-books often give, as the Śâstris express it, only the "dikpradarśana," the indication of the direction, not exhaustive rules. Examples showing that the authors of the Mitâkshará and Mayûkha and other works interpreted the ancient Smṛitis in this manner are frequently met with. Thus, the rule that unmarried daughters inherit before married ones [*see* above § 3 *B.* (5)] is given by Gautama with respect to the succession to their mothers' stridhana, (*see* Gautama 28, Sû. 21). But both Vijñâneśvara and Nîlakaṇṭha apply it also to the daughters' succession to their father's property. From the analogy of the case of "brothers and brothers' sons," it follows also that in no other case, than the one just considered, do daughters' sons share the inheritance with daughters.

Such is the doctrine prevailing in Bombay where each daughter, taking a present right by inheritance, is thought on her death to transmit it to her own proper heirs subject in this case to the qualification founded on special texts.(*b*) *See* Bk. I., Ch. IV., B. § 1, § 4; Ch. II., Sec. 8, Q. 1. Where daughters are regarded as taking as a class, with survivorship as in Madras [*see* above § 3 *B.* (5)] a different rule prevails. The son is not such a co-owner with his mother according

(*a*) See *Ramprasad Tewarry* v. *Sheochurn Doss*, 10 M. I. A. 504.
(*b*) *See* Mit. Ch. II. Sec. II. para. 6; Ch. I. Sec. XII.

to that doctrine as to replace her in the group of successors to her father. It is consistent with this that daughter's sons take *per capita* not *per stirpes* as they would by identification in rights with their mothers. *See* Bk. I., Ch. II., Sec. 8, Q. 1, 2; but a brother's sons too are excluded by brothers, yet succeed to an interest, which, to use an English expression, had become vested in possession in their father before his death.

The text of Yâjñavalkya on which the different doctrines are based is not in itself sufficiently explicit to make either of them untenable. The former is the one more consonant to Vijñâneśvara's general principle of a woman's capacity to take and transmit complete ownership by inheritance: the variation from the general scheme of succession to females by bringing in the daughter's sons in this particular case before the daughter's daughters gives a liberal, though not indisputable, effect to the text instead of reducing the daughter's right to a mere life estate interpolated in the regular series of successions. The succession of the daughter's son to the interest inherited by his mother but not entered on by her in actual separate enjoyment agrees exactly with the rule given by Nîlakaṇṭha in the Vyav. Mayûkha for the further succession to property which has passed to a female by inheritance. It goes, he says, to heirs according to such relations as if she were a man, (*a*) and the first in this series is the son or group of sons of the last owner. Daughters according to him take separate interests (*b*) separately heritable.

§ 3 *B.* (7) THE MOTHER.—*On failure of daughters' sons, the mother* (*except in Gujarât*) *inherits the estate of a separate householder, the separate estate of a united coparcener, as also the estate of a paying student* (*upakurvâṇa Brahmachârî.*)

(*a*) Vyav. Mayûkha Ch. IV. Sec. X. para. 26

(*b*) Vyav. Mayûkha Ch. IV. Sec. VIII. para. 10.

See Book I., Chap. II., Sec. 9; and for Authorities *see* Book I., Chap. I., Sec. 2, Q. 4; and Chap. II., Sec. 9, Q. 1.

A mother who remarries loses, it would seem, her right to the succession to the estate of the son by her first husband under Sec. 2 of Act XV. of 1856, as she certainly would under the strict Hindû law by forming a connexion inconsistent with her retaining a place in the family of her first husband or even in the caste. But in the case of *Akorah Sooth* v. *Boreeanee* (*a*) it was ruled that a widow remarrying forfeits only the right she has then actually inherited, not her right of inheritance to her son then living.

Stepmothers are not included in the term "mother." Regarding the rights of a stepmother, *see* Book I., Chap. II., Sec. 14, I. A. 2, Remark to Q. 1.

The Vyav. May. Chap. IV., Sec. 8, para. 15, places the father first, and next the mother, and the High Court pronounced in favour of this order of succession for Gujarât in *Khodabhai Mahiji* v. *Bahdhur Dalu et al.* (*b*)

The estate taken by a mother succeeding to her son is said to be like that taken by a widow from her husband. (*c*)

§ 3 *B.* (8) THE FATHER.— *On failure of the mother, the father inherits the estate of a separate householder, of a paying student, and the separate estate of a united coparcener. In Gujarât the father has precedence of the mother as heir to their sons.*

See Book I., Chap. II., Sec. 10; and for authorities *see* Book I., Chap. II., Sec. 9, Q. 1; and Chap. 1, Sec. 2, Q. 4.

(*a*) 10 C. W. R. 35, II. *Id.* 82.

(*b*) Bom. H. C. P. J. for 1882, p. 122.

(*c*) *Narsáppá Lingáppá* v. *Sakhárám*, 6 B. H. C. R. 215; *Tuljárám Morárji* v. *Mathurádás et al.*, I. L. R. 5 Bom. 662. *See* also the chapter on Stridhana, and the references given above, p. 94.

§ 3 B. (9) BROTHER OF THE WHOLE BLOOD.—*On failure of the father, full brothers succeed to the estate of a separate Grihastu, &c.*

See Book I., Chap. II., Sec. II., and for Authorities *see* Book I., Chap. I., Sec. 2, Q. 4; and Chap. II., Sec. 11, Q. 4; Vyav. May. Chap. IV., Sec. 8, p. 16.

In case a brother dies leaving more than one brother, and one of these also dies after him but before the partition of the estate of the first deceased brother has taken place, and if this second brother leaves a son, then this son will take the share of the estate which should have fallen to his father. *See* above § 3 *B.* (6) Mit. Chap. II., Sec. 4, p. 9; Vîramit., Transl. p. 195.(*a*)

Representation is not recognized in the case of a predeceased brother who has left sons. These nephews are excluded by their surviving uncles. It is only on the complete failure of brothers of the deceased that brothers' sons succeed to him. Mit. Ch. II., Sec. 4., paras. 1, 5, 7. Vîramit. Tr. p. 195. *See* below Bk. I., Ch. II., Sec. 11, Q. 6, and Bk. I. Chap. II., Sec. 13, Q. 4, 5. The doctrine may indeed be confined to those who by birth become, actually or potentially, sharers with their fathers forthwith, or immediately on the fathers becoming owners of property, and those who by analogy take through a mother from the maternal grandfather,(*b*) when their mother has died between the decease of their grandfather and the actual partition of his property.

(*a*) Some surprise may be felt that this rule should have seemed necessary. But according to Hindû notions as possession is generally necessary to the completion of ownership, so separate possession is essential in theory to the completion of a separate ownership of a share derived from a prior joint ownership of the aggregate. The father, however, having once become a coparcener, his son has acquired a concurrent interest which is but expanded by the father's death.

(*b*) *See* Vyav. May. Ch. IV. Sec. 2, para. 1; Sec. X. para. 26; above § 3 *B.* (6); Sarasvati Vilâsa § 7, 21, 335.

§ 3 *B.* (10) HALF BROTHERS.—*On failure of brothers of the full-blood, half-brothers inherit the estate of a separate householder, &c.*

See Book I., Chap. II., Sec. 12 ; and for Authority, *see* Book I., Chap. II., Sec. 11, Q. 4.

The Vyav. May. includes the half-brother among the Gotraja Sapiṇḍas, and places him after the son of the brother of the full blood. This may be taken as the prevailing law in the town of Bombay according to the preference accorded to the Mayûkha by the High Court for cases arising within its Original Jurisdiction. The full sister, too, takes precedence of the half-brother according to the same authority, on the construction of the word "brethren," which makes it extend to females. (*a*) But beyond these limits the Mitâkharâ is generally preferred and regulates the succession as here indicated. (*b*) In this construction the Vîramitrodaya, Transl. p. 194 and the Dâya Bhâga agree, *see* Dâya Bhâga, Chap. XI. Sec. 5, pl. 10-12. So also the Smṛiti Chandrika, Transl. p. 183.

§ 3 *B.* (11) SONS OF BROTHERS OF THE FULL BLOOD.—*On failure of half-brothers, sons of brothers of the full blood inherit the estate of a separate householder, &c.*

See Book I., Chap. II., Sec. 13; and for Authorities, *see* Book I., Chap. I., Sec. 2, Q. 5 ; and Chap. II., Sec. 11, Q. 4.

§ 3 *B.* (12) SONS OF HALF BROTHERS.—*On failure of sons of full brothers, sons of half-brothers inherit the estate of a separate householder, &c.*

AUTHORITIES.

See Book I., Chap. II., Sec 11, Q. 4.

Regarding the case in which brothers' sons inherit together with brothers, *see* above, Remark to § 3 *B.* (9). The

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(*a*) *Sakhárám Sadáshiv* v. *Sitábái*, I. L. R. 3 Bom. 353, referring to *Vináyak Anandrao* v. *Lakshmibái*, 9 M. I. A. 516.

(*b*) See *Krishnáji* v. *Pándurang*, 12 Bom. H. C. R. 65.

deceased brother is represented by his son, his right having become vested in possession, to use the English phrase, before his death.

The Vyav. May. places half-brothers' sons amongst the Sapiṇḍas.

§ 3 *B* (13) THE PATERNAL GRANDMOTHER.—*On failure of sons of half-brothers, the paternal grandmother inherits the estate of a separate householder, &c.*

AUTHORITIES.

See Book I., Chap. II., Sec. 13, Q. 7; Mit. Chap. II., Sec. 5, p. 2.

The place assigned to the paternal grandmother is a special one, due partly to her entrance into the family and moral unity with the grandfather, but partly also to the particular mention of her as an heir by Manu (*a*) next after the mother.(*b*) The Mitâkshará does not follow Manu in this, but uses the text to support the place assigned to her as the first of the jnâtis or gentiles. The postponement of her to the father, brother and nephew is grounded on the principle that these are specified in Yâjñavalkya's text, while she is not. The fact is that the two Smṛitis as they stand are inconsistent. The passage in Manu was probably uttered originally with some context (such as in case there should be none but female claimants), which has now been lost, and the isolated fragment preserved has thus become misleading, (*c*) but the mention of the grandmother shows a capacity on her part to inherit which Vijñâneśvara makes specific in his comment on Yâjñavalkya's text, which does not itself mention her as an heir. (*d*)

(*a*) Ch. IX. 217. (*b*) Mit. Ch. II., Sec. 1, p. 7.

(*c*) This has occurred in the Roman law as Savigny shows, System, Vol. III. App. VIII. § VIII., and Text § 115.

(*d*) See *Lallubhái* v. *Mánkuvarbái*, I. L. R. 2 Bom. at p. 438 ss. Vijñâneśvara in commenting on Yâjñavalkya was constrained to give his own Ṛishi precedence and to construe other smṛitis in accordance with it. *See* above pp. 11 and 14 notes.

§ 8 *B.* (14) GOTRAJA SAPIṆDAS.—*On failure of the paternal grandmother, the Gotraja Sapiṇḍas, i. e. all the males of the deceased's family (gotra) related to him within six degrees downwards and upwards, together with their respective wives, are entitled to inherit the estate of a separate householder. It would seem that the Gotraja Sapiṇḍas inherit according to the nearness of their line to the deceased, i. e. that the fourth, fifth, and sixth descendants in the deceased's own line (santâna) should be placed first, next the father's line, viz. the deceased's brother's second, third, fourth, fifth, and sixth descendants, next the grandfather and his descendants to the sixth degree, and so on. In Gujarât the sister is placed at the head of the Gotraja Sapiṇḍas.*

AUTHORITIES.

See Book I., Chap. I., Sec. 2, Q. 4; Chap. II., Sec. 14, I. A.3, Q. 1; Chap. II., Sec. 14, I. A. 1, Q. 1; Chap. II., Sec. 14, I. B. b. 1, Q. 1; Vasishṭha IV. 17.

The collateral succession to property on failure of the heirs individually specified has given rise to many controversies amongst the Hindû lawyers. The rule that a jnâti succeeds, or that a gotraja sapiṇḍa succeeds, gives no information as to who and who only are to be regarded as jnâtis (paternal kinsmen) or as gotrajas (of the family or born in the family), and the kind of connexion intended by these terms has been differently understood by different commentators. The nearer relatives of the propositus, as his son, his father and his brother, are obviously jnâtis and gotraja sapiṇḍas, but being expressly named in the Smṛiti they have not to rely on their inclusion under any more general term for their right of succession. When we come to such a relative as the sister, the fact of her passing into another family gives her in one sense a new "gotrajatva," or family connexion, and in the same sense deprives her of connexion with her family of birth. Vijñâneśvara accordingly passes her

by in favour of the male gotraja sapiṇḍas. Nîlakaṇṭha, on the other hand, influenced no doubt by the growing strength of natural affections, as opposed to a strictly logical development of the religious agnatic system, (*a*) gives her a place next to the grandmother as having a gotrajatva (= family connexion) through birth, even though she has since passed out of the gotra. The extent to which each collateral line is to be followed before the right passes to the one next entitled, the interpolation of the "bandhus" or cognates between the nearer and remoter lines of agnates; (*b*) the possibility and the extent of the transmission of hereditary right through daughters of collaterals; the rights of such daughters; and the rights of widows of collaterals to succeed in place of their husbands in preference to a remoter line, possibly even in preference to lower descendants in the same line; all these are questions to which various writers have given inconsistent though almost equally ingenious answers. The Vyavahâra Mayûkha's scheme differs essentially from that propounded in the Mitâksharâ and followed by the Vîramitrodya, (*c*) which however has itself been understood in different ways by subsequent authors and by the Śâstris. The nicer points of the subject have been treated in the principal authorities, not only on discordant principles, but in a fragmentary way, which leaves room for much doubt. Under these circumstances it is hardly to be expected that any system, however

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(*a*) A similar exception in favour of sisters occurred under the Roman law while women generally were thought unfit for inheritance.

(*b*) In Bengal the Bandhus come next after the nearer Sapiṇḍas, *i.e.*, before descendants from ascendants beyond the great-grandfather. *Roopchurn Mohapater* v. *Anundlal Khan*, 2 C. S. D. A. R. 35; *Deyanath Roy et al.* v. *Muthoor Nath*, 6 C. S. D. A. R. 27. In Madras, according to the Smṛiti Chandrikâ Chap. XI., the male gotrajas only come in next after brothers' sons, and after them the samânodakas limited to two descendants from each ascendant above the propositus.

(*c*) *See* also the Sarasvatî Vilâsa, § 581, 586 ss.

carefully deduced from the authorities, will gain universal assent. We will, however, state the principles which seem the most in harmony with those involved in the authoritative text, so far as these go, and which have been generally followed by the Śâstris of the Bombay Presidency. These have in some instances received judicial confirmation since the first edition of this work was published, and the decisions of the High Courts and of the Judicial Committee have thus established fixed points by reference to which the correctness of the views set forth on other cognate questions can readily be tested.

In dealing with the materials now embraced under Book I., Chap. II., Sec. 14, it became necessary to determine on what principles the several questions and answers should be arranged, and this opened up the whole question of the sapiṇḍa and gotraja relationship as conceived by Vijñâneśvara and by Nîlakaṇṭha. We propose to state their views in connexion with the distribution of the answers referrible to the one and to the other authority.

The term "Gotraja" designates, according to the Mitâkṣharâ, Mayûkha, and Manu IX. 217,—1, the paternal grandmother; 2, the Gotraja-Sapiṇḍas; and 3, the Gotraja-Samânodakas. As there were no cases referring to the paternal grandmother, (*a*) the Gotraja-Sapiṇḍas have been given the first place. Amongst these have been placed, first (A), those whose right to inherit is expressly mentioned in the Mitâkṣharâ, the Vîramitrodaya, and the Mayûkha. The Mitâkṣharâ (with which the Vîramitrodaya agrees perfectly) names the following Gotrajas as entitled to inherit, after the paternal grandmother, the property of a separated male. (Colebrooke, Mit. p. 350; Stokes, H. L. B. 446.)

1. The paternal grandfather; 2, the father's brothers; 3, the father's brothers' sons; 4, the paternal great-grandmother; 5, the paternal great-grandfather; 6, the paternal

(*a*) *See* Bk. I. Ch. II. Section 13, Q. 7.

grandfather's brothers; 7, the paternal grandfather's brother's sons; and this order of heirs is to be repeated up to the seventh ancestor.

The Mayûkha lays down the following order:—

1. The uterine sister; 2, the paternal grandfather and the half-brothers, as joint heirs; 3, the paternal great-grandfather, the father's brother, and the sons of half-brothers, as joint heirs; and so on, all the Gotrajas up to the seventh ancestor, according to the nearness of their relationship. But as Mr. Colebrooke remarks (Mit. p. 350, Note), it is by no means clear how the remoter heirs are to follow one another. (*a*)

Though in general the Mitâkshará possesses the greatest authority in this Presidency, and it would therefore seem necessary to follow its order, it was impossible altogether to neglect the Mayûkha, since in Gujarât and in the island of Bombay the Mayûkha partially prevails over the Mitâkshará, (*b*) and the sister is there allowed to inherit immediately after the paternal grandmother. (*c*) Consequently the first place has been generally assigned to her by the Sâstris. They have in several cases even from the Deccan and Konkan decided in her favour, and in Book I., Chap. II.,

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(*a*) Nîlakantha probably aimed at governing succession subject to the express provisions of the Śâstras in favour of specified relatives by a principle of proximity of degree, counting as in the Roman law every step up and down, and making all at an equal distance equal sharers in the estate of the propositus. See *Lalubhái* v. *Mankoovarbái*, I. L. R. 2 Bom. 388. The other authorities follow the principle of the Teutonic and the English laws in going up to the nearest point of the ascendant stock that will afford an heir, and then following the line of descendants springing from it and choosing the nearest in that line.

(*b*) See *Lalloobhoy* v. *Cássibái*, L. R. 7 I. A. 212; and, above, Introduction.

(*c*) *Vináyekráo Anandráo* v. *Lakshmibái*, &c., 1 Bom. H. C. R. 117, S. C. 9 M. I. A. 517.

Section 14, these have been subjoined to those from Gujarât, though, according to the Mitâkshará, they would more properly be included in Section 15.

The cases which refer to the right of the Gotrajas, not mentioned in the Mitâkshará and Mayûkha, form the second division (B), and have been classed under two headings; *a*, males; *b*, females; because the rights of the latter depend on principles less generally accepted than those recognized as applicable to the former.

The questions whether the Gotraja-Sapiṇḍas who are not expressly mentioned in the Law books, have any right to inherit, and if they have, in what order they succeed, are not easy to decide. As regards the males, the Śâstris have confidently asserted their rights (*see* Bk. I., Ch. II., Sec. 14, I., B. *a*. 1 and 2) and quoted as authority for their opinions the passage of the Mitâkshará (Vyav. *f.* 55, p. 2, l. 1., *see* Chap. I., Sec. 2, Q. 4, and Stokes, H. L. B. 427), which names the *Gotrajas* as heirs. It appears therefore that they considered the series of Gotraja-Sapiṇḍa heirs, given by Vijñâneśvara (Colebrooke, Mit. *l. c.*) as not exhaustive, nor intended to exclude others than those named, but only as an exemplification of the general doctrine. The same opinion has also been advocated by the Śâstris in other parts of India, where the Mitâkshará is the ruling authority, (*a*) as well as by Mr. Vinâyak Śâstri, the late Law Officer of the High Court of Bombay. Moreover, this view was adopted by Mr. Harrington in the case of *Dutt Zabho Lannauth Tha and others* v. *Rajunder Narain Rae and Coower Mohinder Narain Rae*, (*b*) and the Privy Council, on appeal, confirmed his judgment.

(*a*) See *R. Sreekaunth Deybee* v. *Sahib Perlhad Sein*, Morley, Digest, New Series, p. 187, No. 14; *Rutcheputty Dutt et al.* v. *Rajunder Narain Rae et al.*, 2 M. I. A. 132, 168.

(*b*) Moore, Indian Appeals, *l. c.* This view is confirmed in *Bhyah Rama Singh* v. *Bhyah Ugur Singh*, 13 M. I. A. 373. So in *Thakur Jibnath Singh* v. *The Court of Wards*, 5 Beng. L. R. 442, and *Parasara Bhattar* v. *Rangaráya Bhattar*, I. L. R. 2 Mad. 202.

Mr. Harrington, after having proved that the word putra, 'son,' is used in the Mitâksharâ and Subodhini as a general term for descendant or male issue, says in his review of the opinions of the Sâstris (p. 157):—

"The same construction must, I think, be put on the words 'sons' and 'issue' (putra and sunavah) in the fourth and fifth paragraphs of the fifth Section and second Chapter of the Mitâksharâ, (*a*) and this interpretation is indeed indicated by other expressions of the same paragraphs, viz., on failure of the father's and on failure of the paternal grandfather's *line* (Santâna). To adopt the construction proposed by the appellant would be to cut off all the descendants below the grandson of the father, grandfather, and every other ancestor, and would render nugatory the provisions in the Mitâksharâ, (*b*) as well as other books of law, which expressly state the succession of kindred belonging to the same family, as far as the limits of knowledge as to birth and name extend."(*c*)

But the opinion that Vijñâneśvara's series of heirs is not intended to be exhaustive, may be strengthened by some further arguments. Firstly, if it were intended to be exhaustive, not only would the provision that the Gotraja-Samânodakas may inherit as far as name and knowledge of birth extend, as Mr. Harrington observes be rendered nugatory, but virtually all the Samânodakas and one line of the

(*a*) Colebrooke, Mit. p. 350; Stokes, H. L. B. 446-7:—

"4. Here on failure of the father's descendants, the heirs are successively the paternal grandmother, the paternal grandfather, the uncles, and their sons.

"5. On failure of the paternal grandfather's line, the paternal great-grandmother, the great-grandfather, his sons and their issue inherit. In this manner must be understood the succession of kindred belonging to the same general family, and connected by funeral oblations."

(*b*) Colebrooke, Mit. p. 351; Stokes, H. L. B. 447.

(*c*) Compare also *Shoodyan* v. *Mohun Pandey et al.* Reports of S. D. A., N. W. P. 1863, II. p. 134; and *Duroo Singh* v. *Rai Singh et ibid.* 1864, p. 523.

Sapiṇḍas would be excluded from the succession. For it is hardly possible that the seventh ancestor and his sons and grandsons could be alive at the time of the death of the seventh descendant; and this improbability increases with every grade among the Samânodakas, who extend to the fourteenth ancestor and are to inherit in the same order as the Gotraja-Sapiṇḍas, *i. e.*, 1, female ancestor; 2, male ancestor; 3, their sons; 4, and grandsons. But, secondly, the definition of the word Sapiṇḍa, which Vijñâneśvara gives in the first chapter of the Mitâkshará, clearly shows that all the unmentioned descendants of the lines of the various ancestors, down to the seventh degree, as well as the descendants of the deceased person down to the seventh, inherit. For Vijñâneśvara says (Âchârakâṇḍa *f.* 6, p. 1, l. 15), (*a*) when he explains the verse I. 52, of Yâjñavalkya, in which it is declared that a man shall marry a girl who is not his Sapiṇḍa:—

"He should marry a girl, who is non-Sapiṇḍa (with himself). She is called his Sapiṇḍa who has (particles of) the body (of some ancestor, &c.) in common (with him). Non-Sapiṇḍa means not his Sapiṇḍa. Such a one (he should marry). Sapiṇḍa-relationship arises between two people through their being connected by particles of one body. Thus the son stands in Sapiṇḍa-relationship to his father because of particles of his father's body having entered (his). In like (manner stands the grandson in Sapiṇḍa-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 Sapiṇḍa-relation) of his mother, because particles of his mother's body have entered (into his). Likewise (the grandson stands in Sapiṇḍa-relationship) to his maternal grandfather and the rest

(*a*) The Saṁskâramayûkha adopts this theory. The Dharmasindhu states merely the two theories, leaf 63 (Bombay Edition), Part I. (p. 353, Marâṭhi, Samvat 1931). It is glanced at in Vyav. May. Ch. IV. Sec. 5, p. 22, and supported in the Datt. Mim. Sec. 6, para. 9, by a reference to Manu.

through his mother. So also (is the nephew) a Sapiṇḍa-relation of his maternal aunts and uncles, and the rest, because particles of the same body (the paternal grandfather) have entered into (his and theirs); likewise (does he stand in Sapiṇḍa-relationship) with paternal uncles and aunts, and the rest. So also the wife and the husband (are Sapiṇḍa-relations to each other), because they together beget one body (the son). In like manner brothers' wives also are (Sapiṇḍa-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 husbands' father is the common bond which connects them). Therefore one ought to know that wherever the word Sapiṇḍa is used, there exists (between the persons to whom it is applied) a connection with one body, either immediately or by descent."(*a*)

After refuting some objections which might be raised against this definition, and after discussing the latter part of Yâjñ. I. 52, and the first half of Yâjñ. I. 53, Vijñâneśvara again recurs to the question, who the Gotraja-Sapiṇḍas are. Mitâkshará, *f.* 7, p. 1, l. 7:—

"In the explanation of the word 'asapiṇḍâm' (non-Sapiṇḍa, verse 52), it has been said that Sapiṇḍa-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 (Yâj ñavalkya) says:—

Vs. 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 Sapiṇḍa-rela-

(*a*) In *Amrita Kumari Debi* v. *Lakhinarayan*, 2 Beng. L. R. 33, is a passage to the same effect from Parâśara Mâdhava, at page 34.

tionship ceases; these latter two words must be understood; and therefore the word Sapiṇḍa, 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 ascendants, beginning with the father, and the six descendants, beginning with the son, and one's self (counted) as the seventh (in each case), are Sapiṇḍa-relations. In case of a division of the line also, one ought to count up to the seventh (ancestor), including him with whom the division of the line begins, (*e. g.* two collaterals, *A* and *B* are Sapiṇḍas, if the common ancestor is not further removed from either of them than six degrees), and thus must the counting of the (Sapiṇḍa-relationship) be made in every case." *See* Dattakamîmaṁsa, Sec. VI. pl. 27, 28 and notes; Stokes H. L. B. 605-6, and *Bhyah Ram Sing* v. *Bhyah Ugur Sing.* (*a*)

From this passage the following conclusions may be drawn: (*b*)

1. Vijñâneśvara supposes the Sapiṇḍa-relationship to be based, not on the presentation of funeral oblations, but on descent from a common ancestor, and in the case of females also on marriage with descendants from a common ancestor.

2. That all blood relations within six degrees, together

(*a*) 13 M. I. A. p. 380.

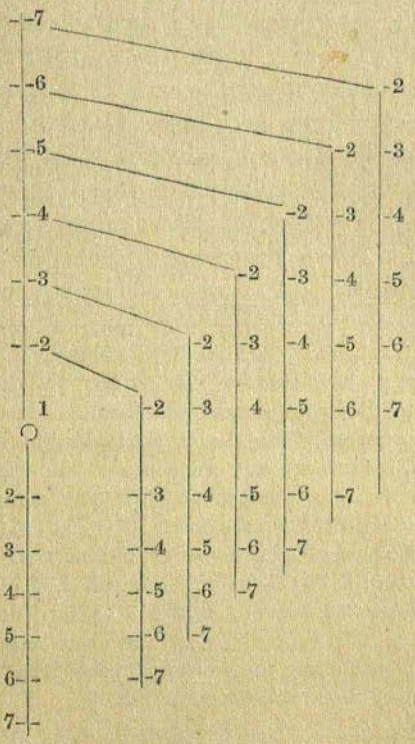
(*b*) See *Amrita Kumari Debi* v. *Lakhinarayan*, 2 Beng. L. R. 3 F. B. R. *See* also Coulanges La Cité Antique, 64. Mitramisra says the capacity to present oblations is not the sole source of a right to inherit, otherwise younger sons would be excluded by the eldest. It gives only a preference, he says, to those who have the right amongst the Gotrajas. Vîram., Tr. p. 91. At p. 196 ff. he adopts Vijñâneśvara's order of succession amongst the Gotrajas though he admits a difficulty as arising from the Vedic text referred to below. As to impurity arising from the death of Sapiṇḍas, and the extent of the Sapiṇḍa connexion, *see* Baudhâyana, Pr. 1, Adhy. 5, Kâṇḍ. 11, Sûtra 1-27.

with the wives of the males amongst them, are Sapiṇḍa-relations to each other. (*a*)

The bearing of these points on the definition of the "Gotraja-Sapiṇḍas," as well as on the interpretation of the passage referring to their rights of inheritance, is obvious. It appears that the series of heirs given there is not exhaustive, and that the term "Gotraja-Sapiṇḍas" designates, if applied to males only, all those who are blood relations within the sixth degree, and who belong to one family, *i. e.* bear one name. If this inference is accepted, all these persons are entitled to inherit according to the passage of the Mitâkharâ given above. (*b*)

(*a*) See *Lakshmibái* v. *Jayaram Hari et al.*, 6 Bom. H. C. R. 152 A. C. J.; and *Lallubhái* v. *Mánkuverbái*, I. L. R. 2 Bom. 388.

(*b*) The following table will serve to show the extent of the Gotraja-Sapiṇḍa relationship, as far as the males are concerned:—



The only remaining question is, in which order the Gotraja-Sapiṇḍas, who are not mentioned in the Mitâkṣharâ, are to be placed. The principle suggested by Mr. Harrington, namely, to continue each line of heirs down to the seventh person, and thus to allow, first the brother's descendants to inherit, next the paternal uncle's descendants, and so on, can easily be carried out in the case of the paternal uncle's line and those descended from the sons of remoter ancestors. But it is impossible to allow the brother's grandsons, great-grandsons, and remoter descendants to inherit before the paternal grandmother, since the right of the latter to succeed immediately after the brother's sons is clearly settled, not only in the Mitâkṣharâ, but in all the law books of the Benares Schools and in the Mayûkha. (*a*) Besides, under this arrangement, the remoter descendants of the deceased himself, as great-great-grandsons, who possibly might be in existence at the great-great-grandfather's death, would be lost sight of altogether. In order to provide for the rights of these persons, who undeniably have a right to inherit, they might either be considered as co-heirs with the descendants of the paternal uncle, who are equally distant from the deceased, according to the principle apparently approved by the Vyavahâra Mayûkha, or placed after the paternal grandmother, and before the paternal grandfather, viz., 1, paternal grandmother; 2, deceased's great-great-grandsons, or

(*a*) *See* Colebrooke, Mit. p. 349; Stokes, H. L. Books, p. 446; Vyav. May. p. 106; Stokes, H. L. B. 88. So also Viśveśvara in the Subodhini adds to the words "on failure of the father's line," the following comment, "the line of the father (must be understood to) end with the brothers and their sons." In Madras the collateral succession of Gotrajas stops with the grandson, in Bengal with the great-grandson of the ascendant. *See* Nort. L. C. 581. But the doctrine above set forth is recognized as that of the Mitâkṣharâ, *T. Jibnath Sing* v. *The Court of Wards*, 5 B. L. R. 443; *Bhyah Ramsing* v. *Bhyah Ugur Singh et al.*, 13 M. I. A. 373. The Smṛiti Chandrikâ, Ch. XI. Sec. 5, para. 9 ss, limits the succession to the (collateral) descendants, excluding the ascendants, except as themselves descendants, from those still higher in the line.

remoter descendants to No. 7, if living; 3, brother's grandsons, brother's great-grandsons, brother's great-great-grandsons and their sons; 4, paternal grandfather. The second arrangement seems to be the more satisfactory, as it follows the principle indicated by the Mitâkshará, that the succession is to go to the direct and the several collateral lines, after providing for the grandmother conformably to Manu's text in her favour, in the order in which they branch from the common stem. That the ascending line should thus be resorted to in the person of the grandmother, then immediately abandoned for remote lineal descendants of the propositus and his brothers, and afterwards recurred to in the person of the grandfather, may seem a rather arbitrary arrangement. It arises from Vijñáneśvara's endeavour, consistently with the recognized principle of the Mimańsa philosophy of giving some effect, if possible, to every sacred text, to work the rule of Manu into the scheme of Yâjñavalkya, if not according to its obvious sense, yet in some sense though an entirely forced one. (*a*)

The distinction between the whole-blood and the half-blood observed in the case of brothers and their sons does not extend to the descendants of the grandfather and remoter ascendants. The fifth in descent from a common ancestor but of the half-blood succeed in preference to the sixth in descent though of the whole-blood. (*b*)

As regards the female Gotraja-Sapiṇḍas, who occupy the next division (I. B. b.), their right to inherit is still less generally recognized than that of the males.

a. According to the doctrines of the Bengal and the Madras school of lawyers, as represented by Jîmûtavâ-

(*a*) *See* Index, Interpretation; Muir's Sans. T. III.; 98 Weber's Hist. In. Lit. 239; M. Müller's Sans. Lit. 78; Burnell's Varadrâja, Pref. p. xiv.; Manu II. 10, 14; IV. 30; and XII. 108. The scriptures were to be literally accepted and yet to be construed by learned Brahmans according to the philosophy in vogue at the time of the compilation of the last named work.

(*b*) *Sámat* v. *Amrá*, I. L. R. 6 Bom. 394.

hana (*a*) and the Smriti Chandrikâ, females are in general incapable of inheriting, and this disability can be removed only by special texts of the Dharmaśâstras. The authority for this view is Baudhâyana, the reputed founder of one of the schools of the Black Yajurveda, who, in his turn, quotes a passage of his Veda to support his opinion. He says, Praśna II. k. 2:—

"A woman is not entitled to inherit; for thus says the Veda, females and persons deficient in an organ of sense (or a member) are deemed incompetent to inherit."

The meaning assigned by Baudhâyana to the Veda passage is by no means the only one in which it can be taken. Vidyâraṇya, in his commentary on the Taittirîyaveda, explained it, as Mitramisra (Viram. *f.* 209, p. 1, l. 10, p. 671, Calc. Edn. of 1875) says, in a different way, so that it would have no reference to inheritance. (*b*)

(*a*) Colebrooke, Dâya Bhâga, p. 215; Stokes, H. L. Books, pp. 345, 346.

(*b*) It may be translated thus:—"Women are considered disqualified to drink the Soma juice, and receive no portion (of it at the sacrifice)." *See* the Mâdhavya, p. 33, Burnell's Translation; Vîram. Tr. pp. 174, 175. Jagannâtha says (Coleb. Dig. B. V.T. 397, Comm.) that "dâya" = oblation and "dâyâda" = a sharer of an oblation offered to him in common with others. He points out also that Kulluka's Commentary on Manu IX. 186, 187, shows that the latter text would be inoperative, if restricted to males, and with reference to the text of Baudhâyana, that "a wife must be considered a Sapiṇḍa, because she assisted her husband in the performance of religious duties." Jagannâtha admits the paternal great-grandmother by analogy notwithstanding Baudhâyana's excluding text. Coleb. Dig. Bk. V. T. 434, Comm. "According to the received doctrine of the Bengal and Madras Schools, women are held to be incompetent to inherit, unless named and specified as heirs by special texts. This exclusion seems to be founded on a short text of Baudhâyana, which declares that 'women are devoid of the senses, and incompetent to inherit.' The same doctrine prevails in Benares; the author of the Vîramitrodaya yields, though apparently with reluctance, to this text. (Chap. III., part 7.) The principle of the general incapacity of women for inheritance, founded on the text just referred to, has not been adopted in

But whatever may be the respective philological value of these different comments, Baudhâyana's explanation has long ago become law in the East and South of India, and there accordingly those females only inherit who are specially mentioned in the texts of the law books. (*a*)

b. The question is, however, whether this doctrine prevails also in this Presidency, where the Mitâkshará and the Mayûkha are the ruling authorities. The following considerations seem to furnish an answer to it:—

Firstly, the text of Baudhâyana, or the principle that women are in general incapable of inheriting, is adopted neither in the Mitâkshará nor in the Mayûkha.

Secondly, the Mitâkshará mentions the great-grandmother's right to inherit, and indicates that the wives of the other ancestors in the direct line, up to the seventh degree, likewise succeed to the estate of their descendants, though *none* of them is provided for by special texts. (*b*) They

Western India, where, for example, sisters are competent to inherit. That principle, therefore, does not stand in the way of the widow's claim in the present case." Privy Council in *Lulloobhoy Báppoobhoy* v. *Kássibái*, L. R. 7 I. A. at p. 231.

(*a*) The Vîramitrodaya, after showing that the objections raised to Vijñáneśvara's doctrine by the Smṛiti Chandrikâ (Chap. XI., Sec. 5) are unsustainable upon the grounds taken by Devânḍa Bhaṭṭa, and charging Jimûtavâhâna with inconsistency in contending that Yâjñavalkya's text is meant to exclude female Sapiṇḍas (as wives or daughters-in-law of ascendants and collaterals sprung from them), while he employs it to determine the right of the paternal grandmother (Dâya Bhâga, Chap. XI., S. 4. paras. 4-6, compared with S. 6, para. 10), finally itself pronounces Vidyâraṇya's explanation of the Vedic text an insufficient basis for female inheritance as not affording room for a proper application, by way of disparagement of woman's capacity, of the word "adâyâda," "shareless." *See* the Vîram. p. 671, Calc. Edn. of 1875, Transl. p. 198, and as to Jimûta.'s meaning, Coleb. Dig. Bk. V. T. 434, Comm.; Smṛiti Chandrikâ, Chap. XI. S. 5, para. 15.

(*b*) See *Lakshmibái* v. *Jayram Hari et al.*, 6 Bom. H. C. R. 152 A. C. J. *See* also Coleb. Dig. Bk. V. T. 397, Comm. *ad fin.*, and T. 434, 370; also Comm. on T. 434.

inherit therefore merely by virtue of their relationship as Gotraja-Sapiṇḍas. Hence it follows that the Mitâkshará does not recognise the doctrine of the Bengal and Southern schools, and there is consequently no reason why, according to its doctrine, the female Gotraja-Sapiṇḍas, whom it does not mention, should be excluded from inheriting, if the males, who stand in the same position, are allowed to do so. Moreover, one of the commentators on the Mitâkshará, Bâlambhaṭṭa, expressly mentions the right of a pre-deceased son's widow, (*a*) whom he places immediately after the paternal grandmother, and says that the word Sapiṇḍa must be everywhere interpreted as including the males and females. (*b*) Nîlakaṇṭha likewise adopts in this respect the same view as the Mitâkshará, as he makes the sister inherit

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(*a*) A case at 2 Borr. 670 (*Roopchund* v. *Phoolchund et al.*) places a daughter-in-law before a divided brother, but this seems wrong. She is excluded by a daughter, 2 Macn. 43. In *Bái Gungá* v. *Bái Sheokoovur*, Sel. Cases at p. 85, the Śâstri, after pronouncing against the validity of the adoption of a daughter's son, prefers the daughter-in-law to the daughter as heir, with a restriction on the power of alienation during the daughter's life. This opinion was acted on by the Zilla Judge and the Saddar Court. It is questioned in *Lalloobhoy* v. *Kássibái*, L. R. 7 I. A. at p. 220.

(*b*) Viśveśvara, in his discussion on the rights of the paternal grandmother, says that there is no objection to understand the word 'Gotrajas' in the sense of 'male and female Gotrajas.' The Vaijayanti also, a Commentary on Vishṇu, referred to by Colebrooke, 2 Str. H. L. 234, recognizes a right of representation in the son's widow. In *Rany Pudmavati* v. *Baboo Doolar Sing*, 4 M. I. A. 259, grandsons of a common ancestor were held, under the Mithila law, entitled to succeed before the widow of deceased's brother, his nieces, or their sons, but this would not be so in Bombay where the widow being the last representative of a line takes before a remoter line is resorted to. *See* below and comp. Tupper's Panj. Cust. Law, vol. II. p. 148, where the widow of a collateral ending a branch or sub-branch takes the share that would have fallen to her husband had he been alive. The widow of a pre-deceased grandson takes before the daughter of a predeceased son, *Musst. Brijimalee* v. *Musst. Pran Piaree et al.*, 7 C. S. D. A. R. 59.

as *the first and nearest amongst the Gotraja-Sapiṇdas* unaided by special texts. (*a*)

c. But though both the principal authorities thus repudiate the doctrine of Baudhâyana, and allow females to inherit as Gotraja-Sapiṇdas, they differ as to the question what females fall under this designation.

The Mitâkshará and its followers seem to interpret the term "Gotraja" (="of" or "born in the family") as "belonging to the family." For we read, Mitâkshará Vyav. *f.* 58, p. 2, l. 13:—

"The kinsmen sprung from the same family as the deceased (Gotraja-Sapiṇdas), namely, the grandfather and the rest inherit the estate. For the Bhinnagotra-Sapiṇdas are included by the term (Bandhus)."(*b*)

The word samânagotra, 'belonging to the same family,' is substituted for "gotraja." See *infra*, quotation in Bk. I. Ch. II. Sec. 14, I. A. 3, Q. 1.

The substitution of samânagotra for gotraja, as well as the employment of bhinnagotra to designate the opposite of the term, both show that Vijñâneśvara took gotraja in the sense of "belonging to the same family." If the term has this meaning, it would follow that no *married daughters* of ascendants, descendants, or collaterals can inherit under the text which prescribes the succession of the Gotrajas. For the daughters by their marriage pass into another family, or, as the Hindû lawyers say in their expressive language, "are born again in the family of their husbands." But it seems improbable that even unmarried daughters of Gotraja-

(*a*) Vyav. May. Chap. IV. Sec. 8, p. 20; Borradaile, p. 106; Stokes, H. L. B. 89. In a Madras case the Privy Council say, "His sisters, if they had a remote right to succeed as Bandhus.....could only so succeed after the Sapiṇdas.....had been exhausted." See *V. Venkata Krishna Rao* v. *Venkatrama Lakshmi et al.*, In. L. R. 1 Mad. 185; S. C. L. R. 4 I. A. at p. 8.

(*b*) Stokes, H. L. B. 446; and Mit. *ibid.* 1, 15 (Stokes, H. L. B. 447).

Sapiṇḍas can inherit under the text mentioned. (*a*) For, though they belong to their father's gotra up to the time of marriage, they *must* leave it, under the Hindû law, before the age of puberty; and consequently by their succeeding to the estate of Sapiṇḍas belonging to their fathers' families, the object of the law, in placing Sagotra-Sapiṇḍas before the Bhinnagotra-Sapiṇḍas, namely, the protection of the family property, would be defeated, since such property, through them, would pass into their husbands' families. The quitting of the paternal family by a girl is looked on as so inevitable that it is made a ground for exempting her from sharing her father's loss of caste with her brothers, because she goes to another family. (*b*) It seems therefore more in harmony with the principles on which the doctrines of the Mitâkshará are based, to exclude even unmarried daughters of Gotrajas. (*c*) The only females, who can be understood

(*a*) Compare Manu II. 67, 68. Compare also Coulanges La Cité Antique, 51. Colebrooke, Dig. Bk. V. T. 183, speaks of a second birth by investiture and other ceremonies.

(*b*) Vîramit., Transl. p. 254.

(*c*) Bâlambhaṭṭa admits the rights of inheritance of sisters, sisters' daughters, and daughter's daughters. But he does not consider them to be included by the term Gotraja-Sapiṇḍa, but by the words "bhrâtarah," "brother," and "dauhitra," "daughter's son," and "tatputra," his (her) sons, in Yâjñavalkya's text. Stokes, H. L. B. 443. *Thakoorain Sahiba et al.* v. *Mohun Lall et al.*, 11 M. I. A. 402. Sisters' inheritance does not follow the analogy of daughters'. If any analogy is to be recognized it is to the case of brothers, *Bhágirthibái* v. *Báyá*, I. L. R. 5 Bom. 264. *See* however the Chapter on Strîdhana. The Smṛiti Chandrikâ excludes the daughter of the grandfather and of other ascendants from amongst Gotrajas on the ground that the form of the word, as derived from a combination of masculine terms, must primarily be taken to indicate only males. Smṛiti Chandrikâ, Ch. XI. S. 5, p. 2. On a similar construction sisters and their sons are excluded. *See* Smṛiti Chandrikâ, p. 191. Devâṇḍa takes *Gotrajah* as meaning sprung from the family, p. 192, and hence as a reason for excluding the grandmother from succession after nephews, except under the special texts in her favour, p. 184 ss.

by the term Gotraja-Sapiṇḍa, are the wives and widows of the male Gotraja-Sapiṇḍas.

Nîlakaṇṭha, on the other hand, takes 'gotraja' in the sense of 'born in the family,' and declares expressly that the 'sister' inherits for this reason. (*a*) He does not mention the paternal great-grandmother, nor the widows of other Gotrajas in his list of heirs. But it is not clear whether he intends to exclude them, as, according to Hindû ideas, a wife may be said to have been born again in the family of her husband, and he, as we have seen, admits the theory of a sapiṇḍa connexion by particles. He would, consistently with the principle on which he assigns her place to the sister place the daughters of male Gotraja-Sapiṇḍas amongst the heirs bearing this name; but this logical extension of his doctrine does not seem to have been generally accepted into the local law. Except for sisters it may be taken that the Mitâkṣharâ law prevails. (*b*)

The Śâstris have in their answers, except in the Gujarât cases relating to the sister, generally followed the Mitâkṣharâ. They prefer the sister-in-law to the sister's son (Bhinnagotra-Sapiṇḍa) and to a male cousin and more distant male Sagotra-Sapiṇḍas, (*c*) the paternal uncle's widow to the

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See Introductory Remarks to Bk. I. Chap. II. Section 15. At 2 Str. H. L. 243, Colebrooke says that commentators on the Mitâkṣharâ admit sisters, but that this view is controverted. Sutherland says that he inclines to the view that the sister is excluded. Remarking on Manu IX. 185, Collett, J., says, in a Madras case, that the plural *bhrâtara* is used, and that Prof. Wilson allows the plural masculine to include only males, though the dual *bhrâtarau* may include females.

(*a*) *See* Vyav. May., Borradaile, p. 106; Stokes, H. L. Books, p. 88.

(*b*) See *Lallubhâi* v. *Mánkuvarbái* above, p. 2 (*g*), *Daya Bechur et al.* v. *Bái Ladoo*, S. A. No. 158 of 1870, decided on 27th March 1871, Bom. H. C. P. J. F. for 1871; also Sec. 15, B. II. (2) below. In S. A. No. 158 of 1870, it was held that the paternal aunt could not, even in Gujarât, be recognized as a Gotraja-Sapiṇḍa, though she was entitled to a place as a Bandhu.

(*c*) *See* Sec. 14, I. B. *b*. 2.

sister, the maternal uncle, and the paternal grand-father's brother; and they allow a daughter-in-law (*see* Chap. IV. B., Sec. 6, II. *f.*) and a distant Gotraja-Sapiṇḍa's widow to inherit. It is, however, sometimes impossible to bring the authorities which they quote into harmony with their answers.

From their answers as well as on account of the general principle that "the nearest Sapiṇḍa inherits," (*a*) it would appear that the place of the widows of descendants and collaterals in the order of heirs is immediately after their husbands, (*b*) at least where the particular branch to which they belong is not lineally represented by a surviving male. (*c*)

It is on this analogy probably that the Śâstri has grounded his erroneous answer to Chap. II., Sec. 7, Q. 16.

Regarding the Samânodakas, who occupy the next division, it may suffice to remark that according to the principles of interpretation adopted by Vijñâneśvara in regard to the passage on Sapiṇḍa-relationship, they must be understood to comprise the male ascendants, descendants, and collaterals, beyond the sixth and within the thirteenth degrees, together with their wives or widows, or all those persons who can furnish a satisfactory proof of their descent from a common ancestor. The order of their succession also must be regulated by the same principles as that of the Sapiṇḍas.

(*a*) *See* Vyav. May. p. 106. See *Lakshmibái* v. *Jayrám Hari et al.* 6 Bom. H. C. R. 152 A. C. J.

(*b*) *See* Bk. I. Chap II. Sec. 8, Q. 2. The widow of a brother's son was preferred to another brother's great-grandson in succession to a widow as to property inherited by her from her husband. *Dhoolubh Bhaee et al.* v. *Jeevee*, 1 Borr. 75.

(*c*) See *Lallubhái* v. *Mánkuvarbái*, above p. 2 (*g*).

§ 3 *B.* (15) GOTRAJA-SAMÂNODAKAS.—*On failure of Gotraja-Sapiṇḍas, the Gotraja-Samânodakas inherit the estate of a separate householder. Gotraja-Samânodakas are all the male descendants, ascendants, and collaterals, within* 13 *degrees, together with their respective wives; or according to some, all persons descended from a common male ancestor, and bearing the same family name. The Samânodakas inherit, like the Sapiṇḍas, according to the nearness of their line to the deceased.*

AUTHORITIES.

See Book I., Chap. II., Sec. 14, II., Q. 1.

"Samânodaka" means literally participating in the same oblation of water. Another form of the name for these kinsmen is "*Sodaka.*"

§ 3 *B.* (16) BANDHUS.—*On failure of Samânodakas, the estate of a separate householder descends to the Bandhus or Bhinnagotra-Sapiṇḍas (Sapiṇḍa-relations, not belonging to the same family as the deceased). The latter term includes—*

1. *The father's sister's sons,*
2. *The mother's sister's sons,*
3. *The maternal uncle's sons,*
4. *The father's paternal aunt's sons,*
5. *The father's maternal aunt's sons,*
6. *The father's maternal uncle's sons,*
7. *The mother's paternal aunt's sons,*
8. *The mother's maternal aunt's sons,*
9. *The mother's maternal uncle's sons,*
10. *All other Sapiṇḍa relations who are not Gotrajas, according to the definition given above. These take in the order of their nearness to the deceased.*

AUTHORITIES.

See Book I., Chap. II., Sec. 15, A. 1, Q. 1, and B. 2, Q. 1; Vasiṣṭha IV, 18.

The rule as to the nine specified bandhus may be expressed thus:—A man's own bandhus are the sons of his paternal aunt and of his maternal aunt and uncle. The same relatives of his father are *his* bandhus. The same relatives of his mother are *her* bandhus. (*a*) They succeed in the order in which they have been enumerated. *See* Vyav. May. Chap. IV., Sec. VII., pl. 22.

The chief reason for which we hold that all the Bhinnagotra-Sapiṇḍas inherit under the law of the Mitâkshârâ, is that Vijñâneśvara declares "the Bhinnagotra-Sapiṇḍas (or Sapiṇḍas who are not Gotrajas, *i. e.* who do not bear the same family name) *to be understood by the term Bandhu* (bhinnagotrânâñ sapiṇḍânâñ bandhuśabdagrahaṇât). Against this it must not be urged that the opinion stands in contradiction to the enumeration given in Mit. Chap. II., Sec. 6 (Colebrooke), as this enumeration most likely is only intended to secure a preference for the nine Bandhus named there. (*b*) For Hindû lawyers are by no means so accurate that they would hesitate to divide an explanation which ought to stand in one particular place, and to give it in two passages.

But a further proof that it is correct to combine the two passages, Mit. Chap. II., Sec. 5, paras. 3 and 6, is contained in the circumstance that Vijñâneśvara takes the words "bandhu" and "bandhava" in all the passages of Yâjñavalkya, where they occur, in a general sense, viz. of relations in general, or relations on the mother's and father's side, or relations on the mother's side only.

Finally, Vijñâneśvara himself states, in the passage *on the succession to a deceased partner in business*, that the Bân-

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(*a*) It will be observed that "aunt" and "uncle" in the list mean aunt and uncle by blood, not merely an uncle or aunt by marriage.

(*b*) It was perhaps originally, by counting five steps, intended to mark the extreme limits of the bandhu relationship, confining rights of inheritance. *See* note (*b*) next page.

dhavas include the *maternal uncle*, one of those Bhinnagotra-Sapiṇdas who had not been named by him in Chapter II., Sec. 6. As this passage is of great importance for other questions also, connected with the law of inheritance, we give it here in full:—

Yâjñ.—If (a partner in business) proceeded to a foreign country and died (there), his (nearest) heirs (sons, &c.) his relations on his mother's side (bândhavâh), or his Sapiṇḍa relations, or those (partners of his) who have returned (from their journey) shall take his estate; on failure of (all) these the king.

Mitâksharâ—

When amongst partners one proceeded to a foreign country and died, then near heirs (*a*) (dâyâda), the sons and other descendants; the cognates (bândhavâh) the relations of his mother, the *maternal uncle* and the rest; or the gentiles (jñâtayah) the blood relations (sapiṇḍah) not included among the descendants (*b*) or those who have come (âgatâh), the partners in business who have returned from the foreign country; or also these may take his property.

On failure of them, *i.e.* on failure of the near heirs and the rest (dâyâdâdi), the king shall take it.

And by the word "or" he (Yâjñ.) indicates that the right of the near heirs and the rest is contingent (*i.e.* that not all inherit together). The rule however regarding the order of succession, which has been given above (Chapter II., Sec. 1, para. 2) in the text, as to the wife, daughters, &c., applies also here. The object for which this rule (regarding the

(*a*) Regarding the use of dâyâda in the sense of son and nearest relations, *see* the Petersburg Dictionary, s. v.

(*b*) Here, as in other passages, Vijñâneśvara uses the word Sapiṇḍa in the sense of Sagotra-Sapiṇḍa, blood relations bearing the same family name. As to the order of succession amongst the Bandhus *see* Book I. Ch. II. § 15, Introductory Remarks 5, and notes.

succession to a deceased partner in business) has been given, is to forbid (the succession) of pupils, of fellow-students, and of the Brâhmin community, and to establish (in their stead the succession of) merchants (partners). Amongst the merchants, he who is able to perform the funeral oblations, to pay the debts (of the deceased), &c., shall take (the estate). But if all are equally able (to fulfil the conditions mentioned), all the merchants who are partners shall have it. On failure of them the king himself shall take it, after having waited ten years for the arrival of the (near) heirs and the rest. Just this has been distinctly declared by Nârada (Sambhûyasamutthâna), vs.:—

"15*b*. But on failure of such (partners), the king shall protect it well for ten years."

"16. After it has remained without owner for ten years and if no heir has appeared (within that time), the king shall take it for himself. By acting thus the law is not violated."

"7. If (among partners) one die, an heir (dâyâda) shall take his (estate), or some other (partner) on failure of heirs, if he be able (to perform the funeral oblations, &c.), (or) all of them (shall share it)."

According to Vijñâneśvara, the meaning of this verse of Yâjñavalkya is, that the sons, sons' sons, and the rest of the heirs, specially enumerated in Mit. Chap. II., Sec. 1, para. 2, the Gotraja-Sapiṇḍas, the Bândhavas or Bandhus, partners in business, or, on failure of all these the king, shall inherit the estate of a partner in business deceased in a foreign country, and *he states distinctly, that* the *maternal uncle* who had *not been named in Section 6, inherits as Bandhu.* The irresistible conclusion to be drawn from this statement, as well as from the words quoted above from Mit. Chap. II. Sec. 5, para. 3, is that the enumeration of the Bandhus given in Section 6 is not intended to be exhaustive, any more than in the case of the Gotraja-Sapiṇḍas. But if this enumeration is not exhaustive, then clearly all those Sapiṇḍas must be

understood by this term who were not included among the Gotrajas. This view has been adopted by the Privy Council in *Gridhari Lall Roy* v. *The Bengal Government*, (*a*) reversing the decision in *Government* v. *Gridhari Lall Roy*. (*b*).

See on the same subject the Introductory Remarks to Book I., Chap. II., Sec. 15.

According to the definition of the word Sapiṇḍa, and according to that of Gotraja-Sapiṇḍa, given above pp. 122-3, the following persons are Bhinnagotra-Sapiṇḍas :—

1. Daughters of descendants and collaterals within six degrees.
2. Descendants of a person's own daughters and of those persons expressly mentioned within four degrees of such persons respectively, *e.g.* a grand-daughter's grandson, but not the great-grandson, since Sapiṇḍa-relationship through females is restricted to four degrees.
3. Maternal relations within four degrees, *see* table, Bk. I., Chap. II., Sec. 15.

[On failure of sons and brothers united and separated, the succession goes to the parents separated, and then to the wife according to the Vîramitrodaya, Transl. p. 204, which assigns the next place to the sister and then brings in the Sapiṇḍas and Samânodakas, p. 216.] (*c*)

§ 3 *B.* (17) SPIRITUAL RELATIONS.—*On failure of Bandhus a preceptor, on failure of him a pupil, and on failure of him a fellow-student, inherit the property of a separate householder of the Brâhman caste.*

AUTHORITIES.

Mit. Chap. II., Sec. 7, paras. 1 and 2 ; Vyav. May. Chap. IV., Sec. 7, paras. 24 and 25.

(*a*) 12 M. I. A. 448. (*b*) 4 C. W. R. 13.
(*c*) *See* the Vîramitrodaya, Transl. p. 206 ss.

§ 3 *B.* (18) THE BRÂHMAN COMMUNITY.—*On failure of a fellow-student, learned Brâhmans (Śrotriyas), on failure of them other Brâhmans, take the estate of a separate householder of the Brâhman caste.*

AUTHORITIES.

Mit. Chap. II., Sec. 7, paras. 4 and 5; Vyav. May. Chap. IV., Sec. 8, paras. 25 and 26.

For the point that this succession is restricted to the property of a Brâhman, *see* the passage from Vijñâneśvara, translated above p. 135, where no mention is made of the Brâhman community by Yâjñavalkya, and the Mitâkshará expressly excludes it from succession to a trader.

This succession has been disallowed by the English Courts. *See* Stokes, Hindû Law Books, p. 449, note *a*, and *The Collector of Masulipatam* v. *Cavaly Vencata Narainappa.* (*a*)

§ 3 *B.* (19) THE PARTNERS IN BUSINESS OF A BANYA.—*On failure of Bandhus, partners in business take the estate of a Banya.*

(*a*) 8 M. I. A. 520. The succession of the caste on failure of other heirs is not provided for except in the case of Brâhmans. In their case it rests perhaps on an idea of dedication in grants to a Brâhman, so that resumption would be a kind of sacrilege, and property once given must in case of need pass *cy près* to other Brâhmans who have moreover a kind of spiritual title to the world and all that it contains (Col. Di. Bk. II. Ch. II. T. 24; Manu VIII. 37, VII. 33). But tribal succession is found in many districts on the Northern frontier of India where any tribal organization has been preserved, and was probably at one time general amongst the indigenous tribes (*see* Panj. Cust. Law, vol. II. p. 240, etc.) It may be traced to tribal distribution of the whole or of part of the tribal lands to individual members, of which many instances occur; *ib.* pp. 254, 214, and vol. I. pp. 93, 94. *See* also Mr. Chaplin's Report on the Dekkhan, Rev. and Jud. Sel. vol. IV. pp. 474, 475; and comp. Arist. Pol. IV. (VII.) Ch. X, and Bolland and Lang's Edn. Introd. Chs. IV. and XIII.

AUTHORITY.

Mitâksharâ quoted above p. 135.

§ 3 *B.* (20) THE KING.—*On failure of a fellow-student, the king takes the estate of a separate householder or temporary student of the non-Brâhminical castes, with the exception of that of a merchant, which escheats on failure of partners only, and after a lapse of ten years.*

AUTHORITIES.

Mit. Chap. II., Sec. 7, p. 6, and Mit. quoted above.

Failing other heirs the State takes the property even of a Brâhman by escheat, subject to the existing trusts and charges. (*a*)

The Crown desiring to take an estate by escheat must show an entire failure of heirs. (*b*)

As only his own offspring become joint-owners with a man by their birth, the title of a remote heir cannot prevail against his bequest of his separate property (*c*) though acquired by a partition, and so held as under the former title, contrary to 1 Strange, H. L. 26, 2 *ib.* 12, 13, but agreeing with Colebrooke, *ib.* 15; *see* Book II., Ch. I., Sec. 2, Q. 8.; *infra* Bk. II., Ch. I., S. 2, Q. 8.

(*a*) *The Collector of Masulipatam* v. *C. Vencata Narrainappah*, 8 M. I. A. 500.

(*b*) *Gridhari Lall Roy* v. *The Bengal Government*, 12 M. I. A. at pp. 454, 469.

(*c*) *Bhika* v. *Bhana*, 9 Harr. R. 446; *Narottam* v. *Narsandás*, 3 Bom. H. C. R. 6 A. C. J.; *Baboo Beer Pertab Sahee* v. *Maharajah Rajender Pertab Sahee*, 12 M. I. A. 1; *Tuljarám Morárji* v. *Mathurádás and others*, I. L. R. 5 Bom. at p. 668.

§ 3 *C.*—SUCCESSION TO A SAṂSṚISHṬÎ.

(I.) Sons, Sons' Sons, &c.—*Sons, sons' sons, and their sons inherit the estate of a Saṁsrishṭi or reunited coparcener,* per stirpes, *provided they live united with their fathers, or have been born during the time that their fathers were reunited. The rules regarding adopted sons* (*p.* 71) *and a Śûdra's illegitimate son* (*p.* 72) *apply likewise in the case of a united coparcener. Posthumous sons also inherit.*

AUTHORITIES.

Mit. Chap. II., Sec. 9, paras. 1 and 4; Stokes H. L. B. 452.

Reunion may take place, according to the Mitâkshará, with a father, a brother, and a paternal uncle (Chap. II., Sec. 9, para. 2), by their again mixing up their effects after a division between them has taken place. The Vyav. May. allows reunion between all such persons as at some time or other have been coparceners (avibhakta). (Vyav. May. Chap. IV., Sec. 9, para 1.) *See* also the Vîramitrodaya, Transl. p. 205.

As the Mitâkshará states that the Rules of Sec. 9 form exceptions to those given in Chap. II., Sec. 1, regarding the succession of the wife, &c., it follows that all the rules on the apratibandhadâya, the unobstructed inheritance, remain in force, and that consequently reunited sons, sons' sons, sons' sons' sons, adopted sons, and the Śûdra's illegitimate son, inherit the estate of their ancestors, if they are united or reunited with them. A new family, in a general sense, is set on foot, and the rules applicable to a joint family apply amongst its members, though with some exceptions, arising from the consanguinity of those excluded from the reunion, which will be presently noticed.

According to the Subodhinî, sons who are not reunited with their fathers, nevertheless receive a share of the estates of the latter. (Mit. Chap. II., Sec. 9, para. 9, *note.*)

According to the Mayûkha also, unreunited sons take the estates of their father, except in the case where some sons are reunited with him. Then the latter have the preference. (Vyav. May. Chap. IV, Sec. 9, para. 16.)

§ 3 *C.* (2.) REUNITED COPARCENERS.—*On failure of his issue, the reunited coparceners inherit the estate of their coparcener. But if amongst those thus reunited there be brothers born from different mothers the reunited brothers of the whole blood take the whole of their reunited full brother's estate. If among full brothers one is reunited with a half brother and another not, on the death of the reunited brother the reunited half-brother and the unreunited full-brother share his estate equally.*

AUTHORITIES.

Mit. Chap. II., Sec. 9, paras. 2, 5, seq. and 11.

According to the Subodhinî, a father, whether reunited or not, shares the estate of his son (*see* Mit. l. c. para. 9, *note*), and a son, though not reunited, shares the estate of the father with a son united or reunited, but this seems inconsistent with Mit. Chap. I., Sec. 6, p. 4.

According to the Vyav. May.:—

1. The parents have a preference before other reunited coparceners, excepting sons (Vyav. May. Chap. IV., Sec. 9, paras. 17, 18).

2. Other coparceners standing in an equal relation share the estate of a childless coparcener equally (Vyav. May. l. c. para. 19); but the whole-brother takes in preference to the half-brother. (*Ibid.* para. 8.)

3. Unreunited full brothers share the estate of a full brother who was reunited with half-brothers or remoter relations, together with the reunited relations. (Vyav. May. l. c. para. 20.)

4. In case of the reunion of a wife alone—there being no other coparceners—she takes the inheritance of her reunited husband; on failure of her, a daughter and a sister, on failure of them, the nearest Sapiṇḍa. (Vyav. May. l. c. paras. 21–25.)

It is difficult to understand how a reunion with a wife can take place, since according to Âpastamba II., 6, 14, 16 seq. no division can take place between a husband and wife. No such partition is known in actual practice at the present day, and Nîlakaṇṭha's rule may be regarded as merely speculative, resting perhaps on an analogy to the passage of Âpastamba (*a*) which calls a woman's own property her share in an inheritance. The rules as to inheritance after partial or complete reunion are complicated through the endeavours of the commentators to give effect to two rules, one in favour of reunited brethren and one in favour of whole-brothers, which, in some cases, clash or overlap. (*b*) The favour shown in a reunited family to the brother of the whole blood rests on rather artificial reasoning, but it may perhaps be traced back to the institution of marriage with wives of different castes and of a patnibhâg or a division in which the shares of each group of sons varied according to the mother's class. The general rule of equal rights on a second partition would deprive the favoured sons of their larger portions, unless thus qualified. But the rule of unequal inheritance does not seem really reconcilable with that of equal partition amongst whole and half-brothers reunited, unless the inherited shares taken by the former are to be regarded as separately acquired property; for which in a united family there seems to be no authority. The contradiction would be most easily avoided by regarding the qualification by whole blood as one not extended in its operation by its happening to coincide in the same person with

(*a*) Transl. p. 134. Comp. Coleb. Dig. B. V. T. 515, Comm.

(*b*) *See* Vîramit. Transl. p. 209.

the capacity arising from reunion. Otherwise Manu's text, IX. 210, might be taken, as proposed by some, only to limit the eldest brother to equality, as opposed to any special right arising from his eldership, while the general rule of partition, instead of absolute equality, would be that of shares proportional to those brought in by the several coparceners at the time of their reunion. (*See* Vyav. May. Chap. IV., S. 9, pl. 2, 3. Vîramitrodaya, Transl. p. 205.) Regard being thus had to the comparative value of the different elements of the reunited estate, it might be extended to supervening inequalities, arising from inheritance *inter se* or acquisitions from without, in the shares of the several members. (*a*)

The practical difficulties in the way of thus dealing with reunited property may be the reason why the people in this part of India (*b*) have been content in practice to abide by the rule in a reunited, as in an unseparated family, of partition giving equal shares to the descendants of each son of the former owner in whom the different lines of ascent coincide, and of survivorship rather than of inheritance, in the English sense, amongst the members of the reunited family down to the moment of defining their rights according to the several branches in making a partition. (*c*)

The Privy Council say that "a member who has separated from a Hindû family and subsequently rejoins it, is remitted to his former status."(*d*) And so too where a

(*a*) In the Multan District a member of a united family even, who has joined his separate acquisition to the common stock, is allowed to withdraw it before partition. *See* Panj. Cust. Law, vol. II. p. 275.

(*b*) *See* too *Huro Doss Dosteedar* v. *Sreemutty Huro Pria*, 21 C. W. R. 30.

(*c*) *See* Chap. II. Sec. 11, Q. 5; *Mohabeer Parshad* v. *Ramyad Singh et al.*, 20 C. W. R. 192, 194; *Gavuri Devamma Gâru* v. *Raman Dora Gâru*, 6 M.H. C. R. 93; and below Book II. Introd. '*The family living in union*,' and *Moro Vishavanath* v. *Ganesh Vithal*, 10 Bom. H. C. R. at p. 461.

(*d*) *Prankishen Paul Chowdry* v. *Mothooramohun Paul Chowdry*, 10 M. I. A. 403.

brother had brought his separate gains into the common stock. (*a*)

According to Bṛihaspaṭi the acquirer in a reunited family of what in a united family would be his separate property obtains only a double share as compared with the other members. *See* Viramit., Transl. 205. This exaltation of the common right in a reunited family is not recognized in practice.

The Viramitrodya (*b*) quotes the Dâyatattwa to the effect that in the case of the reunion of coheirs the extinction of rights over portions and the production of rights over the entire estate are acknowledged; and says of a coparcener that "if reunited, then although his share had been specified, it was lost by the accrual of a common right over again." (*c*)

The widow of a reunited coparcener deceased must be maintained while chaste by the survivors, and also his daughter until provided for in marriage. (*d*)

§ 3 *D.*—HEIRS TO MALES WHO HAVE ENTERED A RELIGIOUS ORDER.

(1.) To a Yati or Sannyâsî.—*The virtuous pupil (and not the relative by blood) of a Sannyâsi is his heir.*

See Book I., Chap. III., Sec. 1, and for Authorities Book I., *loc. cit.* Q. 1, and Sec. 2, Q. 1; Vyav. May. Chap. IV., Sec. 8, para. 28.

Regarding the question—what is meant by the estate of a Yati? *see* Mit. Chap. II., Sec. 8, paras. 7 and 8.

(2.) To a Naishṭhika Brahmachari.—*The preceptor (Achárya) inherits the property of a Naishṭhika-Brahmachari.*

See Book I., Chap. III., Sec. 2, and for Authorities *see* Q. 1.

(*a*) *Rampershad Tewarree* v. *Sheochurn Doss*, 10 M. I A. at p. 506.
(*b*) Trans. p. 40. (*c*) *Op. cit.* p. 164. (*d*) *Op. cit.* p. 205.

HEIRS TO FEMALES.

§ 4 *A*.—To Unmarried Females.

Brothers, and on failure of them, the mother, on failure of her the father, and on failure of him the nearest Sapiṇdas, inherit the property of a girl who died before the completion of her marriage.

See Book I., Chap. IV. A, Secs. 1, 2, 3, and for Authorities *loc. cit.* Sec. 1, Q. 1, and Sec. 3, Q. 1.

Regarding the question—what constitutes the property of an unmarried female, *see* Mit. Chap. II., Sec. 11, para. 30. The inherited property of the betrothed damsel to which as well as to gifts from her own family her brothers are heirs can but rarely be of great value. But the rule given by Vijñâneśvara coupled with the text on which he bases it is important, as it shows that he ranked a heritage in a maiden's strîdhana.

§ 4 *B*.—Heirs to Married Females leaving Issue.

(1) Daughters.—*Daughters inherit the separate property, Strîdhana, of their mothers. Unmarried daughters inherit before married ones, and poor married ones before rich married ones.*

See Book I., Chap. IV. B, Sec. 1, and for Authorities *loc. cit.*, Q. 1 and Q. 13.

The question—what constitutes Strîdhana, the separate property of a married female, as well as its descent, are topics regarding which, as Kamalâkara in the Vivâdatâṇḍava despairingly exclaims, "the lawyers fight tooth and nail," (yatra yuddham kachâkachi). It is impossible to reconcile with each other even the views of those lawyers whose works are the authorities in this Presidency. As pointed out in the Introductory Remarks to Book I., Chapter IV. B, Sec. 6, Nîlakaṇṭha makes a distinction between the pâribhâshika, the sixfold strîdhana proper,

as defined by the law-books, and other acquisitions over which a woman may have proprietary rights. This is the distinction which Nîlakaṇṭha keeps in view when fixing the succession to the estate of a childless married female. But in the case of a married female leaving issue, there is yet a third distinction to be observed. In this case, the following three categories of strîdhana are to be taken into account, and descend each in a different manner:—

a. The Anvâdheya, the gift subsequent to the marriage, and the Prîtidatta, the affectionate gift of the husband, are shared by the sons and the unmarried daughters, small tokens of respect only being due to married daughters, and some trifle to daughters' daughters. (Vyav. May. Chap. IV., Sec. 10, paras. 13–16.)

b. The rest of the pâribhâshika strîdhana, the strîdhana proper, as defined by the law-books (*see* Vyav. May. *loc. cit.* para. 5) descends to the daughters, &c., in the manner described by the Mitâkharâ. (*See* Vyav. May. *loc. cit.* paras. 17–24 especially, regarding the limitations, paras. 18 and 24.)

c. Other acquisitions, as property acquired by inheritance, go to *the sons and the rest.*

The Mitâkharâ, on the other hand, knows of no distinction between pâribhâshika and other strîdhana. Everything acquired by a married female, by any of the recognized modes of acquisition, descends in the same manner to her daughters, daughters' daughters, &c. The views of the High Courts have varied on this subject like those of the commentators. In the judgment of the Bombay High Court, in the case of *Jamiyatrâm and Uttamrâm* v. *Bâi Jamna* (*a*) the following passage occurs:—

"The notion that according to the Mitâkharâ such (immoveable) property (inherited from a sonless husband) forms

(*a*) 2 Bom. H. C. R. 11.

part of the widow's stridhana, and as such goes on her death to her heirs, not to her husband, was founded on a passage of Sir T. Strange (p. 248, 4th ed.), which was itself based on a mistaken reference to the Mitâkshará. The Mit. Chap. II., Sec. 11, cl. 2, undoubtedly classes property acquired by inheritance under the widow's stridhana; but (as pointed out in Devacooverbai's case) clause 4 of the same chapter and section conclusively shows that the words 'acquired by inheritance,' as used in clause 2, relate only to what has been received by the widow from her brother, her mother, or her father, *i.e.* from her own family."

According to this passage, it would seem that, in the opinion of the Court, clause 4 is to be read with clause 2, and intended to restrict the sense of the latter. Though this interpretation of Mr. Colebrooke's version of the Mitâkshará might be possible, still no Sanskritist, who reads the original of the Mitâkshará, will be able to allow, or has allowed, that this was the intention of Vijñáneśvara. Unfortunately Mr. Colebrooke has left untranslated(*a*) two words of the Sanskrit text which head the 4th clause. These are "*yatpunaḥ*," 'but as to (what is said by Manu. . . . . that is intended,' &c.). It is the custom of Hindû scientific writers to indicate by these two words, or others of similar import, that the passage which follows is intended to ward off a possible objection to some statement made by them previously. Now, in this case, Vijñáneśvara had stated, in clause 3, that the term "stridhana" was to be understood according to its etymology, and had no technical (páribhâshika) meaning. The words "yatpunaḥ" (*lit.* "again what") indicate therefore that clause 4 removes a possible objection to clause 3.

The same conclusion indeed follows from a consideration of the general course of the argument. "Stridhana,"

(*a*) Regarding another slight inaccuracy in Colebrooke's translation of Clause 2 of Mit. Ch. II., Sec. XI., *see* below, Book I., Chap. II., Sec. 2, Q. 10.

Vijñâneśvara says, "includes property acquired by inheritance," &c. Such is the real purport (mistaken by some lawyers) of Manu and the rest, for "strîdhana" etymologically means (all) a woman's acquisitions, and this sense being an admissible one, is preferable to a merely technical interpretation. *It is true no doubt* that six sorts of strîdhana are expressly enumerated by Manu, but that is meant not as a restriction to those six, but as a denial only that any of those six are not "strîdhana." He is commenting on the passage of Yâjñavalkya (II., 143, Mit. Chap. II., Section 11, para. 1) which says that a gift, or *any other* separate acquisition, of a woman is termed "strîdhana"; and he contends, in tacit opposition to the Eastern lawyers, that strîdhana is to be taken in the widest sense. It would therefore be a self-contradiction if he wound up this contention by admitting restrictions which it was his very object to combat. "What has been received" in paragraph 4 does not mean "what has been *inherited*." It means, like the passage in Yâjñavalkya, "what was given by the father," &c., and to apply it to the limitation of the phrase "acquired by inheritance" in paragraph 2 involves a serious misconception both of the sense of the Sanskrit text, and of the author's logical method. Take the several paragraphs 2, 3, 4, however, (1) as developing the sense of the Smriti, (2) as supporting this development by a special argument, and (3) as meeting a possible objection to that argument, and all becomes explicable and consistent. The process of reasoning is precisely that which argumentative writers amongst the Hindûs usually take. The passage is in its proper place, and involves neither contradiction nor restriction of the preceding statements.

Its meaning consequently is—"But in case you (the imaginary opponent) should say that my statement stands in contradiction to the verse of Manu IX., 194, then I answer that this verse does not contain a complete enumeration of the various kinds of strîdhana, but only gives some of the most important." It appears therefore that clause 4 is to be

read in connexion with clause 3. For this reason we must still adhere to Sir T. Strange's opinion, that the property inherited from the husband becomes, according to Vijñâneśvara, strî-dhana. The most recent decision of the Judicial Committee to be presently cited puts a narrower limitation on the rule than that adopted by the High Court of Bombay in Jamiyatrâm's case. (*a*) That case allowed property inherited from a woman's own family to rank as strîdhana, but the gifts particularly specified as forming part of the strîdhana were clearly not meant to include inheritance, and the technical restriction of strîdhana being accepted at all, necessarily leads to the result of excluding inheritance altogether, which is the one arrived at by the Privy Council. The Vîramitrodaya (Transl. p. 136 ss.) assigns to the widow complete ownership of her separated husband's estate on his death with a right to dispose of the property if necessary. But from an injunction of Kâtyâyana to the widow only to enjoy the property with moderation, Mitramiśra deduces a limitation in her case on the power of alienation usually accompanying ownership, except for necessary religious and secular purposes. And another part of the same passage: "After her let the heirs, (dâyâdas) take," he construes as meaning the husband's heirs because of the previous reference to the husband and the honour of his bed, not the widow's own heirs—her daughters, etc. This passage is not quoted by Vijñâneśvara. He merely makes property taken by a woman as heir part of her strîdhana, and says that her strîdhana as thus defined is to be taken by her kinsmen. (*b*) So Colebrooke has understood the doctrine, which he contrasts with the different views taken by the lawyers of the Eastern School. (*c*) In *Bhagwandeen Doobey* v. *Myna Baee*, (*d*) the Privy Council were of opinion that no pro-

(*a*) 2 Bom. H. C. R. 11.

(*b*) Mitâkshará Chap. II., Sec. XI., paras 2, 9.

(*c*) *See* his notes 2-13 to para. 2 of Mitâkshará Chap. II., Sec. XI.

(*d*) 11 M. I. A. 487.

perty, inherited by a woman from her husband, formed part of her strîdhana in the narrower sense involving a special mode of devolution. Property inherited from a father or a brother has, on the other hand, been held in Bombay to be strîdhana, and a widow has been held to succeed to her son's property on the same terms as to her husband's. The question then arose, whether all property inherited by a woman was under the Mitâkharâ to be deemed strîdhana, or whether none was so. In the case of *Vijiârangam* v. *Lakshman*,(*a*) strîdhana is said, according to the Mitâkharâ, to include all a woman's acquisitions of property, the descent of which is governed by the form of her marriage. According to the Vyavahâra Mayûkha, it is said, strîdhana in the narrower sense descends according to special rules, while stridhana such as property inherited descends as if the female owner had been a male. (*b*) The latest ruling of the Judicial Committee on this subject which seems intended to shut out all further controversy is, that regard being had to the authority of other commentators and to other parts of the Mitâkharâ, the passage declaring property inherited by a woman to be strîdhana does not in the case of "inheritance from a male" confer upon her "a strîdhana estate transmissible to her own heirs." (*c*) It is on her death to pass to "the heirs" of the last male owner, the woman's estate being regarded as a mere interruption. This may not, unfortunately, settle the matter. The decisions in Bombay have not been placed on so extremely general a construction as that adopted by the Privy Council. (*d*) The local usage

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(*a*) 8 Bom. H. C. R. 244, O. C. J.

(*b*) *See* below on Strîdhana, and *Jaikisondas* v. *Harkisondas*, In. L. R. 2 Bom. 9.

(*c*) *Mutta Vaduganadha Tevar* v. *Dorasinga Tevar*, L. R. 8 I. A. 99, 109.

(*d*) See *Tuljárám Morarji* v. *Mathurádás*, I. L. R. 5 Bom. 662; *Vináyak Anundráo* v. *Lakshmibái*, 1 Bom. H. C. R. at pp. 121, 124; *Bái Benkor* v. *Jeshankar Motiram*, Bom. H. C. P. J. F. for 1881 p. 271.

may perhaps not admit it, (*a*) and the "other commentators" accepted as having authority in Madras have little or no weight in Bombay against the Mitâkshará itself. (*b*) There is an exception in the case of the Vyavahâra Mayûkha, but this work does not give back the heritage after the death of a female ...essor to the original heir: it makes the female the s... of a new line of descent as if she were a male. (*c*) Such at least is the literal sense of its rule: how it is to be worked out in detail is not laid down.

In Madras it would seem that the daughter's estate is wholly assimilated to the widow's (*d*) as to succession on her death.

From the rule given in § 4 *B* (1), the "fee or gratuity" of a woman is excepted, which goes to her brothers (Mit. Chap. II., Sec. 11, para. 14), *see* also Gautama XXVIII. 23, 24.

§ 4 *B.* (2) GRAND-DAUGHTERS.—*On failure of daughters, daughters' daughters inherit the estate of a married female.*

See Book I., Chap. IV. B, Sec. 2, and for Authority *loc. cit.* Q. 1.

Grand-daughters, descended from different daughters, share according to their mothers. (Mit. Chap. II., Sec. 11, para. 16.)

On concurrence of daughters and grand-daughters, the latter receive a trifle. (Mit. Chap. II., Sec. 11, para. 17.)

(*a*) See *The Collector of Madura* v. *Moottoo Ramalinga Sathupathy*, 12 M. I. A. at p. 436; Steele L. C. pp. 63-65.

(*b*) *Nárâyan Bábáji* v. *Náná Manohar*, 7 Bom. H. C. R. 167, 169; *Krishnaji Vyanktesh* v. *Pandurang*, 12 Bom. H. C. R. 65; *The Collector of Madura* v. *Moottoo Ramalinga Sathupathy*, at pp. 438, 439; *Lallubhái Bápubhái* v. *Mánkuverbái*, I. L. R. 2 Bom. at p. 418; *Ráhi* v. *Govind valad Tejá*, I. L. R. 1 Bom. at p. 106; *Sakárám Sadáshiv* v. *Sitábái*, I. L. R. 3 Bo. at pp. 367, 368.

(*c*) *See* Vyav. May. Ch. IV. § X. para. 26, Steele L. C. pp. 63, 64.

(*d*) See *Muttayan Chetti* v. *Sivagiri Zamindár*, I. L. R. 3 Mad. at p. 374; *Simmani Ammál* v. *Muttamál*, *Ib.*, 268.

§ 4 *B.* (3) DAUGHTERS' SONS.—*On failure of daughters' daughters, daughters' sons inherit the estate of a married female.*

See Book I., Chap. IV. B, Sec. 3, and for Authority *loc. cit.* Q. 1.

§ 4 *B.* (4) SONS.—*On failure of daughter's sons, sons inherit the estate of a married female.*

See Book I., Chap. II. B, Sec. 4, and for Authority *loc. cit.* Q. 1.

§ 4 *B.* (5) SONS' SONS.—*On failure of sons, sons' sons inherit the estate of a married female.*

AUTHORITY.

Mit. Chap. II., Sec. 11, para. 24.

§ 4 *C.*—HEIRS TO A MARRIED FEMALE LEAVING NO ISSUE.

(1) THE HUSBAND.—*On failure of sons' sons, the husband inherits his wife's estate, if she was married according to one of the laudable rites.* [*If she was married according to one of the blamed rites, her property devolves on her parents.*]

See Book I., Chap. IV. B, Sec. 5, and for Authority *loc. cit.* Q. 1.

There are no opinions of the Śâstris in the Digest illustrating the parts of this and the following paragraph enclosed between brackets [ ]. *See* the cases of *Vijiáraṅgam* v. *Lakshaman*, (*a*) and *Jaikisondas* v. *Harkisondas*.(*b*)

2. Regarding the question, which rites of marriage are laudable and which blamed, *see* Book I., Chap. IV. B, Sec. 5, Q. 1, and Remark.

(*a*) 8 Bom. H. C. R. 244, O. C. J.
(*b*) In. L. R. 2 Bom. 9.

§ 4 *C.* (2) THE HUSBAND'S SAPIṆDAS —*On failure of the husband, the husband's Sapiṇḍas, or blood relations within six degrees on the father's side, and within four degrees on the mother's side, together with the wives of such male blood relations, inherit the estate of a female leaving no issue, if she was married according to one of the laudable rites.* [*If married according to the blamed rites, the estate devolves on her parents' Sapiṇḍas.*]

See Book I., Chap. IV. B, Sec. 6, and for Authority *loc. cit.* Introductory Remarks.

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§ 4 *C.* (3) WIDOW'S SAPIṆDAS.—*On failure of the husband's Sapiṇḍas, the widow's own Sapiṇḍas inherit her Strî-dhana even though she was married according to the laudable rites.*

See Book I., Chap. IV. B, Sec. 7, and for Authorities *see* the Introductory Remarks to that Section.

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§ 5.—PERSONS DISQUALIFIED TO INHERIT.

Persons disabled from inheriting are—

1. *Persons diseased, or infirm in body or mind, who are—*

   a. Impotent.

   b. Blind.

   c. Lame.

   d. Deaf.

   e. Dumb.

   f. Wanting any organ.

   g. Idiots.

   h. Madmen.

1. *Sufferers from a loathsome and incurable disease such as ulcerous leprosy. See Ch. VI., Sec.* 1, Q. 5 (*a*).

2. *Illegitimate children of Brâhmans, Kshatriyas, and Vaiśyas.*

3. *Persons labouring under moral deficiencies—*

   a. Enemies of their father.

   b. Outcastes and their children. (*b*)

   c. Persons addicted to vice. (*c*)

   d. Adulteresses and incontinent widows.

See Book I., Chap. VI., and for Authorities *see* Book I., Chap. VI., Sec. 1, Q. 1, 5; *ibid.* Sec. 3 *a*, Q. 1 *b*, Q. 1, and *c*, Q. 1.

REMARKS.

Regarding the question—whether diseases, infirmities, or moral taints contracted after the property has vested, disable a person for holding it any longer, *see* Remark to Book I., Chap. VI., Sec. 3 *c*, Q. 6.

(*a*) See *Ananta* v. *Ramábái*, I. L. R. 1 Bom. 554; *Janárdhan Pándurang* v. *Gopál et al.*, 5 Bom. H. C. R. 145, A. C. J.; and as to wife's society, *Bái Premkúvar* v. *Bhiká Kallianji*, 5 Bom. H. C. R. 209, A. C. J.

(*b*) *See* above p. 58 (*a*). The sons of outcastes born before their father's expulsion are not outcastes but take their father's place. Sons born after expulsion are outcastes, but Mitramisra says a daughter is not, for "she goes to another family." Vîramitrodaya, Tr. p. 254, Steele L. C. p. 34. The doctrine of outcastes' heritable incapacity does not apply to families sprung from outcastes, *Syed Ali Saib* v. *Sri R. S. Peddabali Yara Simhulu*, 3 M. H. C. R. 5. Act 21 of 1850 has removed any disqualification occasioned by exclusion from caste.

(*c*) In a case at 2 Macn. H. L. 133 it is said that an unchaste daughter cannot succeed to her parents. Compare B. I. Ch. VI., Sec. 3 *c*, Q. 6, and *Mussamut Ganga Jati* v. *Ghasita*, I. L. R. 1 All. 46.

It is only congenital blindness that excludes from inheritance according to *Umabai* v. *Bhavu Padmanji*, (*a*) following *Murárji Gokuldás* v. *Párvatibái*, (*b*) *see* also *Bákubái* v. *Munchábái* (*c*) for the different views held by the Sâstris. The same condition as to dumbness is laid down in *Vallabhram* v. *Bai Hariganga*.(*d*) As to mental incapacity, it is said, in *Tirumamagal* v. *Ramasvami*, (*e*) that only congenital idiotcy excludes. In 2 Macn. H. L. 133, the disqualifications are discussed at considerable length. In Steele's Law of Castes a general rule of exclusion for persons labouring under the specified defects is laid down at page 61, but this has been largely qualified by custom. At page 224 it is said that in seventy-two castes at Poona it was found that insanity excluded only unmarried persons, and that in eighty-three castes, blind persons, married and having families, might inherit. In such cases the management of the property would devolve on the owner's relations. See *Bhikaji Ramachandra* v. *Lakshmibai*, (*f*) as to management of a suit. There is a case in which a boy bordering on idiocy was allowed to transmit a heritable right to his widow. (*g*)

§ 6.—SPECIAL RULES OF INHERITANCE ACCORDING TO CUSTOM. SACRED PROPERTY.

The Hindû Law is largely influenced by custom, as already pointed out. But as even those castes and classes which have adopted special customs still recognize the general supre-

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(*a*) I. L. R. 1 Bom. 557.

(*b*) I. L. R. 1 Bom. 177.

(*c*) 2 Bom. H. C. R. 5.

(*d*) 4 Bom. H. C. R. 135 A. C. J.; *see* also *Mohesh Chunder Roy et al.* v. *Chunder Mohun Roy et al.*, 23 C. W. R. 78 S. C. 14 Beng. L. R. 273.

(*e*) 1 M. H. C. R. 214.

(*f*) Special Appeal No. 62 of 1875 (Bom. H. C. P. J. F. for 1875, p. 231).

(*g*) *Bái Amrit* v. *Bái Manik et al.*, 12 Bom. H. C. R. 79.

macy of the sacred writings, any divergence of custom from the ordinary law of succession must be established by satisfactory evidence,(*a*) unless it has already been recognized as law binding on the class or family to which the parties belong, whom it is proposed to subject to the custom. A custom of male in preference to female inheritance to Bhágdári lands in Gujarát was recognized in *Pránjiwan* v. *Bái Revá* (*b*) as it had previously been in *Bháu Nánáji Utpát* v. *Sundrábai* (*c*) to temple emoluments.

A family custom thus established binds the individual holder of a ráj or zamindári so as to prevent his dividing it equally amongst his sons. (*d*)

(*a*) An Ikrarnama, signed by four brothers, was received as evidence sufficient to establish the adoption of a family custom of excluding childless widows from inheritance, differing from the general custom of the country, *Russik Lal Bhuwj* v. *Purush Munnee*, 3 Morl. Dig. 188, Note 2.

In *Rajah Nugendur Narain* v. *Raghonath Narain Dey* (C. W. R. for 1864, p. 20) it was held that a family custom as to intermarriages might be proved by declarations made by members of the family. But still the course of devolution prescribed by law cannot be altered by a mere private arrangement. *Bálcrishna Trimbak Tendulkar* v. *Sávitribái*, I. L. R. 3 Bom. 54.

In the case of an English copyhold an exclusion of females from succession and dower was held an admissible modification by custom of a customary rule of inheritance, though in Ireland it had been, in the case of Tanistry, pronounced void. *See* Elton's Tenures of Kent, 55.

(*b*) I. L. R. 5 Bom. 482.

(*c*) 11 Bo. H. C. R. 249. *See* Colebrooke in 2 Strange's H. L. 181; 1 Macn. H. L. 17, as to a Kuláchár or family custom; and on the same subject, the Judicial Committee in *Chowdhry Chintamon* v. *Mussamut Nowlukho*, L. R. 2 In. A. at p. 269; *Rámalakshmi Ammal* v. *Sivanantha Perumal*, 14 M. I. A. 576, 585, S. C. L. R. S. I. A. 1; *Náráyan Bábáji et al.* v. *Náná Manohar et al.*, 7 B. H. C. R. 153, A. C. J.; *Bhagvándás* v. *Rájmál*, 10 B. H. C. R. 260-261.

(*d*) *Rawut Urjun Singh* v. *Rawut Ghanasiam Singh*, 5 M. I. A., 169, 180.

The cases of *The Court of Wards* v. *Rajcoomar Deo Nundun Sing*;(*a*) *Rajkishen Singh* v. *Ramjoy Surma et al.*;(*b*) *Chowdhry Chintamon Singh* v. *Musst. Nowlukho Konwari*, (*c*) and the remarks of the Privy Council in *Soorendronath* v. *Mussamut Heeramonee*(*d*) show that a family custom of inheritance may be abandoned.

The ordinary rules of Hindû law are applicable to Jains, no special custom being proved. (*e*) Hence in the absence of custom or usage to the contrary, an alienation by gift by a widow of her husband's property is invalid according to the Mitâksharâ which governs the Bindala Jains.(*f*) The Khojas —a class of Mahomedans converted from Hinduism—are governed by the Hindû law of inheritance except so far as this has been modified by special custom. Being of Gujaràthi origin the Khojas allow a precedence to the mother over the widow, which is common to many castes in Gujarât, but the mother is not allowed to dispose of the estate, and after her death it goes to her son's heir, usually his widow. (*g*)

Succession to a Râj was held to be governed by custom in *Arjun Manic et al.* v. *Ram Ganga Deo*, (*h*) by nomination in *Ramgunga Deo v. Doorga Munee Jobraj* (*i*) and *Beer Chunder*

(*a*) 16 C. W. R. 143.

(*b*) I. L. R. 1 Calc. 186.

(*c*) L. R. 2 In. Ap. 269, 273.

(*d*) 12 M. I. A. at p. 91.

(*e*) *Lalla Mohabeer Pershad et al.* v. *Musst. Kundun Koowar*, 8 C. W. R. 116; *M. Govindnath Roy* v. *Gulal Chand et al.*, 5 C. S. D. A. R. 276; *Sheo Singh Rai* v. *Musst. Dukho et al.*, 6 N. W. P. H. C. R. 382; S. C. L. R. 5 I. A. 87; *Bhagvándás Tejmal* v. *Rájmál*, 10 Bom. H. C. R. 241; *Hasan Ali* v. *Naga Mul*, I. L. R. 1 All. 288, where a special custom of adoption prevailed.

(*f*) *Bachebi* v. *Makhan Lal*, I. L. R. 3 All. 55.

(*g*) *Shivji Hasam* v. *Datu Mávji Khoja*, 12 Bom. H. C. R. 281; *Hirbái* v. *Gorbái*, 12 Bom. H. C. R. 294; *Rahimatbái* v. *Hirbái*, I. L. R. 3 Bom. 34.

(*h*) 2 Calc. Sel. S. D. A. R. 139.

(*i*) 1 Calc. S. D. A. R. 270.

Joobraj v. *Neel Kishen Thakoor et al.*(*a*) An illegitimate son was excluded in *Bulbhudda Bhourbhur* v. *R. Juggernath Sree Chundun.*(*b*) As to a quasi-Râj see *Chowdhry Chintamon Singh* v. *Musst. Nowlukho Konwari,*(*c*) and the decision of the Judicial Committee in *Periasámi et al.* v. *The Representatives of Salugai Taver.*(*d*)

A Kuláchár, allotting certain portions of zamindáris to junior members, (*e*) does not render the savings and accumulations made by those members joint property. (*f*)

A family custom of inheritance is not destroyed by a resettlement of the terms of the holding from the Government, even though this should destroy many incidents of the previous tenure, (*g*) and when after a confiscation for 20 years, a grant of a "ráj" was made to the brother of the former holder, the intention of the Government, it was held, was to restore the tenure as it had previously existed, with the special qualities of succession according to the family law.(*h*)

When by family custom an estate is impartible, the ordinary Hindû law is suspended just so far as is necessary to

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(*a*) 1 C. W. R. 177.

(*b*) 6 Calc. Sel. S. D. A. R. 296.

(*c*) L. R. 2 I. A. 269, 273. *See* Maine, Ancient Law, Ch. VII. p. 233.

(*d*) L. R. 5 I. A. 61.

(*e*) This custom of providing an appanage for each junior branch is widely spread, and probably sprung from political conditions. *See* Col. Dig. Bk. II., Ch. IV., T. 15 Comm.: Panj. Cust. Law, II., 183; St. L. C. 229. Comp. Hallam Mid. Ag., vol. I. p. 88 (Ch. I., Pt. II).

(*f*) *Chowdry Hureehur Pershad* v. *Gocoolanand Doss,* 17 C. W. R. 129.

(*g*) *Rajkishen Singh* v. *Ramjoy Surma Mozoomdar,* I. L. R. 1 Calc. 186.

(*h*) *Baboo Beer Pertab Sahee* v. *Maharajah Rajender Pertab Sahee,* 12 M. I. A. 1.

give effect to the particular custom, but the general law still regulates all that lies beyond its sphere.(*a*)

The impartibility of an estate does not necessarily imply that it is inalienable. (*b*) The inalienable quality is a question of family custom requiring proof. (*c*) Yet as a point of customary law impartibility may be expected to be accompanied generally by limitations on alienability, having the same object in view, the preservation of the estate to support the political, official, or social rank of the head of the family. In *Rajah Nilmony Singh* v. *Bikram Singh* (*d*) the Judicial Committee say:—"The same principle which precludes a division of a tenure upon death must apply also to a division by alienation."(*e*)

A bad custom will not be allowed.(*f*) Nor is a custom depending on instances to be extended beyond them.(*g*) If opposed to recognized morality or the public interest it is to be disallowed. (*h*)

(*a*) *Neelkisto Deb Burmono* v. *Beerchunder Thakoor*, 12 M. I. A. 523; *Timangavda* v. *Rangangavda*, Bom. H. C. P. J. F. for 1878 p. 242; *Muttayan Chetti* v. *Sivagiri*, I. L. R. 3 Mad. p. 374.

(*b*) *Naraen Khootia* v. *Lokenath Khootia*, I. L. R. 7 Cal. 461; *Anund Lal Singh Deo* v. *Maharajah Dheraj Gooroo Narayan Deo*, 5 M. I. A. 82.

(*c*) *Rajah Udaya Aditya Deb* v. *Jadub Lal Aditya Deb*, L. R. 8 I. A. 248; *Naarin Khootia* v. *Lokenath ut supra.*

(*d*) Decided 10th March 1882.

(*e*) Comp. *Rajah Venkata Narasimha Appa Row* v. *Rajah Narraya Appa Row*, L. R. 7 I. A. pp. 47, 48.

(*f*) *Nârâyan Bhârthi* v. *Laving Bhârthi*, I. L. R. 2 Bom. 140; *Reg.* v. *Sambhu*, I. L. R. 1 Bom. at p. 352. *See* Yâjñ. by Janárdhan Máhádeo Slo. 186 p. 358. Nârada quoted in Col. Dig. Bk. III., Ch. II., Sec. 28 and Comm. show that customs opposed to morality or public policy are to be refused recognition.

(*g*) *Rahimatbái* v. *Hirbái*, I. L. R. 3 Bom. 34; compare *In re Smart*, L. R. W. N. for 1881, p. 111.

(*h*) *See* Nârada Pt. II., Ch. X., Jolly's Transl. p. 75. *Mathurá Náikin* v. *Esu Náikin*, I. L. R. 4 Bom. 545, 556.

As to property dedicated to an idol see *Juggut Mohini Dossee et al.* v. *Musst. Sokheemony Dossee et al.* (*a*) and *Maharanee Brojosoondery Debia* v. *Ranee Luckhmee Koonwaree et al.*(*b*)

Property dedicated to the service even of a family idol is impressed with a trust in favour of it, dissoluble only by the consensus of the whole family, which itself cannot put an end to a dedication to a public temple.(*c*) In a case of alienation by one of four Sebaits aliening debuttar, the other three suing to recover the property must join the fourth as defendant with his vendees or those deriving from them.(*d*)

§ 7.—BURDENS ON INHERITANCE.

Some of the principal burdens on inheritance have already been noticed as in § 3 *A* (5), § 3 *B* (1), in connexion with the rights, to which they are most commonly annexed. The powers of an owner in relation to his property form the subject of the following Section, but it seems useful to collect, in this place, some of the more general rules applying to charges on property which passes to successors as deduced from the recognized Hindû authorities, and the cases decided in recent years.

There is a general obligation resting on the heir (or other person) taking property of one deceased to pay the debts of the late owner. But in a united family this does not extend

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(*a*) 14 M. I. A. 289.

(*b*) 20 C. W. R. 95.

(*c*) *Dictum* of Sir M. E. Smith in *Konwar Doorga Nath Roy* v. *Ram Chunder Sen*, L. R. 4 I. A. at p. 58.

(*d*) *Rajendronath Dutt* v. *Shekh Mahomed Lal*, L. R. 8 I. A. 135. *See* also *Prosunno Koomari Debya* v. *Golab Chund Baboo*, L. R. 2 I. A. 145; *Konwur Doorganath Roy* v. *Ram Chunder Sen*, L. R. 4 I. A. at p. 57; *Khusálchand* v. *Máhádevgiri*, 12 Bom. H. C. R. 214; *Manohar Ganesh* v. *Keshovram Jebbai*, Bom. H. C. P. J. F. for 1878, p. 252.

to the debts of a member deceased incurred for his purely personal purposes, or even for the family if there was no necessity, (*a*) except in the case of a deceased father's obligations (*b*) lawfully contracted.

Promises deliberately made by the father are by the Hindû law regarded as equally binding on his sons, especially if made to his wife. (*c*)

If property descends as hereditary, the income (of a zamindári) is liable to pay the debts of the deceased zamindár. Such seems to be the principle involved in the judgment of the Privy Council in *Oolgappa Chetty* v. *Arbuthnot*. (*d*) But in Bombay the estate is not, without a specific lien, so hypothecated for the father's debt as to prevent the heir disposing of it and giving a good title; (*e*) though "it descends incumbered with the debts or accompanied by an obligation to pay the debts of the ancestor." (*f*) In the case of *Sangili Virapandia Chinnathambiar* v. *Alwar Ayyangar* (*g*) it was held that though an attachment against the lands, impartible by family custom, of a zamindár for his debts might, if made during his life, continue after his death, yet as at his death the entire interest in the zamindári passed to his son, there was nothing in the estate

(*a*) See *Saravan Tévan* v. *Muttayi Ammal*, 6 Mad. H. C. R. 383; *Mágluiri Garudiah* v. *Náráyan Rungiah*, I. L. R. 3 Mad. at p. 365, and below, Partition, Liabilities on Inheritance.

(*b*) Above, p. 80.

(*c*) Vîramit. Transl. p. 228; Vyav. May. Ch. IV. Sec. X. para. 4, Sec. IV. p. 15; Ch. IX. p. 10; *see* Act. IX. of 1872, Sec. 25.

(*d*) L. R. 1 I. A. at p. 315, S. C., 14 Beng. L. R. at p. 141.

(*e*) *Jamiyatrám* v. *Parbhudás*, 9 Bom. H. C. R. 116.

(*f*) *Sakhárám Rámchandra* v. *Madhavrao*, 10 B. H. C. R. 361, 367. *See* also *Nilkant Chatterjee* v. *Peari Mohan Das et al.*, 3 B. L. R. 7 O. C. J; *Girdharee Lall* v. *Kantoo Lall*, L. R. 1 I. A. 321; *Suraj Bansi Koer* v. *Sheo Prasád Singh*, L. R. 6 I. A. 88, 106; *Udárám Sitáram* v. *Ranu*, 10 B. H. C. R. 83; *Sadáshiv Dinkar* v. *Dinkar Náráyan*, Bom. H. C. P. J. for 1882, p. 139; *Náráyanáchárya* v. *Narso Krishná*, I. L. R. 1 Bom. 262.

(*g*) I. L. R. 3 Mad. 42.

itself "which was attachable assets of the late zamindár, or which could be made available in execution of the decree against his representative *quâ* representative." The son seems to have been regarded as taking the estate as a "purchaser" or independently of the father, as under the English Statute De Donis, while other property of which the father could have disposed passed to his representatives as such. The Hindû law, however, identifies the son with his father for all lawful obligations, as completely as the Roman law or as the English law under which *haeres est pars antecessoris.*(*a*) It was by an analogous identification of persons that the executors as in their sphere "universal" successors became representatives of a testator. The impartibility of an estate may, to a considerable extent, prevent its being incumbered, as was the case also with feudal estates; but supposing the estate to be absolutely inalienable as well as impartible it would seem that no charge at all would attach to it after the ownership proceeded against had ended by the death of the debtor,(*b*) while so far as it was alienable or subject to incumbrance, the heir should be identified with his ancestor for all purposes, as well for the execution of a decree rightly obtained, as for the establishment of a claim. He becomes a representative, and takes as a representative through this identification. What he takes is the aggregate familia as a "universitas" in the character of "heres suus" equally when the property is impartible as when it is partible, and this "universitas" or aggregate includes all obligations properly attaching to the headship of the family equally with the property and rights annexed to it. (*c*) The rules of partition show that the obligation to

(*a*) Co. Lit. 22, *b*.

(*b*) See *Goor Pershad* v. *Sheodeen*, 4 N. W. P. R. 137, referred to in *Udárám Sitárám* v. *Ránu*, 11 Bom. H. C. R. at p. 78; and *Sura Bunsi Koer* v. *Sheo Proshad*, L. R. 6 I. A. at p. 104.

(*c*) See Gaius, Inst. II. 157; Di. Lib. 28 Ti. 2, Fr. 11; Co. Di. B. II. Ch. IV. T. 15 Comm.; Vyav. May. V. Sec. IV. 14 ss.; *ib.* Ch. IV. Sec. IV. 33; Manu IX. 130; Co. Di. Bk. V. Ch. IV. T. 210.

pay a father's debt is a part of the inheritance or familia as much as the property to be divided, (*a*) and it is not less so when the property is impartible, save in so far as it might defeat the purpose of the grantor, or the law of the principality. To the extent, therefore, to which the deceased could have charged the property or disposed of it, and so enjoyed a complete ownership, it would seem that the heir is a representative liable to execution under sec. 234 of the Code of Civil Procedure on account of such property of the deceased having "come to his hands." The distinction grounded in *Muttayan Chetti* v. *Sivagiri Zamindár* (*b*) on a son's not being able to obtain a partition of an impartible estate does not rest on the Hindû law which makes the son responsible and bids him postpone his own interests to the payment of just debts of his father. (*c*) He cannot obtain a partition of an ordinary estate in Bengal as of right, but this does not exempt the estate from liability. For the case of a Polygar in Madras see *Kotta Ramásámi Chetti* v. *Bangari Seshama Nayanivaru.* (*d*)

As to the maintenance of a widow *see* the Section on Maintenance, and *Baijun Doobey et al.* v. *Brij Bhookun Lall,* (*e*) *Musst. Lalti Kuar* v. *Ganga Bishan et al.,* (*f*) *Visalatchi Ammal* v. *Annasamy Sastry,* (*g*) *Baboo Goluck Chunder Bose* v. *Ranee Ohilla Dayee,* (*h*) *Lakshman Ramchandra et*

(*a*) Vyav. May. Ch. IV. Sec. VI.

(*b*) I. L. R. 3 Mad. at p. 381.

(*c*) Col. Di. Bk. I. Ch. V. T. 188; Vyav. May. Ch. V. Sec. IV. 16, 17; and the judgment has since been reversed by the Privy Council in the case of *Muttayan Chettiar* v. *Sivagiri Zamindár.* The Judicial Committee, L. R. 9 I. A. at p. 144, say: "The fact of the zamindári being impartible 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."

(*d*) I. L. R. 3 Mad. 145.

(*e*) L. R. 2 I. A. at p. 279.

(*f*) 7 N. W. P. R. 261 (F. B.)

(*g*) 5 M. H. C. R. 150.

(*h*) 25 C. W. R. 100.

al. v. *Sarasvatibai*, (*a*) *Musst. Golab Koonwar et al.* v. *The Collector of Benares et al.*, (*b*) and the cases referred to above pp. 77-79, and under Partition, Book II.

A reasonable charge subsists to provide even for a concubine and her daughters (*c*) and her sons excluded from inheritance (*d*).

The son is not directly responsible for unsecured debts contracted even for the benefit of the family by his father during the life of the latter. (*e*) As to secured debts thus contracted during his minority, or, with his acquiescence, after his attaining his majority, the case is different. (*f*) Nor does it follow that because he is not directly liable to creditors for the family debts, he is not liable for contribution to his father, when his father has had to pay them. A discharge or distribution of the debts by ordinary coparceners making a partition being expressly enjoined, it might seem to follow, *à fortiori*, that a son taking his share of the family estate from his father should take also, if his father desire it, his proportion of the burdens; but this is not prescribed by the law books. After the father's death the son is by Hindû Law responsible for all his debts, (*g*) except those contracted for immoral purposes, (*h*) and this liability, as under the

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(*a*) 12 Bom. H. C. R. 69.

(*b*) 4 M. I. A. 246.

(*c*) See *Salu* v. *Hari*, Bom. H. C. P. J. F. for 1877 p. 34; *Khemkor* v. *Umáshankar*, 10 Bom. H. C. R. 381.

(*d*) *Rahi* v. *Govind*, I. L. R. 1 Bom. 97.

(*e*) *Amrutrow* v. *Trimbuckrow et al.*, Bom. Sel. Ca. p. 245; *Chennapah* v. *Chellamanah*, M. S. D. A. R. 1851, p. 33; Col. Di. Bk. I. Ch. V. T. 167, Note.

(*f*) *See* 1 Mit. Ch. I. Sec. I. paras. 28, 29; *Gangábái* v. *Vámanáji*, 2 Bom. H. C. R. 318 (2nd Ed. p. 301), a case of ratification.

(*g*) Vyav. May. Ch. V. S. 4. pl. 11-14; Stokes, H. L. B. 121, 122; *Keshow Rao Diwakar* v. *Naro Junardhun Patunkur*, 2 Borr. at p. 222.

(*h*) Coleb. Dig. Bk. I. Ch. V. T. 147-149, Comm.; 2 Str. H. L. 456.

Roman Law, is independent of inherited assets ; (*a*) though where there were assets he who has taken them is primarily answerable, (*b*) but this has been limited by Bombay Act VII. of 1866, Sec. 4, to the amount of the family property taken by the son. In Bengal it has been held (*c*) that the Mit. Chap. I., Sec. 6, para. 10 (Stokes, H. L. B. 395) authorizes the alienation by a father for the payment of joint debts, even *against* the will of his son, so that the father

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(*a*) *Narasimharav* v. *Antâji Virupâksh et al.*, 2 Bom. H. C. R. 61; Co. Di. Bk. I. Ch. V. T. 173.

Nîlakaṇṭha, in the Vyav. Mayûkha, Ch. IV. Sec. IV. p. 17, insists on the character of an inheritance as a "universitas" or inseparable aggregate of rights and obligations. The latter descend only to sons and grandsons in the absence of all property ; but he who takes any property, however small, must pay the debts, however large. So, too, must he who takes the widow of the deceased regarded as part of the "familia," *see* Coleb. Dig. Bk. 1 Ch. V. T. 220, 221. Similarly *Qui semel aliquâ ex parte heres extiterit deficientium partes etiam invitus excipit, id est, deficientium partes etiam invito adcrescunt*, (L. 80 de leg. 3 D. XXXII.) was the rule of the Roman Law when it had allowed the institution by testament of an heir replacing the heir by descent. The whole "familia" or none had to be given to the legatee who accepting the benefit became answerable for all debts and for due celebration of the "sacra privata." The son had no option; in the absence of a will he continuing the person of his father took the inheritance, benefits and burdens as a universitas. The English law has sprung from an entirely different conception, at least so far as the real property is concerned. Though at one time the heir was in a sense a universal representative, yet the distinct character of several fees prevented their uniting in a true universitas. The ecclesiastical jurisdiction was introduced over chattels, and the heir then became successor only to the real property accompanied in Bracton's time with a legal duty to pay his father's debts to the extent of his inheritance and a duty of humanity to pay them out of his other property akin to the Hindu rule. See Bract. *f.* 61 b.

(*b*) See *Zemindár of Sivagiri* v. *Alwar Ayyangar*, I. L. R. 3 Mad. at p. 44 ; Vyav. May. Ch. V. Sec. IV. para. 17; Col. Di. Bk. I. Ch. V. T. 172.

(*c*) *Bishambhur Naik* v. *Sudasheeb Mohapatter et al.*, 1 C. W. R. 96.

could protect himself in that way. The separated son is not legally liable to the creditors either during his father's life or after it, unless he choose to accept the property left by his father according to the remarks of Colebrooke in the cases at 2 Str. H. L. 274, 277, 456; (*a*) but with this compare the dicta of the Śâstris at those places, and in the case above-quoted from Bombay Sel. Cases, which correctly express the doctrine formerly prevailing at this side of India, making the son's obligation a legal and not merely a moral one. In another case (No. 997 MS.), the Śâstri answered that an adopted son, like one begotten, is responsible, independently of assets received, for the debts of the adoptive grandfather, though not incurred for the benefit of the family (they not having been contracted for an immoral purpose).

In the case of *Hunooman Persaud Panday* v. *Musst. Babooee Munraj Koonweree*, (*b*) the Privy Council grounded on the son's obligation as a pious duty to pay his father's debts, a capacity in the father to charge the estate, even though ancestral, for such debts contracted by him as the son could not piously repudiate. The same case, however, as recently construed in *Kameswar Pershad* v. *Run Bahadur Singh* (*c*) imposes on a creditor the necessity of making due inquiry whether in the particular case the manager (even it would seem the father) is acting for the benefit of the estate. (*d*) In *Giridharee Lall et al.* v. *Kanto Lall et al.*, (*e*) a decree having been obtained against a father for a debt, not of an immoral kind but, as appears, not contracted for any benefit to the family, he sold the ancestral property to satisfy it. In a suit by his son to recover the estate, the High Court awarded to him one-half of his father's share, but the Privy Council reversed this decision and held that the deed of sale could not be set

(*a*) *See* also Coleb. Oblig. Ch. II., 51.
(*b*) 6 M. I. A. 421.
(*c*) I. L. R. 6 Calc. 843.
(*d*) See Bk. II. Introd. § 6 A.; 1 Str. H. L. 202.
(*e*) L. R. 1 In. A. 321, S. C., 14 Beng. L. R. 187.

aside at the suit of the son. "*Hanooman Persaud's* case," their Lordships say, "is an authority to show that ancestral property, which descends to a father, is not exempted from liability to pay his debts, because a son is born to him." So, in *Oolagappa Chetty* v. *Arbuthnot et al.*, (*a*) the income of an hereditary polliam was pronounced liable for a father's debts. The property in that case, however, was subject to the rules of singular succession applicable generally to a Râj. In accordance with these cases, it has, in Bombay, been said that "these decisions go to fix the son and his estate, except in cases of wanton extravagance, with the father's debt, whether secured or not on the property," (*b*) and that, "subject to certain limited exceptions (as for instance debts contracted for an immoral or illegal purpose), the whole of the family undivided estate would be, when in the hands of the sons or grandsons, liable to the debts of the father or grand-father." (*c*) But this liability is exceptional, resting on special texts. (*d*) And whether the sale of the living father's interest binds as against his sons the whole ancestral property, as decided in *Narayanacharya* v. *Narso Krishna*, (*e*) on the authority of *Giridharee* v. *Kanto* (*f*) may perhaps now admit of some doubt. The case of *Luchmi Dai Koori* v. *Asman Sing et al.*, (*g*) follows *Giridharee* v. *Kanto* (*h*) to the same effect; but in the case of *Rungama* v. *Atchama et al.*, (*i*) the Privy Council say of a son in

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(*a*) L. R. 1 In. A. 268.

(*b*) *Govindram* v. *Vamanrav*, R. A. No. 16 of 1874, Bom. H. C. P. J. F. for 1875, p. 118.

(*c*) *Uddrâm* v. *Ránu Pánduji et al.*, 11 Bom. H. C. R. 83, citing Coleb. Dig. Bk. I. Ch. V. T. 167; cited and approved by the Judicial Committee in *Suraj Bunsi Koer* v. *Sheo Proshad Singh*, L. R. 6 I. A. at p. 104. *See* also Nârada, Pt. I. Ch. III. Sl. 12; 1 Str. H. L. 173; *Keshow Rao* v. *Naro Junardhun*, 2 Borr. 222.

(*d*) 11 Bom. H. C. R. 85 (*supra*), citing Coleb. Dig. Bk. I. T. 169, 229.

(*e*) In. L. R. 1 Bom. 262.

(*f*) *Supra*.

(*g*) In. L. R. 2 Calc. 213.

(*h*) *Supra*.

(*i*) 4 M. I. A. at p. 103.

relation to his father's distribution of property, "If Jagannâtha takes, as we think he is entitled to do, the whole ancestral property *which the father could not dispose of without his consent, &c.*" So in *Pandurang* v. *Naro.* (*a*) In *Bhugwandeen Doobey* v. *Myna Baee,* (*b*) it is said, "Between undivided coparceners there can be no alienation by one without the consent of the other," and see *Suraj Bunsi Kooer's* case. (*c*) The High Court of Calcutta adopted this principle in the cases of *Sadabart Prasad Sahu* v. *Foolbash Koer,* (*d*) and of *Mahabeer Pershad* v. *Ramyad Singh et al.,* (*e*) which, in *Baboo Deendyal Lall* v. *Baboo Jugdeep Narain Singh,* (*f*) have not been dissented from "as to voluntary alienations."

Even as to a sale in execution of the "right, title, and interest" of a father in the ancestral property, affected to be mortgaged by him "under legal necessity," as conclusively found by the District Court, their Lordships held, on the one hand, that the whole property would not be made available by a suit, directed against the father alone, and a sale in execution of his "right, title, and interest." To make the other co-sharers answerable, it was necessary to join them as parties according to *Nugender Chunder Ghose et al.* v. *S. Kaminee Dossee et al.,* (*g*) and *Baijun Doobey et al.* v. *Brij Bhookun Lall* (*h*) On the other hand, their Lordships ruled that by the purchase of the judgment-debtor's (father's) right in execution, the purchaser had acquired his "share and interest in the property, and is entitled to take proceedings.....to have that share and interest ascertained by partition." (*i*) It may seem rather too broad a statement, therefore, "that under the Mitâkshara and Mayûkha the son takes a vested interest in ancestral estate at his

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(*a*) Sel. Rep. 186.
(*b*) 11 M. I. A. at p. 516.
(*c*) L. R. 6 I. A. 88, 100, 102.
(*d*) 3 Ben. L. R. 31 F. B.
(*e*) 12 Ben. L. R. 90.
(*f*) L. R. 4 In. A. p. 247.
(*g*) 11 M. I. A. 241.
(*h*) L. R. 2 In. A. 275.
(*i*) So in *Haza Hira* v. *Bhaiji Modan,* S. A. No. 444 of 1874, Bom. H. C. P. J. F. for 1875, p. 97.