BOOK I.

INHERITANCE.

CHAPTER I.

HEIRS TO A MEMBER OF AN UNDIVIDED FAMILY.

SECTION 1.—SONS AND GRANDSONS.

Q. 1.—A man of the Sûdra caste died. He has the following relations :—1 son of the deceased's eldest son, 3 younger sons, 2 brothers, and 1 cousin. The deceased received a cash allowance from Government on account of certain "Hakka" and *Lâjima* (*a*) rights. It is an old ancestral property. How should the certificate of heirship be granted to each of them ? Describe his share. If it is not an ancestral property, how should the share of each be described in his certificate ?

A.—If the property was acquired by the forefathers of the deceased, and if it has never been divided before, it should be first divided into two shares, the one to be considered as belonging to the deceased's father and the other to the cousin's father. Then the share of the deceased's father should be sub-divided into three shares, one to be allotted to each of the three brothers including the deceased. The deceased's own share, which is $\frac{1}{3}$ of $\frac{1}{2}$, should be divided again into four shares, one to be assigned to his grandson and three to his sons.—*Tanna, 16th April,* 1852.

(*a*) Lavâjimâ.

AUTHORITIES.—(1) Mit. Vyav. f. 50, p. 1, l. 1; (2) f. 50, p. 1, l. 7, (*see* Auth. 3); (3) f. 48, p. 2, l. 5 :—

"Whatever else is acquired by the co-parcener himself without detriment to the father's estate, as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs (Colebrooke, Mit. p. 268, Stokes, H. L. B. 384). It devolves as though there had been a partition." (*a*).

(4) Mit. Vyav. f. 44, p. 2, l. 13 (*see* Chap. II. Sec. 4, Q. 1.)

REMARKS.—1. The answer applies equally to the higher castes. Bhalchandra Śâstri said the son of the wife first married was to be regarded as the elder, but this is not warranted by the Mitâk. or the Vayav. May. *See* Steele, L. C. 40.

2. For details regarding "indivisible or separate property," *see* PARTITION, Book II.

3. In case the deceased had alone acquired the property in question, it goes in equal shares to his sons and grandson.

4. An unseparated son excludes separated ones. See *Bajee Bapoojee* v. *Venoobái*. (*b*)

5. A son born in wedlock is held legitimate though begotten before it. (*c*)

6. A son may relinquish his share in the common estate for money. He then takes the place of a separated son. (*d*)

7. An elder son by a younger wife succeeds to an impartible estate in preference to a younger son by an elder wife. (*e*)

8. A joint trade is joint family property (*f*). *See* Book II. INTRODUCTION.

9. A joint trade loan is a charge on joint family property. (*g*)

(*a*) See *Musst. Phoolbas Koonwar* v. *Lalla Jogesher Sahoy*, L. R. 4 I. A. at p. 19.

(*b*) S. A. No. 282 of 1871, Bom. H. C. P. J. F. for 1872, No. 41.

(*c*) *Collector of Trichinopoly* v. *Lakhamani*, L. R. 1 I. A. at p. 293.

(*d*) *Balkrishna Trimbak* v. *Savitribai*, I. L. R. 3 Bom. 54. *See* below, Chap. II. § 1, Q. 6.

(*e*) *Padda Ramappa* v. *Bangari Sherama*, I. L. R. 2 Mad. 286.

(*f*) *Sámalbhai* v. *Someshwar et al*, I. L. R. 5 Bom. 38.

(*g*) *Sheoji Devkarn* v. *Kasturibai*, Bom. H. C. P. J. F. for 1880, p. 255; *Bemola Dossee* v. *Mohun Dossee*, I. L. R. 6 Cal. 792. *See* Coleb. Dig. Bk. I. Ch. V. T. 182, 185, 186.

SECTION 2.—OTHER MEMBERS OF AN UNDIVIDED FAMILY.

Q. 1.—A man got his son married and spent a good deal of money on his education. The son afterwards emigrated, and was for a long time in service in another country, where he acquired considerable property and died. Who will be his heir, his father or his wife?

A.—Whatever he may have given to his wife out of affection, or whatever may be her strîdhana, belongs to her. All the rest of the son's property goes to his father.

Ahmednuggur, September 29th, 1854.

AUTHORITIES.—(1) Vyavahâra Mayûkha, p. 153, l. 2:—

"A wife, a son, and a slave are (in general) incapable of property, the wealth which they may earn is (regularly) acquired for the man to whom they belong." (Borradaile, p. 121, Stokes, H. L. B. 100.)

(2) Vyav. May. p. 151, l. 1; (3) Vîramitrodaya, f. 221, p. 1, l. 10.

REMARK.—As the son was instructed at the father's expense, the property gained by him cannot be separate as against the father, unless acquired by means not referable to the family estate. *See* Book II. "PROPERTY SELF-ACQUIRED."

Q. 2.—A father and his son were undivided. The latter died, and left a daughter and a wife. Will these be his heirs, or his father, or his brother, or his mother?

A.—All have an equal right to the estate of the deceased. But the ornaments of the wife belong to her alone.

Dharwar, October 10th, 1859.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1; (2) Vyav. May. f. 155, p. 4.

REMARK.—All the deceased's property, as far as it is not separate property (avibhâjyam), will go to the father, and be divided between him and his surviving son on partition. *See* Question 1.

Q. 3.—If there is an ancestral Inam in the possession of five brothers, and some of them die without issue, will the survivors inherit their shares?

A.—Yes.—*Rutnagherry, September 15th,* 1846.

AUTHORITY.—Vyav. May. f. 136, l. 2:—

"Among brothers, if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property." (Borradaile, p. 101, Stokes, H. L. B. p. 85.

Q. 4.—Who will be the heir to a deceased brother?

A.—If the brother was undivided, his brothers will inherit his property.

But if he was divided, his wife, etc., will be his heir.

Brothers who have divided and afterwards again lived together are called "re-united." If a re-united brother die his re-united coparcener will inherit his estate.

Poona, October 24th, 1845.

AUTHORITIES.—(1*) Vyav. May. p. 136, l. 2, (*see* Chap. I. Sec. 2, Q. 3); (2*) Mit. Vyav. f. 55, p. 2, l. 1:—

"The wife and the daughters also, both parents, brothers likewise, and their sons, gentiles, cognates, a pupil and a fellow student; on failure of the first among these, the next in order is indeed the heir to the estate of one who departed for heaven having no male issue. This rule extends to all (persons and) classes." (Colebrooke, Mit. p. 324, Stokes, H. L. B. 427.)

(3*) Vyav. May. p. 144, l. 8:—

"Yâjñavalkya enumerates the order of those entitled to succeed to the wealth of one re-united; as of a re-united (co-heir) the re-united (co-heir), so of the uterine brother the uterine brother." (Borradaile, p. 112; Stokes, H. L. B. p. 93.)

Q. 5—A man died and left an ancestral Watan. Will his widow or his younger brother inherit it?

A.—If the property is ancestral, and the brothers were undivided, it will belong to the younger brother, though it may have been entered in the records of Government in the name of the eldest only. The wife has no right to it.(*a*)

Broach, May 14th, 1855.

(*a*) A vatan cannot be enjoyed by a female while males of the family claim it.—*Anpoornabái* v. *Janrow*, S. D. A. R. 1847, p. 74, following

AUTHORITIES.—(1) Mit. Vyav. f. 50, p. 1, l. 7; (2*) Vyav. May. p. 136, l. 2. (*See* Ch. I. Sec. 2, Q. 3.)

Q. 6.—Two brothers, Bhâî and Bhâîdâsa, possessed a village. They gave to a certain Bhikâri Râmadatta four bighas of land for himself and his heirs. Râma had four sons. One of these sons died, and after him his son, leaving a widow. The latter claims one bigha as the share of her husband. Upon inquiry it appears that the land had not been divided. Is her claim under these circumstances admissible?

A.—The claim is not admissible since the land was undivided. The other three sons of Bhikâri Râmadatta inherit their brother's share.—*Broach, May 18th,* 1855.

AUTHORITIES.—(1) Mit. Vyav. f. 45, p. 1, l. 1; (2*) Vyav. May. p. 136, l. 2. (*See* Chap. I. Sec. 2, Q. 3.)

REMARKS.—The brothers deceased were held to be represented by their sons in a joint Hindû family in *Bhagwan Goolabchund* v. *Kripa-*

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an interpretation of 1832 on Sec. 20 of Reg. XVI. of 1827. But the reason there given is now no longer applicable. A female may succeed, Ch. IV. B., Sec. 1, Q. 12; *Bái Suraj* v. *Government of Bombay et al,* and *Bápubhái* v. *Bái Suraj et al,* 8 Bom. H. C. R. 83 A. C. J.; *Bái Jetha* v. *Haribhai,* S. A. No. 304 of 1871 (Bom. H. C. P. J. F. for 1872, No. 38); *The Government of Bombay* v. *Dámodhar Permánandás,* 5 Bom. H. C. R. 202 A. C. J.; (comp. *Keval Kuber* v. *The Talukdári Settlement Officer,* I. L. R. 1 Bom. 586); *Sayi Kom Náru Powár* v. *Shrinivásrao Pandit,* Bom. H. C. P. J. F. for 1881 p. 270, subject to the provisions of the Vatandars' Act, (Bom. Act 3 of 1874). There is not a general presumption in favour of the impartibility of Vatan estates. He who alleges the impartibility must prove it. *Adreshappa* v. *Gurrushidappa,* L. R. 7 I. A. 162, *infra,* Bk. II. Introd. § 5 C. As to the succession generally to inams and vatans, *see* Chap. II., Sec. 6 A, Q. 8, Remark; and as to claims to inclusion amongst the recognized vatandars, see *Gurushidagavda* v. *Rudragavdati et al.* (I. L. R. 1 Bom. 531.) In Madras it is said that a woman cannot hold the office of Karnam except nominally. *Venkatraínama* v. *Ramanujasámi,* I. L. R. 2 Mad 312. She may perhaps appoint a deputy, as in Bombay, under Sec. 51 of the Act above referred to.

ram Anundran; (*a*) *Debi Pershád* v. *Thákur Dial*; (*b*) *Bhimul Doss* v. *Choonee Lall* (*c*).

In *Moro Vishvanáth* v. *Ganesh Vithal* (*d*) it was held that the representation descends without limit when there is not an interval of more than three generations between the deceased and his surviving descendant.

Q. 7.—Three brothers divided their father's property and lived apart. But one room was left undivided, and given to their mother as a dwelling place. One of the brothers died, leaving a widow. Then the mother of the brothers died. The widow claims a third of the room as her husband's share. Has she a right to it? She has given it as Kṛishṇârpaṇa to her daughter's son. Has she a right to do so?

A.—The widow has no right to any part of the undivided room.—*Broach, March 17th,* 1857.

AUTHORITIES.—(1) Mit. Vyav. f. 47, p. 2, l. 13; (2*) Vyav. May. p. 136, l. 2. (*See* Chap. I. Sec. 2, Q. 3.)

REMARK.—As to residence in the family dwelling, *see* above, p. 252, and Book II. Introduction, "PROPERTY NATURALLY INDIVISIBLE." *See* also Q. 9.

Q. 8.—Two brothers lived apart, and each managed his own affairs. The elder of them died without male issue, leaving a widow only. Can she claim a share of the family Watan?

A.—A widow without male issue has no right to demand a share of any Watan, Vṛitti, or hereditary offices which

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(*a*) 2 Borr. 29.

(*b*) I. L. R. 1 All. 105.

(*c*) I. L. R. 2 Calc. 379.

(*d*) 10 Bom. H. C. R. 444. So in the Panjâb; *see* Tupper, Panjâb Customary Law, vol. II. p. 141.

were acquired by ancestors, and which were not previously divided.—*Ahmednuggur, August 7th,* 1854 (*a*).

REMARK.—A Hindû widow has no estate in the joint family property. (*b*)

AUTHORITIES.—(1 and 2*) Vyav. May. p. 136, l. 6 and l. 2 (*see* Chap. I. Sec. 2, Q. 5).

Q. 9.—Four brothers effected a partition and lived separate from each other. As usual, a house, some ground, and other immoveable property remained undivided. Two of these brothers died. The question is whether or not the share of the immoveable property should be made over to the widows or to the surviving two brothers.

A.—The widows of the deceased brothers cannot claim *the whole* of the shares of their husbands, but they should be provided with a suitable residence. The rest of the immoveable property will fall to the two surviving brothers.

Ahmednuggur, January 5th, 1849.

AUTHORITIES.—(1) Vyav. May. p. 136, l. 2 (*see* Chap. I. Sec. 2, Q. 3); (2) Vyav. May. p. 134, l. 4, 6, and 7; (3) Mit. Vyav. f. 49, p. 1, l. 10.

REMARK.—The Śâstri means that to the portion left undivided the ordinary rules governing the inheritance of undivided property must be applied, and that these will exclude the widow, saving her right to residence.

That right cannot be extinguished even by a sale of the house. (*c*)

2. When two united brothers successively die, each leaving a widow and no children, the widow of the last deceased brother takes

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(*a*) The right to a vriṭṭi (upádhyáya) being established in a family a fresh cause of action arises on each infringement of the right by a rival family. *Divákar Vithal Joshi* v. *Harbhat bin Mahádevbhat,* Bom. H. C. P. J. F. for 1881, p. 106.

(*b*) *Lallubhai* v. *Raval Bapuji,* Bom. H. C. P. J. for 1880, page 243; *Antaji Raghunath* v. *Pandurung,* P. J. 1879, p. 478.

(*c*) See *Mangala Debi* v. *Dinanath Bose,* 4 Ben. L. R. 72 O. C. J.; *Talemand Singh* v. *Rukmina,* I. L. R. 3 All. 353; *Parvati Kom Balapa* v. *Kisansing bin Jaising,* Bom. H. C. P. J. F. for 1882, p. 183.

the property, the widow of the first deceased being entitled only to maintenance. (*a*) For the share of an undivided coparcener, who leaves no issue, goes to his undivided coparceners, whether the property is ancestral or acquired by the coparceners as joint estate. (*b*)

Q. 10.—A man had three sons. One of them died without issue. He and his two brothers had not divided their ancestral property. Although the deceased had left a widow, the certificate of heirship was given to his two brothers. They subsequently died. One of them has left a widow and two daughters. The other has left three daughters. The property of the first deceased brother is in the possession of the widow, who is the mother of two daughters. It will be observed that one brother who had not taken his share from his two brothers died, and that his two brothers survived him. Now his widow claims the share of her husband from the heirs of the two brothers, who possess the ancestral property. The question is whether she can claim a share, or a maintenance only.

The widow of the first deceased brother wishes to take the share due to her husband, but it is to be noticed that the two brothers who died afterwards have left some daughters to be married. According to the custom of the caste, a large expense is required for the marriages and subsequent ceremonies. The widow who demands the share of the common property has no children. Will this circumstance cause any obstacle to her claim?

A.—The husband of the widow appears to have died without having previously divided his property. He has left no sons. His widow cannot therefore claim any share from the heirs of the two brothers who died afterwards. They should only give her maintenance (*c*).

Surat, March 17th, 1858.

(*a*) *Musst. Surajmookhi Koonwar* v. *Musst. Bhagavati Koonwar*, Privy Council, 8th Feb. 1881.

(*b*) *Rádhábái* v. *Nánáráv*, I. L. R. 3 Bom. 151.

(*c*) The custom of the City of London and of other places reserves

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 10 (*see* Auth. 3); (2) Mit. Vyav. f. 48, p. 1, l. 9; (3*) Vyav. May. p. 136, l. 2 (*see* Chap. I. Sec. 2, Q. 3).

Q. 11.—A man died and his widow has filed an action against her brother-in-law for the recovery of certain property belonging to her deceased husband. The brother-in-law had lived apart from his deceased brother for about 25 years. A division of the family property had not, however, taken place. Can the widow claim a share?

A.—The widow cannot claim a share of that which may be undivided and ancestral property; but if there is any which may have been acquired by her husband without making use of the property of his ancestors, she can claim it from her brother-in-law.

AUTHORITIES.—(1) Vyav. May. p. 136, l. 4:—

"But if her husband have departed for heaven the wife obtains food and raiment; or (*tu*) if unseparated, she will receive a share of the wealth as long as she lives." (*b*) (Borradaile, p. 102; Stokes, H. L. B. 85).

(2) Vyav. May. p. 136, l. 2 (*see* Chap. I. Sec. 2, Q. 3).

Q. 12.—Two brothers of the Kanojî caste were undivided. One of them died, leaving a widow. The other brother does not maintain her, nor does he assign to her any property to live upon. Who has, under the circumstances,

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the chief room in the family dwelling as the widow's chamber. *See* Elt. Ten. of Kent. pp. 42, 173; and below, Ch. II. Sec. 7, Remarks.

(*b*) NOTE.—The words "if unseparated" (*avibhakta*) belong to both halves of the sentence, and the translation should run thus:—

"In an undivided family, if her husband have departed for heaven the wife obtains food and raiment, or she will, etc." In the explanation, which in the Mayûkha follows this text, the word avarudhâ is wrongly translated by "a woman set apart." It means "a concubine."

the right to collect the money due to the deceased, the wife or the brother ?

A.—The brothers were undivided. The brother has therefore the right to collect debts due to the deceased. The widow of the latter has a claim to maintenance only. But she must stay with her brother-in-law if she has no good reason to show why such an arrangement is impossible.—*Ahmednuggur, March 15th*, 1849.

AUTHORITY.—Vyav. May f. 136, p. 2, Borr. 101; Stokes, H. L. B. 85 (*see* Chap. I. Sec. 2, Q. 3).

REMARK.—*See* above, Introduction, Section on MAINTENANCE, p. 254 ss.

Q. 13.—1. There are three brothers, whose property is undivided. It consists of an office of priest called the "Yajamâna Vṛitti," a house, and some other things. On the death of one of these brothers, a question has arisen whether the surviving brothers, or the son of the deceased brother's sister, are the heirs ?

2. Suppose the property of the brothers was divided, and they themselves separated, who would be the heir in this case ?

3. Will the son of a cousin, or the son of a uterine sister be entitled to inherit the ancestral office of a priest held by a deceased in an undivided state ?

4. Supposing the above-mentioned property was divided, which of the two relatives above-named would be entitled to inherit it ?

A.—1. If one of the three brothers, whose property was undivided, died without leaving either a son or a grandson, his uterine brothers must be considered the heirs.

2. In the case of a family whose property is divided, the order of heirs laid down in the Śâstra is as follows :—The widow, the daughter, the daughter's son, the parents, and the uterine brothers. In the absence of each of these, the next succeeding becomes the heir.

3. When the office of priest is undivided, and when a co-sharer dies, his cousin's son will be entitled to inherit the deceased's share, provided the following kinsmen are not in existence:—The uterine brother, nephew, parents, half-brother, sons of half-brother, uncle, sons of uncle, and widow.

4. When the property is that of a deceased person divided in interest, his sister's son inherits his share; as long as the sister's son is alive the cousin's son cannot succeed.

Surat, October 18th, 1845.

AUTHORITIES.—(1*) Vyav. May. p. 136, l. 2 (*see* Chap. I. Sec. 2, Q. 3; (2*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARKS.—*Ad.* 3. The undivided coparceners alone inherit the deceased's share. (Auth. 1.)

Ad. 4. The cousin's son inherits the deceased's property, in preference to the sister's son, since he is a "Gotraja Sapiṇḍa," connected by funeral oblations with, and a member of, the same family as the deceased, whilst the sister's son is only a Bhinnagotra Sapiṇḍa. (Auth. 2.) *See* also Introductory Note to Chap. II. Sec. 15—§ 5. The Śâstri seems to have been steeping his mind in Bengal law. *See* H. H. Wilson's Works, vol. V. p. 14.

Q. 14.—There were four brothers who divided their moveable property and left the immoveable undivided. The immoveable property consisted of some land given to them in order to keep up a lamp in a temple. One of the four sons died. He left a widowed daughter. Can she obtain her father's share?

A.—She cannot obtain it. It goes to the other undivided relations.—*Rutnagherry, January 7th*, 1853.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1; (2) f. 46, p. 2, l. 14; (3*) Mit. Vyav. f. 51, p. 1, l. 9 (*see* Chap. I. Sec. 2, Q. 17); (4*) Vyav. May. p. 136, l. 2 (*see* Chap. I. Sec. 2, Q. 3).

REMARK.—The Śâstri has not distinguished between the divided and the undivided property.

Q. 15.—There were three brothers. Two lived united and one separate. The one of the undivided brothers had a

son, the other a daughter. The latter lived in the house of her husband. Both the brothers died. Who will inherit the second brother's property?

A.—The first brother's son inherits his uncle's property. But if anything had been promised by the second of the brothers to his daughter, it must be given to her.

Ahmednuggur, November 29th, 1845.

AUTHORITIES.—(1*) Vyav. May. p. 136, l. 2 (*see* Chap. I. Sec. 2, Q. 3); (2) Mit. Vyav. f. 51, p. 1, l. 9 (*see* Chap. I. Sec. 2, Q. 17).

REMARK.—The property promised must not have been disproportionately great. Vyav. May. Chap. IV. Sec. X. pl. 5, 6; above, p. 208.

Q. 16.—Three brothers died. One of them left a grandson, the second a son, the third a son's daughter. Will the latter inherit her grandfather's property?

A.—As long as males are living in the family, the son's daughter has no right to her grandfather's share.

Poona, September 10th, 1852.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2*) p. 136, l. 2 (*see* Chap. I. Sec. 2, Q. 3); (3*) Mit. Vyav. f. 51, p. 1, l. 9 (*see* Chap. I. Sec. 2, Q. 17.)

Q. 17.—A man died and left a daughter. His brother, who was united with him in interests, adopted a son. Will the latter or the daughter inherit the property of the deceased?

A.—The deceased and his brother were undivided. Consequently the latter's adopted son will inherit deceased's property.—*Dharwar, September 29th,* 1849.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2*) p. 136, l. 2 (*see* Chap. I. Sec. 2, Q. 3); (3*) Mit. Vyav. f. 51, p. 1, l. 9:—

"In regard to unmarried sisters, the author states a different rule, giving them as an allotment the fourth part of a brother's own share." (Colebrooke, Mit. p. 286; Stokes, H. L. B. 398.)

REMARK.—The position of all daughters of undivided coparceners is the same as that of sisters. Nephews represent their fathers. *See* cases referred to below. (*a*)

Q. 18.—Two persons, related as uncle and nephew, held an hereditary Watan. The nephew died, and the question is whether the widow of the nephew or the uncle should come in the place of the nephew as his heir?

A.—If the uncle and his nephew were separated members of the family, the widow of the nephew will inherit his share. If the property was not divided, and if it was held as a joint property of the uncle and the nephew, the uncle should come in the place of the deceased nephew.

Broach, May 14th, 1855.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2) f. 50, p. 1, l. 7; (3*) Vyav. May. p. 136, l. 4 (*see* Chap. I. Sec. 2, Q. 11.)

Q. 19.—A man's widow and his cousin live together as an undivided family. The widow's late husband had lent money to other people, and the question is who has the right to recover it?

A.—As the deceased and his cousin lived together, the cousin has the right to recover the money due to the deceased. The widow will be entitled to a maintenance.

Rutnagherry, July 13th, 1847.

AUTHORITY.—Vyav. May. p. 136, l. 2 (*see* Chap. I. Sec. 2, Q. 3).

REMARK.—The cousin who was united with the deceased, and not the widow, inherits the deceased's share.

Q. 20.—A man died. His first cousin performed his funeral ceremonies. Will he or deceased's half-brother inherit the estate?

(*a*) *Bhagwan Goolabchund* v. *Kriparam Anundram et al,* 2 Borr. R. 29; *Nurbheram Bhaeedas* v. *Kriparam Anundram, ibid.* 31. Comp. p. 106, note (*g*) above.

A.—The first cousin was separate from the deceased whilst the half-brother lived with him as a member of a united family. Consequently the half-brother alone inherits.

Tanna, August 12th, 1847.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1; (2*) Vyav. May. p. 136, l. 2 (*see* Chap. I. Sec. 2, Q. 3).

REMARK.—At 2 Macn. H. L. 66 is an answer to the effect that where a man dies united with a whole and a half-brother, these succeed together to the exclusion of deceased's widow.

Q. 21.—A man died, leaving a daughter. Will the latter or a second cousin with whom the deceased had lived united in interests, inherit the deceased's estate?

A.—The second cousin inherits the deceased's estate; the daughter will receive only what her father may have given to her.—*Ahmednuggur, January 8th,* 1851.

AUTHORITIES.—(1) Vyav. May. p. 136, l. 2 (*see* Chap. I. Sec. 2, Q. 3); (2) Vyav. May. p. 140, l. 1; (3*) Mit. Vyav. f. 51, p. 1, l. 7 (*see* Chap. II. Sec. 1, Q. 2).

Q. 22.—A woman has a daughter. Her husband left the country and was not heard of for many years. She receives the proceeds of her share of the estate. The woman and her husband have been living separate from their cousin for about 75 years. The immoveable property has not been divided. The woman has sued her cousin for a division of the immoveable property. The cousin states that the woman should be satisfied only with a share of the proceeds of the property, and that the share would be continued to her during her lifetime. He further states that he would divide the property only on condition of her agreeing never to transfer it in any way. The question is how the case should be decided?

A.—As the woman has received her share of the proceeds separately for many years, and as she has a daughter, she has a right to move for the partition of the immoveable pro-

perty. The objection of her cousin founded on the apprehension of the transfer of the property is not valid. The woman has a right to transfer her property whenever she may find it necessary to do so.

Ahmednuggur, November 25th, 1848.

AUTHORITIES.—(1 and 2) Vyav. May. p. 134, l. 4 and 6; (3) p. 136, l. 2 (*see* Chap. I. Sec. 2, Q. 3.)

REMARK.—As the property is undivided, the widow has no right to it. The Śástri seems to have considered separate enjoyment of the proceeds a proof of partition. As to this see Bk. II. Introd. Sec. 4 D. The right which the Śástri ascribes to the woman to alien the property is not generally recognized. (*See* above, pp. 297 ss.)

Q 23.—A woman has instituted a suit against her mother-in-law, and four cousins of her father-in-law, for the recovery of the share of her father-in-law of the ancestral property of the family. Is her claim tenable?

A.—The woman cannot claim any share of the property. She can only claim a maintenance from the defendants.

Ahmednuggur, July 21st, 1856.

AUTHORITIES.—(1) Vyav. May. p. 136, l. 2 (*see* Chap. I. Sec. 2, Q. 3); (2) f. 136, l. 4. = Mit. Vyav. p. 55, f. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

Q. 24.—Certain members of a family have a right to a house which is their undivided and ancestral property. A son of one of the members died, and his widow claims the share of her husband, the other members of the family, namely, grandsons of her brother-in-law and sons of her father-in-law's brother, are alive. Can the widow claim the share?

A.—The widow of a man who dies while the family of which he is a member is still united in interests, cannot claim a share. She can only claim a maintenance.

Surat, 1845.

AUTHORITIES.—(1*) Vyav. May. p. 136 l. 2 (*see* Chap. I. Sec. 2, Q. 3); (2*) p. 136, l. 4. = Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

Q. 25.—A paternal grand-aunt and her grand-nephew lived together as an undivided family. They hold Yardî and Kulkarnî Watans. Can the paternal grand-aunt claim a share of the Watans, or only a maintenance from their proceeds?

A.—She can claim a maintenance only, and provided she sustains her good character and lives with her grand-nephew.

Ahmednuggur, April 30th, 1847.

AUTHORITIES.—(1) Vyav. May. p. 136, l. 2 (*see* Chap. I. Sec. 2, Q. 3); (2) p. 136, l. 4 = Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (3) Vyav. May. p. 129, l. 2 and 4; (4) p. 134, l. 4 and 6; (5) p. 137, l. 7; (6) Mit. Achar. f. 12, p. 1, l. 4 and 6; (7) Mit. Vyav. f. 16, p. 1, l. 6; (8) f. 69, p. 1, l. 1.

REMARK.—*See* p. 254 *supra*, and Chap. VI. Sec. 3 c, Q. 6, below.

Q. 26.—Two brothers, *A* and *B*, obtained a house as security for a debt. *A* took his wife's sister's son into his house, and brought him up as his own son. The house was in the joint possession of this latter person and of the son of *B*, and after *B*'s son's death in his possession jointly with the sons of the deceased *B*'s grandson. But the wives of these two began to quarrel, and *B*'s grandson sued *A*'s sister's son for the possession of the whole house. The latter has no certificate to show that he was formally adopted. He had merely possession of the house for 20 or 25 years. Is *B*'s grandson's claim admissible under these circumstances, or not?

A.—A's wife's sister's son had not been formally adopted, and can therefore not be considered as *A*'s son. The claim of *B*'s grandson is therefore admissible.

Ahmednuggur, November 1st, 1849.

AUTHORITIES.—(1) Mit. Vyav. f. 53, p. 2, l. 6; (2) f. 51, p. 1, l. 3; (3) f. 50, p. 1, l. 1; (4*) f. 44, p. 2, l. 14 (*see* Chap. II. Sec. 4, Q. 1); (5) Vyav. May. p. 102, l. 4; (6) p. 110, l. 6; (7) p. 100, l. 1; (8) p. 142, l. 8.

CHAPTER II.

HEIRS OF A SEPARATED PERSON.

SECTION 1.—SON BY BIRTH, LEGITIMATE.

Q. 1.—If a man separates from his father and brothers, and acquires property after the separation, who will be his heir? If his son be his heir, should his mother be considered the son's guardian during his minority?

A.—His son will be his heir, and his widow, during his son's minority, will be his son's guardian.

Poona, June 2nd, 1845.

AUTHORITIES.—(1*) Manu IX. 185:—

"Not brothers, nor parents, but sons (if living and their male issue) are heirs to the deceased."

"The production of children, the nurture of them, when produced, and the daily superintendence of domestic affairs are peculiar to the wife."

REMARKS.—1. The son would of course not be separated from his father, by the separation of the father from his father and brothers. A new joint family would forthwith commence consisting of the father and son. In every case of partition between a father and sons, a son born after partition is sole heir to the shares reserved for the father and the mother. (*a*)

Sir H. Maine explains the law of Borough-English (*b*) by supposing it originated in a preference given to the youngest unemancipated son who remained under the *patria potestas* over those who were presumably separated. Under the Hindû law the preference arises from the union of interests and sacrifices. It extends to a son remaining joint with his father and to a brother remaining united with another in a general partition, as may be seen in the preceding chapter.

2. Under the Mithila law the mother as a guardian is preferable to the father. (*c*)

(*a*) Mitâkshará, Chap. I. Sec. VI. para. 1. ss.

(*b*) Early History of Institutions, pp. 222, 223.

(*c*) *Jussoda Koer* v. *Lallah Neitya Lall,* I. L. R. 5 Cal. 43.

Q. 2.—Should the sons, who are minors, or the widow, or the brothers of a deceased Sûdra, be considered his heirs?

A.—All of them have a right to the property of the deceased, but the sons are his heirs.—*Poona, June 23rd*, 1845.

AUTHORITIES.—(1*) Manu IX. 185 (*see* Chap. II. Sec. I. Q. 1); (2*) Mit. Vyav. f. 69, p. 1, l. 1 :—

"Manu has declared that aged parents, a faithful wife, and an infant son must be maintained, even by performing a hundred improper actions."

(3*) Mit. Vyav. f. 51, p. 1, l. 7 :—

"Of heirs dividing after the death of the father let the mother take an equal share." (Colebrooke, Mit. p. 285; Stokes H. L. B. 397.)

REMARK.—The sons are their father's heirs, and the widow is entitled to maintenance, or, if the sons divide, to one full share of the property, provided she had received no Strîdhana. (*See* Book II., Introd., and above, pp. 68, 163.)

Q. 3.—A man of the Mâhâr caste expelled his wife from his house. His son went out with her. The husband afterwards died, when a son of his relatives was nominated by his friends as the son of the deceased, and was presented with a turban. Will he be his heir?

A.—The son of the deceased will be his heir and not the person nominated.

AUTHORITIES.—(1*) Dattaka Mîmâmsâ, p. 1, l. 3 :—

"In regard to this matter Atri says: Only a man who has no son ought to procure a substitute for a son."

(2*) Manu IX. 185 (*see* Chap. II., Sec. 1, Q. 1).

Q. 4.—A Kunbî brought up a son of another Kunbî, and transferred to him his immoveable property. It accordingly passed into the possession of the foster-son. A son was afterwards born to the Kunbî. This son and the foster-son lived separate from each other for many years. The son has now sued the foster-son for the recovery of the immoveable property given to him by the Kunbi. Can he do so? and within what time should the suit be brought? Can the

possession of the property be disturbed after the lapse of 30 years ? If the father and his foster-son should have improved, and taken care with trouble and expense of the immoveable property in question, cannot the foster-son have some claim to it ?

A.—A son is entitled to three-fourths of the property which his father may have transferred to his adopted son before the birth of his son. The adopted son will only be entitled to one-fourth, provided his adoption has been performed with the due ceremonies and sacrifices by the adoptive father. The Śâstra does not lay down any rule in regard to the limitation of time within which a suit for a share of property should be brought. It is however laid down that when a man has received the income of any immoveable property for 20 years, and of any moveable property for 10 years, without any objection or demand from the owner, he cannot be obliged to pay the income, but the right to the immoveable property is never lost.

The foster-son, mentioned in the question, should be allowed to hold such things as he may have received from his foster-father as tokens of his affection, provided they are becoming his rank in society, and not unjustly oppressive to the son. If the foster-son was born of his father's slave woman, he would be entitled to one-half of the property which is allotted to his son.

AUTHORITIES.—(1) Datt. Mîm. f. 1, p. 1, l. 1, 3, and 11; (2) Vyav. May. p. 102, l. 4 :—

"He is called a son given (Dattrima) whom his father or mother affectionately gives as a son, being alike (by class) and in a time of distress, confirming the gift with water." (Borradaile, p. 66; Stokes, H. L. B. 58.)

(3) Vyav. May. p. 110, l. 6; (4) p. 107, l. 6; (5) p. 112, l. 3; (6) p. 28, l. 5; (7) Mit. Vyav. f. 11, p 2, l. 11; (8) f. 51, p. 1, l. 3; (9) f. 55, p. 1, l. 11; (10) Manu IX. 185 (*see* Chap. II. Sec. 1, Q. 1).

REMARK.—It must be noted that the question refers to the relative rights of a son, and a *foster-son*, not an *adopted son*, in which case a different relation of right would arise. (*See* Section 2.)

2. If the father should have parted with ancestral property for valuable consideration, and not for a palpably immoral purpose, the son would be bound by such alienation, according to *Narayanacharya* v. *Narsoo Krishna*. (*a*) This case, and the ones cited in it, are discussed with reference to the Hindû law of Bombay in the Introd. to Book II.

Q. 5.—*A* died, leaving a son, *B*, by his first wife, and a second wife, *C*. Does *A*'s house pass to *B* alone, or can *C* claim a share of it?

If a portion of the house happen to be in the occupation of *C*, will such occupation give *C* a title to the portion of the house which she is occupying?

A.—On the death of *A*, his house passes to his son *B*, and although *B*'s step-mother may at the time be in occupation of a portion of the house, she cannot on that account be considered to have any right to such portion.

Surat, April 6th, 1846.

AUTHORITIES.—(1) Mit. Vyav. f. 69, p. 1, l. 1 (*see* Chap. II. Sec. 1, Q. 2); (2) Manu IX. 185 (*see* Chap. II. Sec. 1, Q. 1).

REMARK.—The step-mother can, however, claim maintenance, (Auth. I.) and residence. (*See* above, p. 252, and Book II. Introd.)

Q. 6.—*A* had a son *B* by his first wife. *B* separated from his father *A*, who married a second wife *C*. On the death of *A*, if *B* pays *A*'s debts, will *B* or will *C* be *A*'s heir? If *B* is *A*'s heir, then is *C* entitled to a share of *A*'s property, or can she claim only a maintenance out of *A*'s estate?

A.—*B* will be heir to his father *A*; but if *A* has assigned to *C* any strîdhana, this strîdhana will belong to *C*, and besides so long as she behaves chastely and lives under the protection of *B*, she should be allowed maintenance.

Ahmednuggur, April 21st, 1848.

AUTHORITIES.—(1) Vyav. May. p. 89, l. 2; (2) p. 142, l. 8; (3) p. 181, l. 5; (4) Mit. Vyav. f. 69, p. 1, l. 1 (*see* Chap. II. Sec. 1, Q. 2); (5) Manu IX. 185 (*see* Chap. II. Sec. 1, Q. 1).

(*a*) I. L. R. 1 Bom. 282. *See* also above, pp. 206, 207.

REMARK.—A prior separation and renunciation of rights by a son does not deprive him, on his father's death, of his right of inheritance. (*a*)

2. *Ramappa Naicken* v. *Sithammál* (*b*) establishes (reversing the judgment of Mr. Burnell, the District Judge) that a separated son inherits before the father's widow. To the same effect is the judgment in *Advyapa bin Dundapa* v. *Dundapa bin Andaneapa*. (*c*)

3. *See* Introd. p. 254 ss.

Q. 7.—A Rangâri (dyer) put away his wife and his son by her, after which he lived for several years with a concubine, by whom he had a daughter. On his death, will his widow and her son be his heirs, or will his concubine and her daughter be his heirs?

A.—The son is entitled to inherit his father's moveable and immoveable property, though he may have lived separate from him. The kept woman and her daughter are not the heirs of the deceased.

Poona, September 11th, 1849.

Kheda, May 18th, 1848.

AUTHORITIES.—(1) Manu IX. 163:—

"The son of his own body is the sole heir to his estate."

(2) Mit. Vyav. f. 46, p. 2, l. 1; (3) Manu IX. 185 (*see* Chap. II. Sec. 1, Q. 1.)

Q. 8.—If a "Lingâyat" die, will his widow or his son inherit his house?

A.—The son is the rightful heir to the father's moveable and immoveable property. A widow can only claim that portion of the family property which may have been left for her by her husband at the time he effected a division of his property among his sons, or a share (to be) reserved by the sons when sharing the property among themselves.

Ahmednuggur, September 2nd, 1850.

(*a*) *Bálkrishna Trimbak Tendulkar* v. *Sávitribái*, I. L. R. 3 Bom. 54. Comp. Viner's Abridgment, Extinguishment, Co. Litt. 7 *b*, 8 *b*, 237 *b*; *see* above, p. 59.

(*b*) I. L. R. 2 Mad. 182.

(*c*) Bom. H. C. P. J. F. for 1881, p. 48.

AUTHORITIES.—(1) Mit. Vyav. f. 46, p. 1, l. 9; (2) f. 20, p. 1, l. 6; (3) f. 33, p. 1, l. 3; (4) Vyav. May. p. 89, l. 2 and 6; (5) p. 108, l. 3; (6) p. 90, l. 2 and 3; (7) p. 94, l. 7; (8) p. 95, l. 5; (9) p. 151, l. 2; (10) p. 175, l. 3; (11) Manu IX. 185 and 163 (*see* Chap. II. Sec. 1, Q. 1 and Q. 7).

Q. 9.—*A*, a Kunbî, had a son *B* by his first wife. He then married a woman *C* who had been married before. *B* and *C* survived *A*. Has *C* any right to a share of the immoveable property of *A*, and if so, to what share?

A.—As *A* left a son by his first wife, the wife, who was not a virgin when he married her, can have no right to any share of his property.—*Tanna, September 28th*, 1852.

AUTHORITIES.—(1) Mit. Vyav. f. 54, p. 2, l. 16; (2) f. 55, p. 2, l. 1; (3) Manu IX. 163 and 185 (*see* Chap. II. Sec. 1, Q. 7, and Q. 1).

REMARK.—As the second marriage of a Hindû female has been legalized by Act XV. of 1856, it seems that the widow can claim maintenance under Mit. Vyav. f. 69, p. 1, l. 1 (*see* Chap. II. Sec. 1, Q. 2; and above, pp. 88, 89).

Q. 10.—A Hindû died, leaving a widow and a son, which of these is the heir?

A.—The son is the heir, but if the property left by the deceased is to be divided, the widow will receive a share equal to that which the son receives.

Broach, July 28th, 1848.

AUTHORITIES.—(1) Mit. Vyav. f. 51, p. 1, l. 7; (2) Manu IX. 185 (*see* Chap. II. Sec. 1, Q. 1); (3) Mit. Vyav. f. 69, p. 1, l. 1 (*see* Chap. II. Sec. 1, Q. 2).

REMARK.—The widow could not claim such a division, nor any separate share, against the will of the son. (*See* Book II., Introd.)

Q. 11.—A deceased person has left two sons and a widow. Will the widow be entitled to a share of her husband's property in the same manner as the sons?

A.—The widow is entitled to a share of the property equal to that received by one of her sons. The value of the strîdhana which she may have received should be deducted from her share, that is, if a division of property take place.

Dharwar, November 29th, 1850.

AUTHORITY.—Mit. Vyav. f. 51, p. 1, l. 7 (*see* Chap. II. Sec. 1, Q. 2).

Q. 12.—A man died, leaving a widow and four sons. Three of these sons are minors and one is an adult. Can each of these sons claim an equal share in their father's property? and can the widow claim any share in her husband's property?

A.—Each of the sons of a deceased father can take an equal share of the patrimony. If their mother or the widow of their father has not received any property in the shape of strîdhana, she should be allowed a share in her husband's property equal to that which is allotted to one of her sons. If she has received Pallu (the Gujarâthî word for Strîdhana), her share will be equal to one-half of that which falls to one of her sons.—*Broach, June 3rd,* 1848.

AUTHORITIES.—(1) Mit. Vyav. f. 51, p. 1, l. 7 (*see* Chap. II. Sec. 1, Q. 2); (2*) Vyav. May. p. 94, l. 8 :—

"If any (Strîdhana) had been given, they are only to get half (a son's share), for, he adds : Or if any had been given, let him assign the half." The half meaning so much as, with what had been before given as separate property, will make it equal to a son's share. "But if her property be (already) more than such share, no share belongs to her." (Borradaile, p. 58; Stokes, H. L. B. 51.)

REMARK.—In case the mother possesses separate property, the amount of her share will depend on the amount of her strîdhana. (*See* Auth. 2.)

Q. 13.—Can a widowed sister without male issue claim from her brother a share of her father's property, and has she any right to live in her brother's house?

A.—The sister has no right to any share of the property, nor to a residence in her brother's house.

Ahmednuggur, August 1st, 1847.

AUTHORITY.—Manu IX. 185 (*see* Chap. II. Sec. 1, Q. 1).

REMARK.—Colebrooke recognized a widowed sister's claim in a case of destitution. (*See* above, p. 248.).

Q. 14.—A man died, leaving two sons, one of whom paid all his father's debts. Is he alone, on this account, entitled to inherit the property of his father? or have both sons equal rights of inheritance?

A.—If the son who paid his father's debts has taken possession of the property, with the consent of his brother, he may be considered the owner of the whole. If he has paid the debts and taken possession of the property of his father, without the consent of his brother, then the brother or his son has a right to recover one-half of the property on payment of the amount of one-half of the debts discharged with interest.—*Ahmedabad, June 25th*, 1858.

AUTHORITIES.—(1) Vyav. May. p. 181, l. 5; (2) Mit. Vyav. f. 47, p. 2, l. 13:—

"Let sons divide equally both the effects and debts after (the demise of) their two parents." (Colebrooke, Mit. p. 263; Stokes, H. L. B. 381.)

REMARK.—The sons divide the father's property equally, and are subject to equal shares of his debts. If one of the sons has paid all debts, he will be justified in retaining, besides his own share, as much as covers what he has expended in excess of his proper share of the debts.

Q. 15.—*A* died, leaving his widow *B*, his sons, *C* and *D*, and *C*'s wife *E*. Which of these is his heir? After the death of *A*, and while the property was still undivided, *C* died, leaving no male issue. If *C* had property, which of the above-named persons would succeed to it after the death of *C*? If *D* had property, and, while the family was still undivided, *D* died, which of the two widows, *B* and *E*, would

succeed to it? If *A* left a house as the common property of the family, which of the two widows, *B* and *E*, would be entitled to occupy? *A*'s house was sold by *B* without the consent of *E*. Is the sale valid?

A.—*C* and *D* are the heirs of *A*; as *C* died while the family was united in interests, the right of inheritance to the whole of the undivided property of the family will devolve on *D*.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2) f. 55, p. 2, l. 10; (3) f. 46, p. 2, l. 11; (4) Viramitrodaya f. 194, p. 1, l. 4; (5) Manu IX. 185 (*see* Chap. II. Sec. 1, Q. 1); (6):—

"Even a single individual may conclude a donation, mortgage, or sale of immoveable property, during a season of distress, for the sake of the family, and especially for pious purposes." (Colebrooke, Mit. p. 257; Stokes, H. L. B. 376.)

REMARK.—The last passage is intended as an answer to the last of the series of questions proposed.

Q. 16.—Are all the sons of a man equally entitled to inherit the immoveable property acquired by their father? and can they, after their father's death, divide such property?

A.—All the sons of a man are equally entitled to inherit their father's immoveable property, and they may divide it after his death.—*Poona, November 5th,* 1851.

AUTHORITIES.—(1) Mit. Vyav. f. 47, p. 2, l. 13 (*see* Chap. II. Sec. 1, Q. 14); (2) Vyav. May. p. 90, l. 2.

Q. 17.—*A* died, leaving *B* a son, *C* the son of another son *D*, and *E* the widow of a third son *F*. How should the real property of *A* be divided among these three?

A.—The property should be divided equally between *B* and *C*; *E* is entitled to a maintenance only.

Surat, September 16th, 1846.

AUTHORITIES.—(1) Vyav. May. p. 94, l. 1:—

"In wealth acquired by the grandfather, whether it consist of moveables or immoveables, the equal participation of father and son is ordained." (Borradaile, p. 57; Stokes, H. L. B. 51.)

(2) Vyav. May. p. 136, l. 4 (*see* Chap. I. Sec. 2, Q. 11). See *infra*, Bk. II. Introd. Sec. 6 B.

REMARK.—As to the maintenance of the widow, *see* the Introduction, Sec. 10; above, p. 246; and Bk. II. Introd. Sec. 6 B.

Q. 18.—A man and his son were united in interests. The son died, and the question is, who should be considered his heir? There are his father, mother, brother, wife, and son.

A.—All have equal right to the deceased's property. The ornaments which might have been given to the wife of the deceased must, however, be considered her exclusive property.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1; (2) Vyav. May. p. 54, l. 4; (3) Manu IX. 185 (*see* Chap. II. Sec. 1, Q. 1).

REMARK.—The father being united succeeds according to the authorities cited (*see* above, Bk. I. Introd.) if the son of the deceased was separated. Otherwise the son takes his father's place in union with his grandfather.

Q. 19.—A man had two sons. The father divided his property between them, and reserved a portion for himself. He had afterwards a third son born to him. The father subsequently died. The question is, what portion of the property should be given to the third son?

A.—It appears that when the father was alive he divided his property between his sons, and reserved a portion for himself. The father may have acquired some more property after the division took place. All the property which may thus have come into the possession of the father belongs to the son born after the division. The sons who separated cannot claim any portion of this property. The son born after the division will be entitled to it, and will be also liable for such debts of the father as he may have contracted since the separation of his two sons.

Poona, August 20th, 1857.

AUTHORITIES.—(1) Vyav. May. p. 99, l. 4 (*see* Auth. 2); (2*) Mit. Vyav. f. 50, p. 2, l. 6 :—

"A son born after a division shall alone take the paternal wealth. The term 'paternal' must be here interpreted 'appertaining to both father and mother.'" (Colebrooke, Mit. p. 281; Stokes, H. L. B. 394.)

SECTION 2.—ADOPTED SON. (*a*)

Q. 1.—A person adopted his sister's son's son, but became afterwards displeased with him. He made a will bequeathing his property to his adopted son and several brothers. Can he distribute his property in this manner? and is an adopted son liable to his natural father's debt?

A.—No. A man has no right to distribute his property in the manner described in the question, when he has a legal heir in his adopted son. A son given in adoption is not responsible for the debt of his natural father.

Sadr Adálat, May 25th, 1824.

AUTHORITIES.—(1*) Dattakamîmâṁsâ, p. 36, l. 10 (*see* Chap. II. Sec 2, Q. 3); (2*) Manu IX. 142 :—

"A given son must never claim the family and estate of his natural father; the funeral cake follows the family and estate; but of him, who has given away his son, the funeral oblation is extinct." (*See* Vyav. May. Chap. IV. Sec. V. para. 22.)

REMARK.—As to the will, see Book II. Chap. I. Sec. 2, Q. 8, Remark; and above, p. 219.

Q. 2.—Can a man set aside an adoption duly solemnized?

A.—It cannot be set aside without sufficient grounds.

Poona, October 27th, 1854.

AUTHORITY.—*Datt. Mîm. p. 36, l. 10 (*see* Chap. II. Sec. 2, Q. 3).

(*a*) An adopted son competing with one begotten takes one-fourth as much, *Ayyávu Muppanár* v. *Niladatchi et al*, 1 M. H. C. R. 45. Adoption causes a complete severance from the family of birth, *Shrínivás Ayyangár* v. *Kuppan Ayyangár*, 1 M. H. C. R. 180; *Narsammal* v. *Balarámáchárlu, ibid.* 420.

REMARK.—"Without sufficient grounds," *i.e.* unless the son shows such physical or moral defects as would make the rules of disinheritance applicable.

Q. 3.—A man adopted a son. The adoptive father afterwards died, leaving a widow. The adopted son wishes to have possession of the whole property of his adoptive father. What is the law on the point?

A.—The widow of the adoptive father should in the above case be allowed a portion of the property, which, together with her "Strîdhana," will make up a share equal to that which the adoptive son receives.

Sadr Adâlat, June 25th, 1827.

AUTHORITIES.—(1) Vyav. May. p. 94, l. 8 (*see* Chap. II. Sec. 1, Q. 12); (2) Mit. Vyav. f. 51, p. 1, l. 7 (*see* Chap. II. Sec. 1, Q. 2); (3*) Datt. Mîm. p. 36, l. 10:—

"Therefore Manu says, 'an adopted son, who possesses all the qualities (requisite for an heir), inherits (his adoptive father's estate), though he may have been adopted from another family (gens).'"

REMARKS.—1. The adopted son inherits his adoptive father's property.

2. The passage quoted by the Śâstri, under Authority 2, prescribes that the mother should receive a son's share, if after the father's death the sons divide the estate. Where no division takes place, the mother receives a suitable maintenance only.

3. The adoption by a widow, according to *Raje Vyankatráv* v. *Jayavantráv*, (*a*) operates retrospectively, and relates back to the death of her husband. But the Hindû Law does not allow this principle to be made a means of fraud. See next case.

Q. 4.—Can a woman, having an adoptive son, let her land by the contract called "Sarkat" (*b*) without his consent?

A.—When a son is adopted he becomes the owner of the property of his father. A woman therefore has no right to

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(*a*) 4 Bom. H. C. R. 191 A. C. J.

(*b*) "Partnership," a letting on terms of a division of the produce.

let her land by the contract called "Sarkat" without his consent. Any contract entered into before the adoption of an heir will, however, be valid.—*Poona, June 20th*, 1845.

AUTHORITY.—*Datt. Mim. p. 36, l. 10 (*see* Chap. II. Sec. 2, Q. 3).

REMARKS.—1. It must be presumed that the land, though called "the widow's," belonged originally to the husband.

2. The adopted son is not bound by an unauthorized alienation. (*a*) But he is bound by one for a recognized necessity. (*b*) He is also bound by one made before his adoption to pay off a debt of the widow's deceased husband. (*c*) The widow must be understood as occupying a place similar to that of a manager down to the time of the adoption. Whether before or after the adoption, (the adopted son being a minor,) the person contracting with her should satisfy himself of the propriety of the transaction. *Ram Dhone Bhuttachargee* v. *Ishanee Dabee*; (*d*) *Rajlakhi Debia* v. *Gakul Chandra Chowdhry*; (*e*) *C. Colum Comara Vencatachella* v. *R. Rungasawmy*; (*f*) *Dalpatsing* v. *Nanabhai et al*; (*g*) *The Collector of Madura* v. *Mootoo Ramalinga*; (*h*) *Bamandas* v. *Musst. Tarinee*; (*i*) and *Náthájí* v. *Hari*. (*j*) In the last case, a gift made by a widow, before adopting a son, was set aside in his favour. In the case of *Govindo Nath Roy* v. *Rám Kanay Chowdhry*, (*k*) on the other hand, cited in I. L. R. 2 Calc. 307, an

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(*a*) *The Collector of Madura* v. *Moottoo Ramalinga Sathupathy*, 12 M. I. A. at p. 443.

(*b*) See *Bamundoss Mookerjea* v. *Musst. Tarinee*, 7 M. I. A. at pp. 178, 180, 185, 206.

(*c*) *Satra Khumagi et al* v. *Tatia Hanmantrao et al*, Bom. H. C. P. J. F. for 1878, p. 121. He takes the duties with the rights of a begotten son. See *Bamundoss Mookerjea* v. *Musst. Tarinee*, 7 M. I. A. at pp. 178, 180, 185, and *Manikmulla* v. *Parbuttee*, C. S. D. A. R. for 1859, p. 515; *Maharajah Juggernaut Sahaie* v. *Musst. Muckun Koomwar*, Calc. W. R. 24 C. R.; *Rámbhat* v. *Lakshman Chintáman*, I. L. R. 5 Bo. at p. 635.

(*d*) 2 C. W. R. 123 C. R.

(*e*) 3 B. L. R. 57 P. C.

(*f*) 8 M. I. A. at p. 323.

(*g*) 2 Bom. H. C. R. 306.

(*h*) 12 M. I. A. 443.

(*i*) 7 M. I. A. 169.

(*j*) 8 Bom. H. C. R. 67 A. C. J.

(*k*) 24 C. W. R. 183.

alienation for value was upheld; and in the later judgment (*a*) it is laid down that in no case can an estate, vested in possession, be divested by the subsequent adoption of a son, who then claims as a collateral heir of the former owner. In *Nilcomul Lahuri* v. *Jotendro Mohun Lahuri* (*b*) it was held that where a nephew of a deceased had, by fraud, prevented his widow from adopting, and had thus himself succeeded to the whole instead of the half of the estate left by the widow of another uncle, the subsequent adoption did not relate back so as to divest the nephew of the moiety to which the adopted son if taken in due time would have been co-heir with his cousin by adoption. Whether an adoption by one widow annulled a prior conveyance of her estate by another was a question sent back for trial in *Bábáji* v. *Apáji*. (*c*) In a series of cases in C. S. D. A. R. for 1856, pp. 170 ss., an adopted son who had long received rents under leases granted by his adoptive mother sought to enhance the rents inconsistently with the leases. It was thought he could do this, but now probably his conduct would be deemed a ratification. These cases differ from the case of *Shiddheshvar* v. *Rámchandrarão*, (*d*) as in the latter the adoptive mothers after the adopted son had attained his majority had mortgaged the estate in their own names. The adopted son promised to his mothers to redeem the mortgage, and he offered no objection to the mortgagee's paying them an annuity in accordance with the mortgage; but it was held that there could be no ratification of what had not been done professedly on account of the principal, and that mere quiescence of the owner would not validate unauthorized dealings with his property. The mortgagee, it was said, if he had taken assignments of prior charges valid as against the adopted son, might enforce them in another suit.

In *Bai Kesar* v. *Bai Ganga* (*e*) the question was as to alienation by a father's widow as guardian of a son's minor widow of property of the latter. The transaction was set aside an account of the guardian's not having obtained a certificate of administration under Act XX. of 1864; but as the sale had been made to pay debts reasonably incurred, its rescission was made conditional on the repayment by the younger widow of the purchase-money to the vendee. (*See* further, Book II. Introd.)

(*a*) *Kally Prosonno Ghose* v. *Gocool Chundre Mitter*, I. L. R. 2 Cal. 307.

(*b*) I. L. R. 7 Cal. 178.

(*c*) S. A. No. 190 of 1877; Bom. H. C. P. J. F. for 1877, p. 269.

(*d*) I. L. R. 6 Bom. 463.

(*e*) 8 B. H. C. R. 31 A. C. J.

3. For the conditions limiting a widow's power to adopt in Bombay, see *Rámji valad Náráyan* v. *Ghaman Kom Jiváji* (*a*) and Book III. of this work treating of ADOPTION.

Q. 5.—The holder of an Inâm granted for the support of a temple, died, leaving an adopted son. The son and the widow of the holder disagreed and separated. The question therefore is whether the Inâm should in future be entered in the name of the adopted son or of the widow?

A.—The Inâm should be entered in the name of the adopted son.—*Ahmednuggur, October 16th,* 1851.

AUTHORITIES.—(1) Datt. Mîm. p. 1, l. 3 and 11; (2*) p. 36, l. 10 (*see* Chap. II. Sec. 2, Q. 3); (3) Vyav. May. p. 104, l. 7; (4) p. 105, l. 6; (5) p. 107, l. 6; (6) p. 102, l. 4; (7) p. 110, l. 6; (8) p. 108, l. 3.

Q. 6.—A deceased man has left a daughter and an adopted son. Which of these has a right to inherit the property belonging to the deceased?

A.—The daughter is entitled to one-eighth of the property. The expenses of her marriage should be defrayed from this share and the rest of the share made over to her. The adopted son should receive the remaining seven-eighths of the property.—*Ahmednuggur, March 14th,* 1856.

AUTHORITIES.—(1) Vyav. May. p. 102, l. 4; (2) p. 110, l. 6; (3) Mît. Vyav. f. 51, p. 1, l. 9 (*see* Chap. I. Sec. 2, Q. 17); (4*) Datt. Mîm. p. 36, l. 10 (*see* Chap. II. Sec. 2, Q. 3).

Q. 7.—A Brâhman widow has adopted a son; should he or she have the management of her property during her lifetime?

A.—The adoptive mother's Stridhana should remain in her possession. The adopted son should make a suitable provision for the support of his mother, and the mother should remain under the control (*b*) of her son, who should have

(*a*) Bom. H. C. P. J. F. for 1882, p. 141.

(*b*) *See* above, Introd. p. 254 ss.

the management of all the moveable and immoveable property.—*Ahmednuggur, October 17th*, 1845.

AUTHORITY.—* Datt. Mim. p. 36, l. 10 (*see* Chap. II. Sec. 2, Q. 3).

Q. 8.—A woman after the death of her husband adopted a son. Can he claim the property of his (adoptive) father during the lifetime of his mother?

A.—Yes, he can claim his father's property, but not that of his mother.—*Poona, November 1st*, 1852.

AUTHORITIES.—(1) Mit. Vyav. f. 54, p. 2, l. 15; (2*) Datt. Mîm. p. 36, l. 10 (*see* Chap. II. Sec. 2, Q. 3.)

Q. 9.—A woman adopted a son, and agreed to put him in possession of his property. The woman afterwards refused to act up to her agreement. Can the adopted son sue his adoptive mother for the possession of the property?

A.—The adoptive mother can be sued on the agreement, but she can still claim a maintenance.

Poona, November 5th, 1852.

AUTHORITIES.—(1) Viram. f. 121, p. 1, l. 10; (2) p. 2, l. 14; (3*) Datt. Mîm. p. 36, l. 10, (*see* Chap. II. Sec. 2, Q. 3).

Q. 10.—Can an adopted son of a woman claim the property in her possession? A part of the property was acquired by her and the rest by her husband.

A.—The portion of the property which was acquired by the woman is her "Stridhana," of which she alone is the owner. The adopted son can claim a half of the property belonging to her husband. The other half must be left with the widow. She is at liberty to enjoy the proceeds of the immoveable property, but not to mortgage or dispose of it.

Rutnagherry, February 20th, 1854.

AUTHORITIES.—(1) Mit. Vyav. f. 51, p. 1, l. 7; (2) f. 60, p. 2, l. 16; (3) f. 61, p. 1, l. 10; (4) f. 61, p. 2, l. 3; (5) f. 60, p. 2, l. 16:—

(Yâjñavalkya.) "What was given to a woman by the father, the mother, the husband, or a brother, or received by her at the nuptial

fires, or presented to her on her husband's marriage to another wife, or also any other (separate acquisition), is denominated a woman's property." . . . . . (Vijñâneśvara). And on account of the word "âdyam" (and the like) property which she may have acquired by inheritance, purchase, partition, seizure, or finding, are denominated by Manu and the rest, 'woman's property.' (Colebrooke, Inh. p. 364; Stokes, H. L. B. 458. Translation revised according to note in 1st Edition of this work, *q. v.* *See* above, pp. 268 ss.)

REMARK.—The adopted son takes the whole of his adoptive father's property. (*See* Chap. II. Sec. 2, Q. 3.)

Q. 11.—A woman has adopted a son. She is possessed of some moveable and immoveable property. Is she or her adopted son the owner of the property?

A.—When a son is adopted by a widow, he becomes the owner of her husband's property. If he should happen to be a minor, the property should be taken care of by the widow, who is the owner of her "Strîdhana" only.

Ahmednuggur, August 18th, 1849.

AUTHORITIES.—(1) Datt. Mîm. f. 1, p. 1, l. 3 and 11; (2) Vyav. May. p. 102, l. 10; (3) p. 110, l. 6; (4) p. 104, l. 7; (5) p. 105, l. 6; p. 107, l. 6; (7) p. 103, l. 7; (8*) Datt. Mîm. p. 36, l. 10 (*see* Chap. II. Sec. 2, Q. 3); (9*) Manu IX. 27 (*see* Chap. II. Sec. 1, Q. 1).

Q. 12.—A widow of the Mahâr caste adopted a son of her sister. He succeeded to the Watan of his adoptive father. His cousin has sued him for the recovery of the property. How should this case be decided?

A.—The sister's son adopted by the widow is legally entitled to the Watan of his adoptive father. The cousin therefore cannot disturb his possession.

Ahmednuggur, April 12th, 1856.

AUTHORITY.—*Datt. Mîm. p. 36, l. 10 (*see* Chap. II. Sec. 2, Q. 3).

Q. 13.—A person having lost his first adopted son adopted another, and the wife of the deceased adopted one also. How will the two adopted sons share the family property?

A.—Equally.—*Tanna, June 12th,* 1858.

AUTHORITIES.—(1) Mit. Vyav. f. 50, p. 1, l. 7 (*see* Chap. II. Sec. 4, Q. 2); (2) f. 50, p. 2, l. 3.

REMARK.—The adoption by the widow of the deceased son, it was answered in one case (No. 1666 MSS), would hold good notwithstanding a prior adoption by her father-in-law. An adoption by her alone is to be preferred (No. 1660 MSS).

Q. 14.—A man adopted a son, but afterwards he had a son born to him. He separated from his adopted son, giving him a share of his property. The man and his son subsequently died. The widow of the son married another husband. The adopted son, and a "Pâṭ" widow of the adoptive father, are the only persons who claim to be the heirs of the adoptive father. Which of these is the heir?

A.—The adopted son.—*Dharwar, January 13th,* 1859.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2*) Vîram. f. 194, p. 2, l. 4 (*see* Chap. II. Sec. 6A, Q. 14); (3*) Datt. Mîm. p. 36, l. 10 (*see* Chap. II. Sec. 2, Q. 3).

Q. 15.—A man first adopted a son, and afterwards he had a son born to him. How will they share the man's property?

A.—The adopted son is entitled to one-fourth of the share of the son.—*Dharwar, September 10th,* 1847.

AUTHORITY.—Vyav. May. p. 108, l. 2:—

"When a son has been adopted, if a legitimate son be afterwards born, the given son shares a fourth part." (Borradaile, p. 72; Stokes, H. L. B. 66.)

REMARK.—On the death of an intestate a contest arose between his adopted son and the adopted son of his natural son. The Court held that their rights were equal. *Raghoobanand Doss* v. *Sadhuchurn Doss.* (*a*) This would not be right on the principle of an adopted son fully representing his father in the absence of a natural son, as that would give the adoptive grandson the whole share of his father, in competition with whom the father's adoptive brother would take only half a share.

(*a*) I. L. R. 4 Cal. 425.

Q. 16.—If a son is born to a man after he has adopted one, what portion of his property should be given to the adopted son ?

A.—The property should be divided into five shares, one share should be given to the adopted, and four to the begotten son.—*Sadr Adâlat, July 2nd,* 1858.

AUTHORITIES.—(1) Datt. Mîm. f. 21, p. 2, l. 1; (2*) Vyav. May. p. 108, l. 2. (*See* the preceding question.)

Q. 17.—A Pâṭîl adopted a son, afterwards a son was born to him by a wife who had been married before he married her. Which of these will be his heir ? If after he had adopted a son, a son was born to him by his wife who was a virgin when he married her, which of the two sons will be his heir ?

A.—The son of her who was a virgin, when the Pâṭîl married her, has a greater right than the adopted son, and the adopted son a greater right than he who was born of a twice married mother.—*Dharwar, December 3rd,* 1858.

AUTHORITIES.—(1) Mit. Vyav. f. 53, p. 2, l. 6; (2*) f. 55, p. 1, l. 11 (*see* Chap. II. Sec. 3, Q. 1); (3*) Vyav. May. p. 108, l. 2 (*see* Chap. II. Sec. 2, Q. 15); (4*) p. 112, l. 2 (*see* Chap. II. Sec. 3, Q. 16).

REMARKS.—1. If the son born after adoption was born from a Pâṭ wife, he would, in the higher castes, and except by custom in the lower also (being under the Hindû Law considered illegitimate), be excluded. But as the illegitimate son of a Sûdra, he will, according to Authority 3, receive one-third of the property. But *see* also Chap. II. Sec. 3, Q. 16, and Remarks on the same question.

2. If a legitimate son be born after the adoption has taken place, the adopted son receives a fifth of the deceased's estate, according to the preceding question. According to the Mit. Ch. I. Sec. XI. p. 24, the adopted son takes a fourth part.

Q. 18.—*A*, an Âgarvâḷî, had no children; but he brought up one, *B*, as his foster son. *A*'s mistress had a son, *C*, before she was kept by *A*, and *C* accompanied his mother when

she went to live in *A*'s house, and took *A*'s name. On the death of *A*, will *B* or *C* succeed to his property?

A.—*A*'s foster son, *B*, will be his heir. *C*, the son of his mistress, will not be his heir merely because he went with his mother to live in *A*'s house.

Ahmednuggur, September 30th, 1846.

AUTHORITIES.—(1*) Datt. Mîm. p. 36, l. 10 (*see* Chap. II. Sec. 2, Q. 3); (2*) Vyav. May. p. 102, l. 2:—

"Here we must remark that with the exception of the son given (all other) secondary sons are set aside in the Kali (or present) age." (Borradaile, p. 66; Stokes, H. L. B. 58.)

REMARK.—*B* will inherit only if he was formally adopted; *Bashettiappa* v. *Shivalingappa*; (*a*) *Nilmadhab Das* v. *Bisswambhar Das et al.* (*b*)

Q. 19.—A Kolî *A*, had nephews, but they were separated from him. He had no son of his own, but he brought up *B*, the son of a relation by a kept woman, either as a foster child, or as his adopted son (it is not known which). On the death of *A*, will his property pass to *B*, or to his nephews?

A.—If *B* was adopted by *A*, he will be his heir. If *B* was not adopted, but only brought up as a foster child by *A*, then his nephews, though separated from him, will inherit his property in preference to *B*.

Ahmednuggur, February 21st, 1846.

AUTHORITIES—(1*) Datt. Mîm. p. 36, l. 10 (*see* Chap. II. Sec. 2, Q. 13); (2*) Vyav. May. p. 102, l. 2 (*see* Chap. II. Sec. 2, Q. 18).

Q. 20.—*A*, a Sûdra, died, leaving first and second cousins, and also a boy, *B*, whom he had either brought up as a foster child, or else bought. *A*, previous to his death, bequeathed a portion of his property to *B*. Is *B* entitled to

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(*a*) B. H. C. P. J. F. for 1873, p. 162.
(*b*) 3 B. L. R. 27, P. C.

claim any further share of the property besides that expressly bequeathed to him, and if so, how should the rest of the property be divided between *B* and *A*'s cousins ?

A.—If *B* was adopted by *A* with all the forms required by the Śâstras, then he will succeed to the whole of the property left by his adoptive father. If he has not been so adopted, he can claim only so much property as may have been expressly assigned to him by the deceased *A*, and the rest of *A*'s property will pass to his blood relations.

Ahmednuggur, January 17th, 1848.

AUTHORITIES.—(1) Vyav. May. p. 102, l. 2 (*see* Chap. II. Sec. 2, Q. 18); (2) p. 159, l. 2; (3) p. 142, l. 8; (4) p. 7, l. 8; (5) Mit. Vyav. f. 54, p. 1, l. 3 and 13; (6) f. 53, p. 2, l. 6; (7) f. 54, p. 2, l. 13; (8) f. 51, p. 1, l. 3; (9) f. 50, p. 1, l. 1; (10) Datt. Mîm. p. 36, l. 10 (*see* Chap. II. Sec. 2, Q. 3).

SECTION 3.—ILLEGITIMATE SON.

Q. 1.—Can a son of a Śûdra's female slave be his heir ?

A.—The son of a female slave is the heir of a Śûdra.

Ahmednuggur, September 30th, 1846.

AUTHORITY.—*Mit. Vyav. f. 55, p. 1, l. 11 :—

"Even a son begotten by a Śûdra on a female slave may take a share by the father's choice. But if the father be dead, the brethren should make him partaker of a moiety of a share; and one who has no brothers, may inherit the whole property, in default of a daughter's son." (Colebrooke, Mit. p. 322; Stokes, H. L. B. 426.)

REMARKS.—See *Rahi* v. *Govind,* (*a*) *Narayanbharti* v. *Lavingbharti,* (*b*) and *Inderun Valungypooly Tuver* v. *Ramasawmy.* (*c*)

2. The union of the sexes amongst many of the wilder tribes and the lower castes of India can be called marriage only by courtesy. The word implies a set of relations which amongst them does not really

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(*a*) I. L. R. 1 Bom. 97.
(*b*) I. L. R. 2 Bom. 140.
(*c*) 13 M. I. A. 141, or 3 B. L. R. 4 P. C.

exist. Thus amongst the Khonds the so-called wife is bought from her father and carried off by force. (*a*) She can leave her husband when she will, her parent being then bound to repay her price. Amongst some classes in Kângra a purchased widow is reckoned a "wife" without further ceremony. (*b*) The custom of some castes in Gujarât allows the woman to leave the man and to form a connexion with another, subject or not to ratification by the caste. Mere incompatibility of temper is with several regarded as a ground for dissolution of the union, and in nearly all the lower castes the man may dismiss the woman at his pleasure with or without reason; the only restraint he feels arises from the necessary expense of a new wife. Parents and brothers habitually encourage young wives to run away from their husbands to induce the latter to divorce them and so leave room for another sale. The Brahmanic law regards a marriage as really indissoluble, (*c*) though the erring wife may be divorced in the sense of being disgraced and kept apart. It could not, therefore, treat with respect connexions in which there was no religious conjunction of sacra, no recognition of an indissoluble bond, no procreation of children to fulfil the sacrificial law. The British Courts give effect to many unions as marriage which are almost entirely wanting in the characteristics of what in England goes by that name, and even apply the provisions of the Penal Code to transgressions of a law which in itself never laid any strict obligations on the spouses. The relations of the sexes in British territory have thus been raised in some degree to a higher level amongst the lower castes, but at the cost of penal inflictions, it may be feared in many instances in which the culprits were wholly unconscious of having committed any offence. (*d*)

Baudhâyana makes mere sexual association a lawful 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 sacrifices offered to the gods or the manes. Kâsyappa has pronounced her a slave."—Transl, p. 207. (*See* above, pp 86, 274.)

(*a*) *See* Rowney, Wild Tribes of India, p. 103.

(*b*) *See* Panj. Cust. Law, II. 184.

(*c*) *See* above, p. 90, and below, Sec. 6 B. Introd. Remarks.

(*d*) See *Mathurá Náikin* v. *Esu Náikin*, I. L. R. 4 Bom. 545, 565, 570; Rowney, *op. cit.* p. 136, 139, 190, 204; Steele, Law of Castes, 32, 33, 170, 171, 172, 173. Lord Penzance in *Mordaunt* v. *Mordaunt*, L. R. 2 P. and D. at p. 126; Lush, L. J., in *Harvey* v. *Farnie*, L. R. 6 P. D. at p. 53.

3. An illegitimate son was preferred to a widow and daughter in *Sadu* v. *Baiza and Genu.* (*a*) (*See* below, Q. 12.)

Q. 2.—Can an illegitimate son of a Brâhman claim a share from his legitimate brother?

A.—No: he cannot have any share. He can only claim that which his father may have expressly given to him.

Ahmednuggur, February 15th, 1851.

AUTHORITIES.—(1) Vyav. May. p. 99, l. 1 (*see* Auth. 3); (2) p. 98, l. 4; (3) Mit. Vyav. f. 55, p. 1, l. 15:—

"From the mention of a Śûdra in this place (it follows that) the son begotten by a man of a regenerate tribe on a female slave does not obtain a share, even by the father's choice, nor the whole estate after his demise." (*b*) (Colebrooke, Mit. p. 323; Stokes, H. L. B. 426.)

REMARK.—*See* above, p. 263.

Q. 3.—A Mârwâḍî has a son by a woman either kept or purchased as a slave. Can the woman or the son be his heir?

A.—If the Marwâḍî is a Śûdra, his illegimate son will be his heir. If he is not a Śûdra, and if he has not made a gift of his property to any one, the Sirkâr should take his property after paying for his funeral rites and the maintenance of the woman. If the deceased has made a gift of his property to either the son or the woman, it should be made over to her or him.

Ahmednuggur, February 23rd, 1847.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 1, l. 11 (*see* Chap. II. Sec. 3, Q. 1); (2) f. 57, p. 1, l. 5:—

(*a*) I. L. R. 4 Bom. 37, S. C.; Bom. H. C. P. J. F. 1879, p. 509.

(*b*) According to the Sanscrit text as given above, the translation "nor the whole estate after his demise" is not correct. It ought to be "nor half a share, much less the whole."

The English law of Glanville's time allowed a father to give to an illegitimate son a share of the patrimony which he could not give to a younger legitimate son without the consent of the heir. (*See* Glanville, p. 141.) This arose from a preservation of the literal direction of a text while the law to which it was collateral had changed. For an analogous process in the Hindû Law, *see* below, Q. 8.

"It is said by Kâtyâyana that heirless property goes to the king, deducting, however, a subsistence for the females, (*a*) as well as the funeral charges, but the goods belonging to a venerable priest, let him bestow on venerable priests." (Colebrooke, Mit. p. 335; Stokes, H. L. B. 435.)

(3) Vyav. May. p. 236, l. 61; (4) p. 98, l. 6; (5) Manu IX. 155.

Q. 4.—When a deceased Pardeshi (*b*) has no nearer heir than a son of his kept woman, can such a person be his heir?

A.—Yes.—*Poona, August 17th,* 1847.

AUTHORITY.—*Mit. Vyav. f. 55, p. 1, l. 11 (*see* Chap. II. Sec. 3, Q. 1).

REMARK.—"Yes," if the son is his own also, and if deceased belonged to the Śûdra caste.

Q. 5.—A person permitted his illegitimate son to live in one of his houses. This person and his descendants occupied the house for several years. They repaired, improved, and divided it among themselves. Can the house be claimed by the legitimate heirs of the original owner, and how many years' possession constitutes a prescriptive title?

A.—A man of the Sûdra caste having legitimate and illegitimate sons, can transfer his real or personal property to the latter. The legitimate heirs cannot cancel such a transfer. The period necessary to constitute a prescriptive title is not fixed in the Śâstras.—*Ahmednuggur, May 26th,* 1847.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 1, l. 11 (*see* Chap. II. Sec. 3, Q. 1); (2) f. 55, p. 1, l. 3; (3) f. 11, p. 2, l. 11 and f. 12, p. 2, l. 14. Translated 1 Macn. H. L. 200; (4) Vyav. May. p. 83, l. 3; (5) p. 89, l. 2.

(*a*) According to Vijñâneśvara, "females" here means "concubines" (avaruddhâ). If a *patni* wife survived, the property would not be heirless.

(*b*) "Pardeshi," Paradeśî (lit. foreigner) is used in the Dekhan to denote any Hindû who has immigrated from some other part of India, especially from Hindustân, whatever his caste may be.

REMARKS.—1. A Śûdra cannot transfer his entire property to his illegitimate children, if he has legitimate sons. He can only give equal portions to the legitimate and illegitimate heirs. *See* however Book II. Chap. I. Sec. 2; above, p. 209.

2. If the house which the illegitimate son had received was not more than a portion equal to the share of a legitimate son, the latter cannot recover it. If it was more, he would be able to recover it, but be obliged to give to the illegitimate son one-third of the property or one-half of a son's share. (*a*) Even amongst the higher castes, as the illegitimate son is entitled to maintenance, a grant to him by his father for this purpose is valid against the legitimate sons. (*b*) (*See* the Introd. p. 263.)

3. According to the Mitâkshará, contrary to Yâjñavalkya and Nârada to which it refers, proprietary rights cannot be acquired by mere occupancy, however long it may last, and though the owner may not remonstrate. But *see* now Act 15 of 1877, Reg. V. of 1827, and Book II. Introd., "WILL TO EFFECT A SEPARATION."

Q. 6.—Is a cousin who performed the funeral ceremonies of his deceased relative, or a kept woman's son, who is a minor under the guardianship of his sister, his heir?

A.—As the deceased was separate from his relatives, and as he was of the Sûdra caste, his illegitimate son will be heir. But as the illegitimate son is a minor under the protection of his sister, she may have the charge of the property on his behalf.—*Nuggur, November 1st*, 1845.

AUTHORITY.—*Mit. Vyav. f. 55, p. 1, l. 11 (*see* Chap. II. Sec. 3, Q. 1).

Q. 7.—A man of the Mâlî caste left a son by a kept woman, and this son claims a share in certain land which is in possession of the deceased's nephew. Is the claim of the illegitimate son valid?

A.—As it appears that the man lived separate from his brothers, and that his share is in the possession of his nephew, the illegitimate son can claim it.

Nuggur, September 12th, 1845.

(*a*) *Kesaree et al* v. *Samardhan et al*, 5 N. W. P. R. 94.
(*b*) *Raja Parichat* v. *Zalim Singh*, L. R. 4 I. A. 159.

AUTHORITY.—*Mit. Vyav. f. 55, p. 1, l. 11 (*see* Chap. II. Sec. 3, Q. 1).

REMARK.—If there be no legitimate sons, daughters or daughter's sons, the illegitimate son of a Śûdra succeeds, taking precedence of a legitimate son's daughter. (*a*)

Q. 8.—A Mohatûr-widow of a man of the Mâlî caste, sued his kept woman for a house belonging to her husband. The widow, while her husband was alive, lived separately from him for about 12 years. During all this time she was supported by her own labour. It is not said that her character was bad. The man has two sons by the kept woman. Can the claim of the widow be allowed?

A.—The man's sons by the kept woman are his heirs. They should inherit the whole property, and grant a suitable maintenance to the widow.—*Ahmednuggur, March 13th,* 1848.

AUTHORITY.—*Mit. Vyav. f. 55, p. 1, l. 11 (*see* Chap. II. Sec. 3, Q. 1).

REMARKS.—1. A Mohatûr-widow is a widow who had been married twice.

2. For the preference of the illegitimate son to the widow, *see* p. 84 ss.

Q. 9.—A man, deceased, of the Śûdra caste, had two sons, one legitimate and the other illegitimate. The former died, leaving a widow. The deceased had a house, and the question is, who shall inherit it?

A.—The daughter-in-law has a right to a maintenance only. The illegitimate son will inherit the property of his father.—*Ahmednuggur, October 30th,* 1856.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 1, l. 11 (*see* Chap. II. Sec. 3, Q. 1); (2) f. 12, p. 1, l. 16; (3) Mit. Achâra, f. 12, p. 1, l. 4; (4) Vyav. May. p. 134, l. 6; (5*) p. 136, l. 4 (*see* Chap. I. Sec. 2, Q. 11).

(*a*) *Sarasuti* v. *Mannu,* I. L. R. 2 All. 134.

According to the law of the Lombards the legitimate sons excluded illegitimates, but were compelled to provide them and their own sisters with portions.

REMARK.—The illegitimate son of a Śûdra is entitled to half the share of a legitimate son, *Dhodyela et al* v. *Malanaik*, S. A. No. 243 of 1873, (*a*) in Bombay and Madras, (*b*) if there be a legitimate son, daughter, or grandson. Failing these, he may inherit the whole. Mit. Chap. I. Sec. 12, pl. 1 ss. See *Salu* v. *Hari*, (*c*) *Gopal Narhar* v. *Hunmant Ganesh Saffray*, (*d*) *Sarasuti* v. *Maina*. (*e*)

Q. 10.—A Śûdra, *A*, who was possessed of an open piece of ground suited for building purposes, died, leaving two sons. One of these, *B*, was a legitimate son, and the other, *C*, was either an illegitimate son, or else his foster-son. On the death of *A*, will the piece of ground belong to *B* alone, or will it belong to *C*? If *C* is entitled to a share of it, to what share is he entitled?

A.—In the Śûdra caste both legitimate and illegitimate sons succeed to their father's immoveable property. Their father may divide it according to his pleasure, and assign what share he pleases to a foster-son. If the property has to be divided after the death of the father, then, according to the Śâstras, the illegitimate son will be entitled to one-third, and the legitimate son to two-thirds of the whole property left by the father.—*Ahmednuggur, March 14th*, 1855.

AUTHORITY.—Mit. Vyav. f. 55, p. 1, l. 11 (*see* Chap. II. Sec. 3, Q. 1).

REMARKS.—1. The father may give an equal share to his illegitimate son if he likes. He could not give the bastard a greater portion than the other. (*See* above, p. 194; Mit. Ch. I. Sec. XII. para. 1.)

2. If *C* is a "foster-son," and has not been formally adopted, he receives nothing.

Q. 11.—*A*, a Tailor, died, leaving a legitimate son, *B*, and an illegitimate son, *C*. Are *B* and *C* entitled to equal

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(*a*) Bom. H. C. P. J. F. for 1874, p. 43.
(*b*) 2 Str. H. L. 70.
(*c*) H. C. P. J. for 1877, p. 34.
(*d*) I. L. R. 3 Bom. 273, 288.
(*e*) I. L. R. 2 All. 134.

shares of the moveable property and of the Watan of *A*, or can *C* claim no share at all? On the death of *B* will *C* be the heir to the Watan, or will it pass to the distant relatives of *A*? Is *B* competent to will away on his death-bed the Watan to distant members of his family, to the prejudice of *C*?

A.—*B* is entitled to three-fourths of the property of *A*, and *C* to one-fourth. If *B* die, leaving neither a widow, nor a son, nor a daughter, his Watan and other property will pass to *C*. If *B* and *C* have separated, then *B* is competent to transfer his property to his other relations, instead of to *C*.—*Ahmednuggur, December 13th*, 1847.

AUTHORITIES.—(1) Vyav. May. p. 83, l. 3; (2) p. 99, l. 1 (*see* Auth. 4); (3) p. 196, l. 4; (4*) Mit. Vyav. f. 55, p. 1, l. 11 (*see* Chap. II. Sec. 3, Q. 1); (5) f. 68, p. 2, l. 16 :—

"Property, except a wife and a son, may be given without prejudice to (the interest of) the family. But the whole estate may not be given if there is living issue, nor that which has been promised to anybody."

REMARK.—According to the Remark to Q. 5, and the Answer to Q. 10, the illegitimate son would be entitled to one-third of the whole estate. It is, however, possible to interpret the expression "half a share," which Yâjñavalkya uses in the passage bearing on this point (Authority 4), in the sense also which has been given to it in the answer to Q. 11. For Vijñâneśvara, when discussing the allotment of a "fourth of a share" to a daughter of a person leaving sons, states that the property is to be divided first into as many shares as there are daughters and sons. Then each daughter is to receive a fourth of such a share, and lastly, the rest is again to be divided equally amongst the brothers. (*See* Colebrooke, Inh. p. 287.) If the same principle is followed in regard to the "half share" of an illegitimate son, he will, in case there is only one legitimate son living, receive a fourth of the whole estate. The same difficulty presents itself also in regard to the fourth share of an adopted son. (*See* Chapter II. Sec. 2, Q. 15 and 17.)

Q. 12.—A man of the Śûdra caste died, leaving a widow and her son, and a kept woman and her son. The widow and the legitimate son of the man afterwards died, and the question is, whether the property of the deceased should

be taken by a separated legitimate member of his family, or by the illegitimate son?

A.—A woman who has not been married by the "Lagna" or "Pât" ceremony, but is kept by a man as a concubine from her childhood, is called a "Dâsî," and a son of a "Dâsî" can inherit the property of his father when there is no legal widow, son, daughter, or daughter's son. (*a*) In the present case, the illegitimate son appears to be the nearest heir of the deceased. The separated legitimate member of his family cannot therefore claim his property.

Poona, October 9th, 1857.

AUTHORITY.—Mit. Vyav. f. 55, p. 1, l. 11 (*see* Chap. II. Sec. 3, Q. 1).

REMARK.—The illegitimate son would inherit the whole estate of his father according to the Mitâkshará (*see* Q. 8), even though a widow of the latter might be living, but here the estate having descended to the two sons jointly (*see* Q. 10), or to the legitimate son, subject to the illegitimate's right to half a share, the Śâstri was not justified in treating the case as if the father had died leaving only the illegitimate son. In *Baiza et al* v. *Sadu*, S. A. No. 74 of 1876, there was a difference of opinion as to whether legitimate and illegitimate sons could be coparceners. In appeal by Sadu it was held that he the illegitimate and his legitimate half-brother were coparceners. (*b*) In the same case it was admitted in argument that the widow was entitled only to maintenance. In Madras, Mr. Ellis (2 Str. H. L. 66) thought that illegitimate sons of Śûdras might take equally with legitimate sons, but this does not appear to be the accepted rule even there (*ibid.* 70). Illegitimate sons by the same mother inherit *inter se* as brothers, *Maynabai et al* v. *Uttaram et al*, (*c*) and see *infra*, Section 11, Q. 4, and probably, but not quite certainly, from legitimate brothers on the footing of a joint family with rights of survivorship. (*See* Steele, 180.) But little difference indeed was at one time recognized between the legitimate and the illegitimate sons of Śûdras. The Brahma Purâna, quoted by the Vîramitrodaya, Tr.

(*a*) This is the doctrine of the Dattaka Chandrikâ, Sec. V. para. 31. For the Mitâkshará, *see* below, Q. 18.

(*b*) *Sadu* v. *Baiza*, I. L. R. 4 Bom. 37.

(*c*) 2 M. H. C. R. 196.

p. 120, says that Śûdras are incapable of having a son (putra) in the proper sense, as "a slave male or female can have only slave offspring." (*See* above, Introduction, p. 82 ss, and Q. 1 and 8.) The subsidiary sons in the order of their preference exclude those lower in the scale (Mit. Ch. 1, S. 11; Nârada, P. II. Ch. XIII. pl. 22, 25, 33, 49). In the answer to Q. 11 above, the Śâstri assumes that they may form a united family. On the other hand, Macnaghten, 1 H. L. 18, seems to rank the illegitimate as a coheir only with a daughter's son, though he recognizes his right to a half share, where there are legitimate sons. In Bengal it has been said by Mitter, J., in *Narain Dkara* v. *Rakhal Gain*, (*a*) that only the son of a Śûdra by his (unmarried) female slave has any right of inheritance, and the Mitâkshará, Ch. I. Sec. 12, is cited in support of this doctrine. A kept woman is for this purpose however regarded as a slave. (*See* Datt. Mimâm. S. 4, pl. 76; Steele, L. C. 41; 2 Str. H. L. 68.) In the case of *Rahi* v. *Govind*, (*b*) the position of the illegitimate son is learnedly discussed, but not with reference to this particular question.

Q. 13.—A Śûdra, who held a Pâtîlkî Watan, died. He had a daughter by his "Lagna" wife, and a son by his kept woman. Which of these is the heir?

A.—The property of the deceased should be divided between the daughter and the illegitimate son in the proportion of two-thirds to the daughter, and one-third to the son.

Poona, September 4th, 1852.

AUTHORITY.—Mit. Vyav. f. 55, p. 1, l. 11 (*see* Chap. II. Sec. 3, Q. 1; Stokes, H. L. B. p. 426).

Q. 14.—A Râjput brought a woman into his house. It is not known whether she was legally married to him or not, either by way of "Lagna" or "Pât." She has two sons and a daughter. The Râjput and she quarrelled; the consequence of which was that she was allowed to live separately from him, he continuing to support her. He subsequently brought another woman into his house. It cannot be ascertained whether this woman either was married to him or not.

(*a*) I. L. R. 1 Cal. 1, 5.
(*b*) I. L. R. 1 Bom. 97.

He had three sons and a daughter by this woman. Some people say that up to the time of his death, he expressed his will that the property should be given to one of the sons of the first woman, but the others affirm that his last wish was to give the whole property to all the sons of the second woman. Who should be considered the heir in such a case?

A.—Two slave women of the Śûdra caste have equal rights, and when both of them have sons, the property should be equally divided among the sons and mothers. If the woman first kept by the deceased was, together with her sons, dismissed by him owing to suspicion regarding her character, she cannot claim any share of the property. The second woman and her sons should be treated as heirs.

Ahmednuggur, February 21st, 1847.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 1, l. 11 (*see* Chap. II. Sec. 3, Q. 1); (2) f. 5, p. 1, l. 5; (3) f. 51, p. 1, l. 3 and 7; (4*) Vîramitrodaya f. 172, p. 2, l. 13:—

"But when the father divides his estate during his life-time, he ought not to give a greater share to one of his sons, nor should he disinherit any one of them without sufficient reason." (*See* the Commentary below, Book II. Chap. I. Sec. 2, Q. 5.)

REMARKS.—1. The two kept women themselves have no right to inherit from the deceased, but can only claim maintenance. *See* Q. 4.

2. Their sons inherit equally after the father's death, but only in case he was Śûdra. *See* Q. 1 and 2.

3. There is no passage in the law books which proves that a concubine's sons lose their rights on account of their mother having connexion with other men than their father after their birth.

4. In case the deceased was a Śûdra, he had no right so to bestow his property as to exclude any of his sons from the inheritance, if they were not disabled to inherit by "physical or moral defects." Auth. 4. *See* also Ch. VI.

Q. 15.—A Sûdra has a grandson, the son of his legitimate son. He has also an illegitimate son. The Śûdra, when he was alive, bestowed a house and some other pro-

perty on the illegitimate son. Should this be considered a legal gift?

A.—A father may allow his illegitimate son a share equal to that which he assigns to his legitimate son. If the partition takes place after the father's death, the illegitimate son can claim only one-half of that which the legitimate son receives. This is the established rule of the Śástra. The illegitimate son therefore should be allowed to enjoy whatever his father may have bestowed upon him.

Khandesh, September 24th, 1852.

AUTHORITY.—Mit. Vyav. f. 55, p. 1, l. 11 (*see* Chap. II. Sec. 3, Q. 1).

REMARK.—The gift will, however, be valid only if the illegitimate son has not received more than the legitimate son's child did.

Q. 16.—A Pâṭîl adopted a son. Afterwards a son was born to him by a wife who had been married before he married her. Which of these will be his heir? If after he had adopted a son, a son was born to him by his wife who was a virgin when he married her, which of the two sons will be his heir?

A.—The son of her who was a virgin when the Pâṭîl married her, has a greater right than the adopted son, and the adopted son a greater right than he who was born of a twice-married mother.—*Dharwar, December 3rd,* 1858.

AUTHORITIES.—(1) Mit. Vyav. f. 53, p. 2, l. 6; (2*) f. 55, p. 1, l. 11 (*see* Chap. II. Sec. 3, Q. 1); (3*) Vyav. May. p. 108, l. 2 (*see* Chap. II. Sec. 2, Q. 15); (4*) p. 112, l. 2:—

"From this text of Vasishṭha: When a son has been adopted, if a legitimate son be afterwards born, the given son takes a fourth part (of a share)." Borradaile, p. 76; Stokes, H. L. B. 66.

REMARKS.—1. If the deceased was a Śûdra, his son begotten on a Punarbhû (twice-married woman) will, according to the Hindu Law, inherit one-half of a son's share (*see* Auth. 2), since a second marriage is null, and the offspring consequently illegitimate, according to the Śâstras. Manu, V. 162, says "Nor is a second husband allowed to a virtuous woman." She must not "even pronounce the name of another man," *ibid.* 157. According to Manu IX. 65, "Nor is the

marriage of a widow even named in the laws." To the same effect are the passages in the General Notes I. and VI. That a remarriage is not allowed by the Mitâkharâ is stated by Colebrooke, 2 Strange, H. L. 399; and Strange himself pronounces against its legality, 1 Strange, H. L. 242. The Nirṇayasindhu quoted beneath (Ch. II. Sec. 8, Q. 6) declares that the remarriage of a once-married woman is not allowed. The Viramitrodaya quotes the Adipurân to the effect that the remarriage of a woman once married is along with the killing of kine, the partition with specific deductions, and the niyoga, disallowed in the present (Kaliyuga) age. (*a*)

But that remarriages, though disapproved, were practised at the time of the composition of Manu's Code, is plain from Manu IX. 175, 176. A woman thus associating with a second husband is distinguished by Yâjnavalkya (I. 68) from the *svairiṇi* who deserts her husband and cohabits adulterously with another man. The son of the twice-married woman was indeed under the older law assigned a place in the scale of sons above that of the adopted son (Yâjn. II. 129 ss, cited in Mit. Ch. I. Sec. 11, pl. 1), but re-marriage having become illegal amongst the higher castes, the illegitimacy of the offspring followed, until legislation restored the widow's capacity. Amongst the lower castes the remarriage of widows and divorced wives has always been common. The Śâstri, in answer to Q. 37 of Sec. 4, has even said that the Śâstras sanction a pâṭ marriage. This is contradicted in the next answer, but caste custom might itself be regarded as approved by the Śâstras according to the often repeated formula (Manu VIII. 41), and on this ground probably it has been recognized in most cases, as may be seen in Sec. 6 B below. In Ch. IV. B, Sec. 4, there is a case in which the Śâstri pronounces a woman's son, by her first marriage, heir to the property which she had inherited from her second husband. The children by a pâṭ marriage are generally regarded as legitimate, where the marriage is allowed. (*See* Steele's Law of Caste, 169. *See* also Manu V. 162, 157; IX. 175, 176; General note at the end of translation of Manu, I. and VI.)

2. By Act XV. of 1856, the son of a Punarbhû is legitimized by the sanction given to the second marriage of his mother. The offspring of an adulterous intercourse even amongst Śûdras has no right of inheritance. See *Datti Parisi Nayudu et al* v. *Datti Bangaru Nayudu et al* (*b*) and the case of *Rahi* v. *Govind* (*c*) in which

(*a*) Tr. p. 61.
(*b*) 4 M. H. C. R. 204.
(*c*) I. L. R. 1 Bom. 97.

the law is fully discussed; *see* also *Viramuthi Udayana* v. *Singaravélu*, (*a*); *see* too *Narayan Bharthi* v. *Laving Bharthi*. (*b*) The same cases however show that the illegitimate son is in all cases entitled to maintenance. Nor has the offspring of an incestuous intercourse between a father-in-law and daughter-in-law any rights of inheritance. (*c*)

3. If legitimate sons are born to a man after he has adopted a son, the adopted son inherits a fourth of a son's share on the demise of the father (Auth. 3).

Q. 17.—A deceased person has some relations who are separate in interest. He has also a daughter by his "Lagna" wife, and a son by his "Pût" wife. Who will be the heir of the deceased ?

A.—The relations, whose interests are separate, have no title whatever. The daughter and the son should be allowed equal shares of the property.—*Dharwar*, 1846.

AUTHORITY.—*Mit. Vyav. f. 55, p. 1, l. 11 (*see* Chap. II. Sec. 3, Q. 1).

REMARKS.—1. According to the Hindû law, apart from customary exceptions, the son of a Punarbhû (remarried widow) is illegitimate, and consequently inherits, if there be living legitimate issue of his father, half a share. *See* Kâtyâyana in Smriti Chandrikâ, Ch. V. p. 10; 2 Str. H. L. 68, 70; Coleb. Dig. Bk. V. Text 174.

2. Regarding the legalization of widow's remarriages, *see* Q. 16.

3. Children by pât are equally legitimate with those by marriage, according to Col. Briggs, Steele 169. See *infra*, Ch. II. Sec. 8, Q. 6.

Q. 18.—A man married a woman, who had been previously married, and by her had a son. At his death, can the son of such a wife inherit his immoveable property?

A.—If a man died leaving neither son nor daughter by the wife whom he married as a virgin, nor the son of such a daughter, the son of the previously married wife will succeed to his immoveable property.—*Dharwar, July 26th*, 1850.

(*a*) I. L. R. 1 Mad. 306.
(*b*) I. L. R. 2 Bom. 140.
(*c*) 4 M. H. C. R. 204, *supra*.

AUTHORITY.—Mit. Vyav. f. 55, p. 1, l. 11 (*see* Chap. II. Sec. 3, Q. 1).

REMARKS.—1. This stamps him as illegitimate in the opinion of the Śâstri; and Bâlambhâtta, commenting on Mit. Ch. II., Sec. 1, p. 28, speaks of twice-married women and others not considered as wives espoused in lawful wedlock.

2. According to the Hindû Law, the son being illegitimate, will succeed only in case the deceased was a Śûdra. *See* 2 Str. H. L. 65, 68.

3. Regarding the legalization of the marriage of a Hindû widow, *see* Act XV. of 1856. *See* also Q. 16.

SECTION 4.

GRANDSONS.—LEGITIMATE, NATURAL OR ADOPTED.

Q. 1.—A man's son died, leaving a son. The man himself also died afterwards, leaving a widow. The question is, whether the widow or the grandson is the heir? If the widow is the heir, another question is, whether she can dispose of the property during the lifetime of her grandson?

A.—A grandson has an unquestionable right to the property of the grandfather. This right is termed in law the "Apratibandha dâya." As there is a grandson, the widow cannot claim the property of her husband, and she has no right to sell it.—*Surat, June 5th,* 1857.

AUTHORITIES.—(1) Mit. Vyav. f. 44, p. 2, l. 13:—

"The wealth of the father or of the paternal grandfather becomes the property of his sons or of his grandsons, in right of their being his sons or grandsons: and that is an inheritance not liable to obstruction." (Colebrooke, Mit. p. 242; Stokes, H. L. B. 365.)

(2) Mit. Vyav. f. 50, p. 1, l. 7.

Q. 2.—A father-in-law caused his daughter-in-law to adopt a son, and afterwards he died. Who should be considered the heir of the deceased, the adopted grandson or the widow?

A.—The adopted grandson.—*Tanva, November 15th,* 1851.

AUTHORITIES.—(1) Mit. Vyav. f. 50, p. 1, l. 7 :—

"For the ownership of father and son is the same in land, which was acquired by the grandfather, or in a corrody, or in chattels (which belonged to him)." (Colebrooke, Mit. p. 277; Stokes, H. L. B. 391.)

(2) Mit. Vyav. f. 53, p. 2, l. 6; (3) Manu IX. 141.

REMARK.—A great-grandson in the male line precedes a daughter's son, *Gooroogobindo* v. *Hurreemadhab.* (*a*)

SECTION 5.

ILLEGITIMATE SONS' SONS.

Q. 1.—A man of the Śûdra caste has a daughter, a separated nephew, and a grandson, who is son of his illegitimate son. Which of these is the heir?

A.—The daughter will have one-half, and the other half should be given to the illegitimate grandson. The separated nephew is not entitled to anything at all.

Ahmednuggur, September 11th, 1849.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 1, l. 11 (*see* Chap. II. Sec. 3, Q. 1); (2*) f. 44, p. 2, l. 13 (*see* Chap. II. Sec. 4, Q. 1).

REMARK.—The grandson inherits the half of a share to which his father was entitled.

SECTION 6.—WIDOW. (*b*)

A.—MARRIED AS A VIRGIN.

Q. 1.—A man, who used to receive from Government an allowance called "Toḍa Grâs," died without issue. He has left a widow. Should the allowance be paid to her as it was

(*a*) I. Marsh. 398.

(*b*) The Smṛiti Chandrikâ, Ch. XII. para. 31, relying on a passage of Śankha (*see* Dâya-Bhâga, Ch. XI. Sec. 1, para. 15), places the widow of a reunited coparcener after the brother, father, and mother. The Vyav. May. Ch. IV. Sec. 9, p. 24, adopts the same construction, but in this case it follows Madan in giving to the mother precedence over the father. These rules seem to be arbitrary. Bṛihaspati (Smṛiti Chan. Ch. XII. S. 5, para. 38), quoted on the same subject, places the widow next after the children.

paid to her husband? Can she claim any property in addition to the Pallu or Strîdhan which she may have received at the time of her marriage?

A.—When the deceased man is a separated member of a family, and when he has left no children, his widow will be the heir to his property. If she has received any Strîdhana or Pallu on the occasion of her marriage, it cannot be considered a part of her husband's property. It is a separate and peculiar property, and its possession can form no obstacle to any right of receiving a share in her husband's property.

Surat, February 26th, 1848.

AUTHORITIES—(1) Vyav. May. p. 134, l. 4 (*see* Auth. 2); (2*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARK.—See *Pranjiwandass* v. *Devkuvarbai*, (*a*) and the Introduction, Sec. 3 B (4), and Sec. 11, pp. 88, 299, 295.

As to payment of debts to the widow empowered or directed to adopt, see *Bamundass* v. *Musst. Tarinee*, (*b*) and for the case of a widow, the real heir, and another person holding a certificate of administration, see *Purshotam* v. *Ranchhod*. (*c*)

That a widow represents the estate as between her successors and strangers, *see* the Introd. p. 95, and *Nand Kuvar* v. *Radha Kuari*. (*d*)

A money decree having been obtained against a man and executed against his widow as his representative, it was held that after the widow's death the daughter could not recover the property sold in execution from the purchaser. (*e*)

The presumptive heir cannot maintain a suit for a declaration of his right. See *Greeman Singh* v. *Wahari Lall Singh*, (*f*) where it is

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(*a*) 1 Bom. H. C. R. 130.

(*b*) 7 M. I. A. 169.

(*c*) 8 Bom. H. C. R. 152, A. C. J.

(*d*) I. L. R. 1 All. 282.

(*e*) *Hari Vydianáthayanna* v. *Minakshi Ammal*, I. L. R. 5 Mad. 5, referring to *The General Manager of the Rdj Durbhunga* v. *Maharaja Coomar Ramaput Singh*, 14 M. I. A. 605 and *Isham Chunder Mitter* v. *Buksh Ali Soudagur*, Marsh. R. 614. In a note to the report reference is made to *Zalem Roy* v. *Dal Shahee*, *ib.* 167.

(*f*) I. L. R. 8 Cal. 12.

said that the Specific Relief Act (I. of 1877) § 42, makes no difference, as it refers only to vested rights.

A widow's refusal to adopt, according to her husband's directions, is no ground of forfeiture of her rights of inheritance. *Uma Sunduri Dabee* v. *Sourobinee Dabee*, I. L. R. 7 Calc. 288.

In Gujaráth caste custom in some cases gives the mother precedence over the widow, as *ex. gr.* in the cases in Borr. C. Rules, MS. Bk. G, Sheets 42, 50. *See* above, Introd. p, 157.

Careful provision is made by the rules of most of the castes in Gujeráth for securing at marriage the Pallu of the bride, whether consisting of gifts from her own family or from her husband.

As to a family custom of excluding childless widows from inheritance differing from the general custom of the country, see *Russic Lal Bhunj et al* v. *Purush Munnee*, 3 Morl. Dig. 188, and note 2. (*a*)

Q. 2.—Four brothers became separate. The youngest of them was a minor. The eldest brother therefore took charge of the minor's share. The minor subsequently died, leaving a widow. Can she claim her husband's share? The minor has passed an agreement to the eldest brother that he (the eldest brother) should take charge of his, the minor's, share, whenever he should live separate from him. Does this operate in any way against the right of the widow?

A.—The share of the minor was set apart, and his widow is therefore entitled to it. The minor must be considered as separated, though he chose to live with his eldest brother.

Dharwar, August 28th, 1855.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 (*see* Auth. 2); (2*) f. 55, p. 2, l. 1 (*see* Ch. I. Sec. 2, Q. 4).

REMARK.—A wife is, under the Hindu Law, in a subordinate sense, a co-owner with her husband; he cannot alienate his property or dispose of it by will in such a wholesale manner as to deprive her of maintenance. Held therefore where a husband, in his lifetime, made a gift of his entire estate, leaving his widow without maintenance, that the donee took and held such estate subject to her maintenance. (*b*)

(*a*) With this may be compared the privilege allowed to the noble class in Germany of making special laws by a family compact.

(*b*) *Jamna* v. *Machul Sahee*, I. L. R. 2 All. 315. *See* also *Narbadabai* v. *Mahadeo Narayan*, I. L. R. 5 Bom. 99. Comp. above, p. 208.

Q. 3.—A woman's husband and father-in-law are dead. She has possession of their property. Should her right of inheritance be recognized?

A.—Yes.—*Dharwar*, 1845.

AUTHORITY.—*Mit. Vyav. f. 55, p. 2, l. 1 (*see* Ch. I. Sec. 2, Q. 4).

REMARK.—The widow inherits under the text quoted above, only in case her father-in-law died before her husband. Regarding the other alternative, *see* Ch. II. Sec. 14; and Introd. p. 125 ss.

Q. 4.—A man died. His property is in the possession of another man. The deceased has left a widow and a daughter. The former has filed a suit for the recovery of the property, omitting the name of the latter. Can she alone claim the property?

A.—The widow has the right to the property of her husband. She can therefore claim it on her own account, omitting the name of her daughter.—*Surat, January 24th*, 1853.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Ch. I. Sec. 2, Q. 4).

Q. 5.—A man, named Bhagavândâs Devakar, separated from his brother. He received his share of the landed property, and had his name registered in the records of Government as the owner of it. On his death, his wife, named Amṛitâ, got her name registered in the records of Government as the owner of the land. She then leased 8¾ Bigâs of land to her nephew, Khushâl Raghunâtha. He accordingly obtained possession of the land. He subsequently set up a claim to the land, alleging that it was in his possession because he was the nephew of Bhagavândâs. The widow, Amṛitâ, wishes to recover the land from her nephew. Can she do so?

A.—The widow of the deceased Bhagavândâs has a right

to the land. Her nephew cannot claim it. Amṛitâ may recover it from him.—*Broach, September 8th*, 1855.

AUTHORITY.—Mit. Vyav. f. 55, p. 2, l. 1 (*see* Ch. I. Sec. 2, Q. 4).

Q. 6.—There were four brothers. They divided their ancestral property among them, and separated. Afterwards one of the brothers died. His property passed into the hands of his widow. A brother of the deceased has filed a suit against the widow, and wishes to impose the following conditions upon her:—That she should not dispose of or waste the property in her possession, and that if she desires to have a maintenance settled upon her, she should give up all her property in consideration of an allowance. What are the rules of the Śâstra on the subject?

A.—If the brothers had not separated, the widow would have been entitled to a maintenance only. The husband of the widow having separated, before his death, from his brother who has filed the suit against the widow, his widow is the heir. The brother cannot claim the right of inheritance. The widow cannot dispose of her immoveable property unless she be placed under a great necessity.

Rutnagherry, January 11th, 1848.

AUTHORITIES.—(1) Vyav. May. p. 136, l. 4; (2) p. 135, l. 2:—

"As for this text of Kâtyâyana:—After the death of the husband, the widow, preserving (the honor) of the family, shall obtain the share of her husband so long as she lives; but she has no property (therein to the extent of) gift, mortgage, or sale: it is a prohibition of a gift of money, or the like, to the Vandî, (*a*) Châraṇa, (*b*) and the like (swindlers). But a gift for religious objects (not visible, *i.e.* the attainment of spiritual benefits) and mortgage, or the like, suitable (*i.e.* with a view) to those objects, may be even made." (Borradaile p. 101; Stokes, H. L. B. 84).

(3*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Ch. I. Sec. 2, Q. 4).

REMARKS.—*See* Introd. p. 299. A Hindu widow must, if she can,

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(*a*) A Vandî is a wandering minstrel (Bhâṭa).

(*b*) Châraṇa, a juggler (Kolambi).

pay a debt of her deceased husband even though barred by limitation. She is justified in aliening part of the estate for this purpose: *Bahala Nana* v. *Parbhu Hari*. (*a*) A widow's needless alienation will subsist during her own life. *Pragdas* v. *Harikishen*. (*b*)

At Allahabad it has lately been said that a widow's power of alienation for spiritual purposes is limited to those by which her husband, as distinguished from herself, will benefit. (*c*) For this reference is made to *The Collector of Masulipatam* v. *Cavaly Vencata Narrainappah*. (*d*) In Bombay her right, though limited, is not so narrowly restricted by the Vyav. Mayûkha, Chap. IV. Sec. VIII. para. 4; and the Courts have allowed her a reasonable liberty of disposal for pious objects. (*e*)

In *Kameshwar Pershad* v. *Run Bahadur Singh* (*f*) the Judicial Committee say the principle laid down in *Hunooman Persaud* v. *Mt. Babooee Munraji* is applicable to—*a*, alienations by a widow of her estate of inheritance;—*b*, transactions in which a father, in derogation of the rights of his son, under the Mit. law has made an alienation of ancestral family estate.

Q. 7.—Two persons, *A* and *B*, inherited a house in equal shares from a common relation. *A* then mortgaged his share of the house, and died. After his death, *B* redeemed the mortgage, and transferred the whole house to his creditor, as security for a debt. After some time, *B* paid off this debt, and regained possession of the house. *C*, the widow of *A*, then demanded her husband's share of the house from *B*, who objected to give it up, on the ground that he had paid off the debt with which *A* had left the house, and on the ground that *C* had for many years lived separate from her husband *A*. *C* has made over her share of the house to a person, in consideration of money advanced by him for her support. She has no male issue. Is she, under these circumstances, entitled to recover a half of the house from *B*?

(*a*) I. L. R. 2 Bom. 67.
(*b*) I. L. R. 1 All. 503.
(*c*) *Puran Dai* v. *Jai Narain*, I. L. R. 4 All. 482.
(*d*) 8 M. I. A. 520.
(*e*) *See* above, Introd. pp. 99, 300.
(*f*) I. L. R. 6 Cal. 843; S. C. L. R. 8 I. A. 8.

A.—*C*'s husband was possessed of one-half of the house which he mortgaged. When *B* redeemed *A*'s half of the house, *C* did not object to his doing so. Her present claim, therefore, is inadmissible. If her conduct is good, and if she was abandoned by her husband, and if she is desirous of recovering her husband's share of the house, she must pay to *B* whatever he has paid on account of the half of the house, with interest. According to the Sâstras, *C* has no right to make over the half of the house, even for her own maintenance, without paying her husband's debts. (*a*) *C*'s right of inheritance cannot be set aside during her lifetime, even though *B* may have performed the funeral rites of the deceased *A*.—*Ahmednuggur, July 9th*, 1847.

AUTHORITIES.—(1) Mit. Vyav. f. 20, p. 1, l. 2; (2) f. 20, p. 2, l. 11; (3) f. 45, p. 1, l. 5; (4) f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (5) f. 55, p. 2, l. 8; (6) f. 69, p. 1, l. 15; (7) f. 12, p. 2, l. 14; (8) f. 20, p. 2, l. 11:—

"He who takes the inheritance must be made to pay the debts (of the person from whom he inherits)." (Stokes, H. L. B. 56.) (*b*)

(9) Vyav. May. p. 183, l. 8.

REMARKS.—1. If the house was divided, the widow inherits her husband's share. *See* Authority 4.

(*a*) So in *Lakshman* v. *Satyabhámábái*, I. L. R. 2 Bom. 499, per Sir M. R. Westropp, C. J.

(*b*) See *supra*, Introd. p. 252; and *infra*, Bk. II. Introd. Sec. 7 A. 1 *a* (2). By the 11th Article of Magna Charta the widow's dower was freed from chargeability for the husband's debts, the payment of which out of his estate is further postponed to the maintenance of minor children according to the father's condition, and to the fulfilment of the service or terms on which the property was held by the deceased. The dower was looked on as secured by a contract prior to the debts, giving to the widow an independent interest in the husband's lands. Under the Mahomedan Law the doweress ranks *pari passu*, it is said, with other creditors; see *Mir Mahar Ali* v. *Amani*, 2 Ben. L. R. 307, and *Mussl. Bebee Bachun* v. *Sheikh Hamid Hossein*, 14 M. I. A. 377. She has not a special lien constituting an interest in immoveable property; *Mahabubi* v. *Amina*, Bom. H. C. P. J. F. for 1873, p. 34. A Jewess claiming under a deed was preferred to subsequent creditors in *Sookhlal* v. *Musst. Raheema*, 2 Borr. R. 687.

2. Her silence, at the time when her brother-in-law paid off the mortgage, does not affect her rights, according to the Mitâkshará.

3. She will have to refund the money which her brother-in-law paid.

Q. 8.—An Inâmdâr died without male issue. Is the Inâm-land which he held continuable to his widow, according to the Hindû Law? If a Hindû should die, without a son, leaving descendants only through his daughter, will his private property fall to them, or to his other relations, or to his widow? Are the rules on these subjects applicable to all castes?

A.—If a man dies without male issue, and if he is not a member of an undivided or reunited family, his faithful wife becomes his heir. The property of a deceased person will fall first to the widow, and when there is no widow, to the deceased's daughter. The widow has a preferable claim to all other relatives. These rules are applicable to all castes of the Hindûs.—*Poona, October 6th,* 1849.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 (*see* Auth. 2); (2*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARKS.—There are no special rules about Inâm-land in the Hindû Law Books. The Privy Council, in *Bodhrav Hanmant* v. *Narsingrav*, (*a*) held that Inâm villages granted to a man and his male heirs are not distinguishable, according to the law of the Southern Maráṭhâ Country, from ordinary ancestral estate, and are divisible amongst the grantee's heirs. See below, Sec. 13, Q. 10, as to the construction of grants. The same was held as to a dêśgat watan in *Kâdapâ* v. *Adrashyapâ*, (*b*) and that a vritti or hereditary office is generally partible, *see* Steele, L. C. p. 41.

2. The inamdar in relation to the tenants of the property may occupy the position of a complete proprietor, or of a mere alienee of the land tax, or of a grantee of a lordship over mirâsdârs holding rights of permanent occupancy subject only to reasonable rates or rents. And in different parts of his manor he may have different rights under the same grant or prescriptive title, owing to the exist-

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(*a*) 6 M. I. A. 426.

(*b*) R. A. No. 30 of 1874; Bom. H. C. P. J. F. for 1875, page 182.

ence of rights (as to hold at an invariable rent) known or presumed to have been prior in origin to his own. (*a*)

3. The Vatandar Joshi (astrologer holding an hereditary office) of a village may recover damages from an intruder who usurps his functions and takes his fees. This is so even though the fees be not precisely fixed in amount, provided only that some reasonable fees must be paid by those entitled to the Joshi's ministrations. (*b*) The presumption is that a Vatandar Joshi is entitled to officiate in the case of any particular family; but though damages may be awarded for an intrusion an injunction will not be granted such as to prevent a family from using the services of a rival functionary. The position of a village priest or astrologer being thus recognized as one of public interest to the Hindu community, the holder of it can of course be constrained if necessary to perform the duties of it when properly called on. In the case of religious or charitable trusts, too, any devotees or beneficiaries may take proceedings for enforcing the duties resting on the incumbent or the trustees, subject to the consent of the Advocate General or his substitute (usually the Collector of the district) under Sec. 539 of the Code of Civil Procedure. (*c*)

4. In *Narain Khootia* v. *Lokenath Khootia* (*d*) it was apparently held by the Deputy Commissioner that a religious grant made by a former Mahárájá of Chhota Nagpore could be resumed at will by his successor in the exercise of a royal or quasi-royal authority. The resumption of grants by native rulers was very common, as Sir T. Munro shows; (*e*) though not of religious grants in Western India. (*f*) The decree of the Deputy Commissioner, however, was reversed by the High Court of Calcutta on the ground that impartibility of the

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(*a*) *Prataprav Gujar* v. *Bayaji Námáji*, I. L. R. 3 Bom. 141, referring to *Lakshman* v. *Ganpatrav*, Special Appeal No. 344 of 1876, and *Vishnubhat* v. *Babaji*, B. H. C. P. J. 1877, p. 146. (At p. 142 of the Report the last case is twice mentioned by mistake for the former.) *See* also *Parshotam Keshavdás* v. *Kalyán Rayji*, I. L. R. 3 Bom. 348.

(*b*) *Vithal Krishna Joshi* v. *Anant Ramchander*, 11 Bom. H. C. R. 6, quoting *Sitarámbhat* v. *Sitaram Ganesh*, 6 Bom. H. C. R. 250, A. C. J.; *Raja valad Shevappa* v. *Krishnabhat*, I. L. R. 3 Bom. 232.

(*c*) See *Radhabai* v. *Chimnaji*, I. L. R. 3 Bom. 27.

(*d*) I. L. R. 7 Cal. 461.

(*e*) Sir T. Munro, by Sir A. Arbuthnot, vol. I. p. 152, 154.

(*f*) *The Collector of Thana* v. *Hari Shitaram*, I. L. R. 6 Bom. 546; Elph. Hist. of Ind. Bk. II, Ch. II. p. 75, 78 (3rd ed.)

râj did not make it inalienable as to grants of land in perpetuity. (*See* Introd. pp. 159, 185, 192.)

Q. 9.—A man of the Burûd caste (*a*) had received a house as a mortgage, before his death. He lived separate from his father. Should the house be made over to his widow or his father?

A.—Whatever was gained by the man without making use of his father's property will pass to his widow. If the father and his sons are not separate, then the common property will pass into the hands of the father.

Ahmednuggur, August 21st, 1848.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 and 6 (*see* Auth. 4); (2) p. 136, l. 4; (3*) p. 153, l. 2 (*see* Chap. I. Sec. 2, Q. 1); (4*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARK.—Regarding the definition of 'separately acquired property,' *see* PARTITION, Book II.

Q. 10.—Has the father or the widow of a deceased person a preferable title to succeed to his property?

A.—If the deceased lived separately from his father, his widow is his heir; but if he had not separated, his father will succeed.—*Poona, June 5th,* 1846.

AUTHORITY.—*Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARK.—But the wife inherits, also, property which the deceased may have acquired separately. *See* the preceding question.

Q. 11.—Two brothers separated. One of them and his son, after separation, died. Does the property of the deceased pass by right to his daughter-in-law or the surviving brother? If it goes to the latter, can the former have a claim to maintenance?

A. Should the daughter-in-law be a woman of good character she will succeed to her husband's, and consequent-

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(*a*) The Burûds are basket-makers.

ly to her father-in-law's, estate. If she be not a woman of good character, her father-in-law's brother takes the whole property of his deceased brother, and gives his daughter-in-law a reasonable sum for maintenance.

Ahmednuggur, September 7th, 1848.

AUTHORITIES.—(1*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2) Vyav. May. p. 134, l. 4 (*see* Auth. 1); (3) p. 133, l. 2; (4) p. 134, l. 6; (5) p. 137, l. 3; (6) p. 136, l. 7; (7*) p. 133, l. 7 :—

. . . . by reason of this text of Kâtyâyana :—" Let the widow succeed to her husband's estate provided she be chaste; and in default of her, the daughter inherits, if unmarried."

" Among the married ones, when some are possessed of (other wealth) and others are destitute of any, these (last) even will obtain the estate)." (Borradaile, p. 103; Stokes, H. L. B. 86).

REMARK.—The daughter-in-law will inherit only if her father-in-law died before her husband. If she be unchaste, her issue next inherit in her stead, and on failure of issue, the father-in-law's brother. *See* below, Bk. I. Ch. VI. Sec. 3.

Q. 12.—Two uterine brothers lived as an undivided family. One of them died, leaving a widow. Afterwards the other also died, leaving a widow. Can both these widows inherit the property of their respective husbands?

A.—As the property was acquired by the ancestors of the deceased men, and as the family was undivided, the widows can inherit the shares of the property belonging to their respective husbands.—*Surat, March 31st*, 1845.

Authority not quoted.

REMARK.—The widow of the brother who died last inherits; the other has a claim to maintenance. *See* the next Question, and the Authorities there quoted.

Q. 13.—Two brothers are either united or separated in interests. When one of them or both die, will their widows be entitled to their property?

A.—If the family was united in interests, the property of a deceased brother falls to the surviving brother. Upon

the death of the latter, his wife becomes his heir. The wife of the one who died first is only entitled to a maintenance. If the brothers were separated before their death, their wives inherit the property of their respective husbands.

Tanna, December 11th, 1858.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4; (2) Vyav. May. p. 136, l. 4 (*see* Chap. I. Sec. 2, Q. 11).

Q. 14.—Two Hindû brothers lived together. The elder of them died, leaving a widow. The younger also died, leaving a widow. The question is whether the widow of the brother who died first or the widow of him who died afterwards should be considered the heir?

The widow of the younger brother is a minor, and there are her sister-in-law and mother; which of these will be her guardian?

A.—The widow of the last deceased brother is the heir. The mother has the right to be the guardian of the widow of the younger brother, who is a minor.

Surat, October 22nd, 1857.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2) f. 12, p. 1, l. 4; (3*) Vîramitrodaya, f. 194, p. 2, l. 4:—

"And thus Nârada says:—After the death of the husband (the nearest relation belonging to) his family has power over his childless wife; such a person is competent to appoint her (to a kinsman), to protect and support her. If the husband's family is extinct, no male, no supporter has been left, and no Sapiṇḍa relations (of the husband) remain, in that case (the nearest relation) belonging to the widow's father's family has power over her."

REMARK.—According to the passage quoted under Auth. 3, it would seem that the sister-in-law, as belonging to the family of the widow's husband, has a better right to the guardianship than the widow's mother.

Q. 15.—A man died, and left two sons. The elder of these died, and left a widow. Afterwards the younger brother also died, and left a widow. The two brothers had

been undivided. They have left no children. Which of the two widows inherits the ancestral property ?

A.—The two widows have equal rights to the property, because they stand in equal relationship to the original head of the family (their father-in-law).—*Surat, June 18th*, 1852.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 (*see* Auth. 4); (2) p. 140, l. 1; (3*) p. 136, l. 4 (*see* Chap. I. Sec. 2, Q. 11); (4*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I, Sec. 2, Q. 4).

REMARKS.—As the family is undivided, the younger brother inherits his elder brother's share, and at his death his widow is his heir. The elder brother's widow has only a claim to maintenance.

Q. 16.—A person died, leaving certain moveable and immoveable property. His widow and brother claim to be his heirs. Who should receive the certificate of heirship ?

A.—If the deceased was a separated member of the family, his widow is entitled to a certificate of heirship. If he was not separated, his widow has not a right of inheritance. (*a*)

Ratnagiri, 1847.

AUTHORITIES.—(1*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2*) Vyav. May. p. 136, l. 4 (*see* Chap. I. Sec. 2, Q. 11).

Q. 17.—Two brothers lived separately in the house, which was purchased in their names with the money of their father. One of the brothers died. The question is, whether the deceased's share should be given to his father, brother, or widow ?

A.—The house was bought with the father's money. The transaction was concluded in the names of his two sons. The deed of sale mentions their names. They lived in the house separately. This circumstance shows that they are separated brothers. The question does not state that they

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(*a*) A childless Hindû widow who has succeeded to her deceased husband's separate share of a Mahal, and is recorded as a cosharer, is entitled under Act. XIX. of 1873 to a perfect partition of her share. *Jhunna Kuar* v. *Chain Sukh*, I. L. R. 3 All. 400.

were [un]divided in interests, nor that the father had given them the house in gift. From this omission it may be inferred that the brothers were separated. The portion of the house which belonged to each of the separated brothers, becomes, on his death, the property of his wife.

Surat, January 20th, 1855.

AUTHORITY.—Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

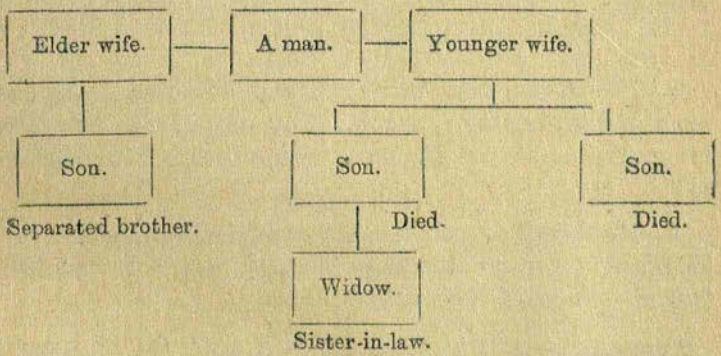
REMARK.—The passage quoted refers only to the right of the widow to inherit, in case her husband has separated from the family.

Q. 18.—A man died, leaving two wives. The elder wife died leaving one son, and the younger died leaving two sons. The son of the elder wife had separated from the other two. The two uterine brothers died. The elder of these has left a widow. Besides this widow there is the separated half-brother. The question is, which of them is the heir of the last deceased brother ?

A.—The sister-in-law of the deceased, having lived with him as a member of an undivided family, is his heir.

Dharwar, August 17th, 1854.

The following is the Genealogical Table showing the family spoken of in the question :—



AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2*) Vyav. May. p. 136, l. 2 (*see* Chap. I. Sec. 2, Q. 3).

REMARK.—If, of the two undivided uterine brothers, the married one dies first, his brother will inherit from him (*see* Auth. 2) ; and after his death the half-brother will succeed. The widow will then be entitled to claim maintenance only. If the married brother died last, his widow inherits from him.

Q. 19.—A man, his wife, his son, and his son's wife lived together as an undivided family. The man died first, and his death was followed by that of his son. Can the son's wife claim from her mother-in-law a half of the family property as her share ?

A.—If the family is undivided, the mother-in-law becomes the heir of her deceased son, and in such a case the possession of the property by the mother-in-law need not be disturbed. If the family is divided, the daughter-in-law is the heir.—*Poona, February 5th,* 1858.

AUTHORITIES.—(1) Mit. Vyav. f. 50, p. 1, l. 7 ; (2*) f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARK.—If the father died before his son, the daughter-in-law is the legal heir, since her husband inherited from his father, and she is, on failure of issue, the nearest heir to her husband. If, on the contrary, the son died before his father, the mother-in-law inherits the family property from the latter. *See* the next question. The preference of the mother to the widow by some caste-laws has been noticed above, Q. 1.

Q. 20.—A man died, leaving a widow; subsequently his son also died, leaving a widow. The daughter-in-law sued her mother-in-law for the ancestral property. Can she do so ?

A.—In default of male issue, a man's widow is his heir. The daughter-in-law, therefore, has rightly sued her mother-in-law.—*Tanna, February 14th,* 1852.

AUTHORITIES.—(1) Mit. Vyav. f. 50, p. 1, l. 7 ; (2*) f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4) ; (3) Vîramitrodaya, f. 195, p. 2, l. 4 (*see* Auth. 2) ; (4*) Manu, IX. 185 (*see* Chap. II. Sec. 1, Q. 1).

Q. 21.—A man died without issue, leaving a widow and mother. The deceased's property consists of an ancestral house. It is in the occupation of the widow and the mother. Are both heirs ? or if only one, which of them is heir of the deceased ?

A.—If the deceased was separate and had received his share of the family property, his widow inherits his property. If the deceased was not separate, both his mother and widow are his heirs. If the wife conducts herself virtuously, supports and serves her mother-in-law, she will have the better right of the two to inherit the property; but if the wife does not behave in this manner, the right of the mother will be superior.—*Ahmedabad, September 12th,* 1851.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 6 :—

"Let the widow succeed to her husband's wealth, provided she be chaste." (Borradaile, p. 100 ; Stokes, H. L. B. 84.)

(2) Vyav. May. p. 136, l. 7 ; (3) p. 136, l. 4 (*see* Chap. I. Sec. 2, Q. 11).

REMARKS.—1. If the deceased was separate, the widow is his heir.

2. If he was undivided, and male members of the family are alive, she can only claim maintenance.

3. The mother has in either case only a claim to maintenance.

Q. 22.—A widow adopted a son, who died after his marriage. The questions are : Who will be his heir, his adoptive mother or his widow ? Which of the two can adopt a son ? and if each of them adopt a son, how shall the property be divided between the sons ?

A.—The deceased, though adopted by the widow, became heir of her husband. On his death his widow is the last heir. She, therefore, has the right to adopt a son, and her adopted son can perform the funeral rites for his mother, as well as for his grandmother. The mother-in-law, therefore, cannot, unless there is a good reason for it, adopt a son.

Sadr Adálat, April 12th, 1850.

AUTHORITIES.—(1*) Manu, IX. 141 (*see* Auth. 2) ; (2*) Datt. Mîm. p. 36, l. 10 (*see* Chap. II. Sec. 2, Q. 3); (3*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

Q. 23.—There are a daughter-in-law and her mother-in-law. The husband of the former died, and the question is, who should collect the debts due to him ?

A.—It is enjoined in the Śâstra that the property of a person who died without issue, and who had declared himself separate from the other members of the family, goes to the widow, and that the property of a person who died without issue, but had not declared himself separate, goes to his mother. In the case under reference the debt should be recovered by the mother-in-law.

Rutnagiri, October 14th, 1847.

AUTHORITIES.—(1) Vyav. May. p. 136 l. 4 (*see* Chap. I. Sec. 2, Q. 11); (2) Mit. Vyav. f. 51, p. 2, l. 5; (3*) f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4) ; (4) Manu, IX. 217.

REMARK.—The widow of the last deceased member of an undivided family inherits, in preference to the widows of all pre-deceased members. (*See* Questions 18, 19 and 24.)

Q. 24.—A man died, leaving a widow and mother. The widow is a minor of about eight years. The mother declared herself to be the heir, and took charge of the banking business of the deceased. The question is, whether the mother or the widow has right to the man's property ?

A.—When a man has separated from other members of his family, his wife alone has a right to inherit his property after his death. As, however, the deceased had not separated from his parents, his mother has rightly assumed the possession of his property. On the death of the mother-in-law, her daughter-in-law will succeed her as heir.

Ahmedabad, March 26th, 1850.

AUTHORITIES.—(1) Vyav. May. p. 95, l. 5; (2*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4) ; (3) Vîram. f. 194, p. 2, l. 4 (*see* Chap. II. Sec. 6A, Q. 14).

REMARK.—The deceased person's wife inherits. But as she is a minor, she will be under the guardianship of her mother-in-law, if the latter is a fit person, and if no male blood relatives of the husband are living. (*See* Act No. XX. of 1864; Act IX. of 1861.)

Q. 25.—A man of the Gavalî (milkman) caste left at his death some money to be recovered from a debtor. His mother obtained a decree, and attached some property belonging to the debtor. There is a widow of the deceased, who, though a "Lagna" wife, did not live with her husband during his life-time. The mother-in-law on this ground contends that her daughter-in-law has no right to the property of the deceased. What is the law on this point?

A.—If the daughter-in-law, though living in her mother's house, has maintained her good character, and is of a proper age, she can recover the debt. If she has a bad character, or has married another husband, she cannot claim any property of her husband.—*Sholapoor, March 27th,* 1854.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 (*see* Auth. 4); (2) p. 134, l. 6 (*see* Chap. II. Sec. 6A, Q. 21); (3*) p. 137, l. 7 (*see* Chap. II. Sec. 6A, Q. 11); (4) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

Q. 26.—A man died, leaving a widow, a son, and a daughter-in-law. They all lived as an undivided family; afterwards the son died. The right of inheritance is contested between the mother and the daughter-in-law. The question is, which of these is the heir?

A.—According to the Śâstra a man's son and widow have a right equally to share his property. If the son is dead, his wife has a right to inherit her husband's share of his father's property. The mother-in-law has no right to it. If the father's property has not been divided between his widow and son, the daughter-in-law cannot claim her share. If, however, she pleases her mother-in-law and induces her to assent to a division of her property, she may obtain a share.

If the daughter-in-law cannot please and induce her mother-in-law to consent to a division, and if the mother-in-law withholds her consent, the daughter-in-law cannot get her share. The mother-in-law will, however, be bound in such a case to maintain her daughter-in-law. On the death of the mother-in-law the daughter-in-law will inherit her property.—*Ahmedabad, October 21st,* 1845.

AUTHORITIES.—(1) Vyav. May, p. 136, l. 7; (2) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARK.—A mother receives a share of her husband's property only if either there are several sons, and these divide after the father's death, or if a son assigns some of his father's property to his mother instead of giving her maintenance. Neither the one nor the other condition seems to exist in this case. The mother has, therefore, after her son's death, only a right to maintenance. The daughter-in-law on the other hand, inherits her husband's property.

Q. 27.—When a man dies after the death of his son, will the man's or his son's widow be his heir?

A.—The father's widow is the heir. Her daughter-in-law is entitled to a maintenance only.

Khandesh, September 7th, 1858.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 (*see* Auth. 3; (2) p. 136, l. 4 (*see* Chap. I. Sec. 2, Q. 11); (3*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec 2, Q. 4).

Q. 28.—A mother-in-law and her daughter-in-law live together as a family united in interests. They possess some ancestral property. The question is, how the women should share it?

A.—Each of the women should take a half of the property. If the property was acquired by the husband of the mother-in-law, she must be considered his heir, and entitled to all his property. In this case the daughter-in-law can claim a maintenance only from her.

Sadr Adálat, September 11th, 1852.

AUTHORITY.—Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARK.—The widow whose husband died last is the lawful owner of the property. The other is entitled to maintenance only. As to the Śâstri's opinion that the daughter-in-law is entitled to naintenance, *see* the Introd. pp. 246, 248.

Q. 29.—A man died, leaving a widow and mother. The question is, which of these is the heir?

A.—If the widow is a chaste woman, she is the legal heir of her husband. If her character is not good, she will be entitled to maintenance only.—*Surat, November 7th,* 1845.

AUTHORITY.—Mitâkshará, f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

Q. 30.—A man died. His young wife is under the protection of her father. A separated uncle and cousin of the deceased state that they are the heirs to the property of the deceased, and that they would support the widow till she should marry another husband. The question is, who is the heir? The father of the girl has passed an agreement to the uncle and the cousin of the deceased, that they should take one-half of the deceased's property, and permit the widow to take the other half. Has the widow's father a right to pass such an agreement?

A.—The widow is the heir to the deceased's property. The other relatives have no right to contest her heirship on the ground that she is likely to be remarried. Her father has no right to pass any agreement of the kind described in the question.—*Khandesh, October 20th,* 1849.

AUTHORITY.—Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

Q. 31.—A representative of a branch of a family passed an agreement to one of two individuals of another branch of the same family, whereby he stipulated that he should have his name entered on the records of Government in regard to certain lands. Of these two individuals, one died, and the

other left the country and was not heard of. The widow of the former represents the branch. The question is, whether the widow or the person who passed the agreement is the heir of her deceased husband?

A.—Those who take meals and carry on their transactions separately, must be considered members of a divided family. According to this description, the person who passed the agreement and the two individuals of another branch appear to be separate in interest from each other. The widow will therefore be the heir of the deceased.

Ahmednuggur, April 26th, 1847.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 (*see* Auth. 7); (2) p. 129, l. 2; (3) p. 129, l. 4; (4) p. 140, l. 1; (5) p. 134, l. 6; (6) p. 137, l. 7; (7*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

Q. 32.—A man held the Watan of a priest, called the "Yajamâna-vṛitti." He died, leaving a widow and a sister. A person, of whose family the deceased was the priest, made a "Dâna," or religious gift, of a bed. The sister received it. The question is whether the widow or the sister has the right to the emoluments of the office of the priest? Can a man make a "Dâna" of a bed to any other person besides his priest, and if he cannot, is the giver or the receiver responsible for it?

A.—In this case the widow is the heir, and so long as she is alive the right of receiving gifts belongs to her. The sister has no such right, but she cannot be prosecuted for receiving that which a man chose to give her. The man may, however, be sued on that account.

Ahmedabad, July 24th, 1856.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 (*see* Auth. 3); (2) p. 140, l. 1; (3*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARKS.—*See* Book I. Chap. II. Sec. 7, Q. 1. As to the customary laws governing the relations between such classes or persons as priests and astrologers and those entitled to their ministrations,

reference may be made to *Damodar Abaji* v. *Martand Abaji*, (*a*) and to *Vithal Krishna Joshi* v. *Anant Ramchandra*. (*b*) In some cases, though the amount of the fee payable by the layman is not fixed by law, yet a parting with some property is essential to the efficacy of the ceremony performed. (*c*) The right to the fees and offerings thus becoming due from particular families or classes is regarded as a family estate, inalienable usually to persons outside the family, but transferrable within the family, and a subject for inheritance and partition like other sources of income. Thus it is that even a widow may be entitled under the customary law to the offering by which on a particular occasion a client of the priestly family has to obtain a spiritual sanction to some secular transaction, or simply to acquire religious merit. The requisite ceremonies have in such cases to be provided for by the appointment of a qualified officiating substitute. An intruder subjects himself to an action for damages, as the reported case shows. Whether a suit lies by the representative of the priestly family against an individual who fails to make the proper offering, depends on the particular legal relation subsisting in each case. (*d*)

Q. 33.—To whom does the ancestral property of the deceased go by the right of inheritance, to his wife or his daughter-in-law?

A.—If a father dies first, his son becomes his heir, and after the death of the latter his wife succeeds him. If, however, the son dies before his father, the father becomes his heir, and on his decease the father's wife succeeds him.

Poona, July 10th, 1858.

AUTHORITY.—*Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

Q. 34.—Two men, *A* and *B*, of the Vâṇi caste, lived together. *A* died, leaving a widow and a daughter. Can the widow have a claim to recover her husband's share of the moveable and immoveable property?

(*a*) H. C. P. J. 1875, p. 293.

(*b*) 11 Bom. H. C. R. 6.

(*c*) See Coleb. Lett. and Ess. vol. II. p. 347.

(*d*) See *Khondo Keshav Dhadphale* v. *Babaji bin Apaji Gurrav*, H. C. P. J. 1881, p. 337, in which it was said that a temple servant had not a right enforcible against a particular worshipper.

A.—As the property was acquired by both, each has a right to an equal share of it. The widow can therefore claim a moiety of the property.—*Broach, June 18th*, 1859.

AUTHORITIES.—(1) Mit. Vyav. f. 83, p. 2, l. 5:—

"If (one of the partners) emigrate or die, his heirs (*i. e.* sons, grandsons, &c.) or paternal or maternal relations, if they appear, may take his property; on failure of these, the king."

(2) Mit. Vyav. f. 82, p. 2, l. 5; (3*) f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (4) Manu VIII. 210.

REMARK.—The decision is right only under the supposition that the two Banias were not members of a united family, but only partners in trade.

Q. 35.—A deceased person has left two widows, one of whom is an elderly woman, and the other of 16 years only. How should they divide the deceased's property between them?

A.—Each of them should take a half.

Poona, April 30th, 1849.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2*) p. 137, l. 5:—

"But if there be more than one (widow) they will divide it and take shares." (Borradaile, p. 103; Stokes, H. L. B. 86.)

REMARK.—*See* also the note at page 52 of Stokes' H. L. Books. It would seem that they take jointly according to the cases in Norton's Leading Cases, page 508. *See* the Introd. p. 103. *See* also *infra*, Chap. IV. B. Sec. 6, II. *c*, Q. 1; and *Bhagwandeen Doobey* v. *Myna Baee*. (*a*) The Śástri at 2 Str. H. L. 83, 90, agrees with the view taken above, p. 103.

Q. 36.—A deceased man has left two widows, the elder of them has two daughters, and the younger has no child whatever. The property of the deceased has passed into the hands of the elder widow. Can the younger widow claim a share of the property? And who has the right to adopt a son?

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

A.—The younger can claim a share. The right of adoption belongs to the elder.—*Poona, March 31st,* 1852.

AUTHORITIES.—(1) Vyav. May. p. 137, l. 5 (*see* Chap. II. Sec. 6A, Q. 35); (2) Saṁskâra Kaustubha. (See Bk. III. ADOPTION.)

Q. 37.—A deceased husband has left two wives, one married by the "Pâṭ" and the other by the "Lagna" ceremony. Which of these wives will be his heir?

A.—According to the Śâstra, both are wives and heirs.

Poona, August 7th, 1847.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 (*see* Auth. 2); (2*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARKS.—According to the strict Hindû law of the higher castes, the remarriage of widows is null, and, apart from caste custom, nothing more than concubinage, and consequently the Lagna-wife alone can inherit. But as by Section I. Act. XV. of 1856, the remarriage is legalized, a Pâṭ-wife has perhaps the same rights as the Lagna-wife under Section V.

2. The Pâṭ-wife's son is legitimate and capable of inheriting, but in 1858 the Dharwar Śâstri assigned to him a place below the previously adopted son, who was himself postponed to the son by a 'Lagna' wife, though born after the adoption. The parties seem to have been Lingayats. R. A. 26 of 1873, *Basanagaoda* v. *Sunna Fakeeragaoda.*

Q. 38.—Is a man's Pâṭ-wife or the Lagna-wife his heir?

A.—The Lagna-wife is the heir. The Pâṭ-wife is not. A Pâṭ is not a legal and ceremonial marriage. It is performed without reference to the appearance of the planets Venus and Jupiter, and in defiance of the situation of other stars, and of the prohibition of certain days for the performance of marriage.—*Dharwar, September 21st,* 1855.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 (*see* Auth. 3); (2) p. 136, l. 4; (3*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARK.—*See* Question 39, with reference to which the answer would be wrong as to members of a caste recognizing Pâṭ marriages.

Q. 39.—A deceased person has left two widows, one by "Lagna" and another by "Pâṭ." The latter has a daughter who is married. Is the "Pâṭ" widow entitled to the whole or a portion of the deceased's property, or to a maintenance only?

A.—Both the widows are equally entitled to the husband's property, which should therefore be divided between them.

Poona, December 28th, 1848.

AUTHORITY.—Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARK.—*See* Question 35.

Q. 40.—A deceased man has two wives, one by "Lagna" (the first marriage), and the other by "Pâṭ" (remarriage as respects the woman). The former has daughters, to whom the man has transferred his property as a gift. The question is, whether the daughters or the "Pâṭ" wife will be his heirs?

A.—The "Pâṭ" wife is the nearer relation and better heir of the deceased than his daughters. There is scarcely any difference between a "Pâṭ" and "Lagna" wife.

Khandesh, February 6th, 1848.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 (*see* Auth. 3); (2*) Mit. Vyav. f. 68, p. 2, l. 16 (*see* Chap. II. Sec. 3, Q. 11); (3*) f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARKS.—If the deceased kept back enough of his property to maintain his widow, the gift of the rest to his daughters is valid. But if he left his widow unprovided, the gift is ineffectual, and as according to Section I. of Act. XV. of 1856 the Pâṭ marriage is legal, his widow will be his heir, provided that the mother of his daughters be dead. Should she be still alive, both the widows will inherit.

2. A widow remarrying remains personally liable on a bond executed by her. (*a*) A married woman contracting jointly with her husband is responsible only in her strîdhana. *Narotam Lalabhai* v. *Nanka Madhav*, Bom. H. C. P. J. 1882, p. 161; *Nathubhai Bhailal* v. *Javher Raiji*, I. L. R. 1 Bom. 121; *Govindji* v. *Lakmidas*, Ib. 4 Bom. 318.

(*a*) *Náhálchand* v. *Bái Shivá*, I. L. R. 6 Bom. 470.

Q. 41.—A man had two wives, one by "Lagna" and the other by "Pâṭ." He married a third by "Pâṭ." This last-mentioned woman had not taken the leave of her first husband to contract a "Pâṭ" marriage with the man. She gave birth to a daughter. Can this daughter succeed her father after his death ?

A.—It is not legal for a woman to enter into a "Pâṭ" marriage without having previously obtained permission of her husband, unless he is dead. The daughter, therefore, can have no share in the property of the deceased father. But as she was the result of the "Pâṭ" marriage, the heirs who will take the assets of the deceased must support her. The "Lagna" and the first "Pâṭ" wives will be the heirs of the deceased, entitled to take all his property.

Sholapoor, October 19th, 1852.

AUTHORITIES.—(1) Manu V. 147; (2) Vîramitrodaya, f. 157, p. 2, l. 11; (3) Mit. Âchâra, f. 12, p. 1, l. 4; (4) Vyav. May. p. 239, l. 3; (5) p. 137, l. 5; (6*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (7*) f. 57, p. 1, l. 5 (*see* Chap. II. Sec. 3, Q. 3).

REMARKS.—(1) As the husband of the second "Pâṭ-wife" is still alive, the woman cannot be called correctly a "Pâṭ-wife," but is an adulteress and concubine. As a concubine she has no right to inheritance, but only to maintenance for herself and her daughter from the heirs of the man under whose protection she lived. The concubine of a late proprietor is entitled to maintenance from his heirs, (*a*) and a sufficient portion of the estate may be invested in order to provide the requisite income during her life. (*b*)

2. The recognition of a natural son by his father confers on him that status, though he was not born in the father's house or of a concubine having a peculiar status therein. (*c*)

3. Illegitimate children of the Śûdra caste inherit the estate of their putative father, in default of legitimate children. (*d*)

(*a*) *Khemkor* v. *Umiashankar*, 10 Bom. H. C. R. 381.

(*b*) *Vrindavandas* v. *Yamunabai*, 12 Bom. H. C. R. 229.

(*c*) *Muthusawmy Jagavera Yettappa* v. *Vencataswara Yettaya*, 12 M. I. A. 220.

(*d*) *Inderun Valungypooly* v. *Ramasawmy Pandia et al*, 13 M. I. A. 141.

Q. 42.—A man died. His Lagna-wife had lived separate from him. The man kept a woman. His property has passed into the hands of his mistress. The question is, which of the two women has the right of inheritance?

A.—If the deceased has left no sons, grandsons, or other nearer heirs, the Lagna-wife has the right to inherit the property of the deceased. The mistress cannot lay any claim to it.

Poona, March 20th, 1855.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 (*see* Auth. 3); (2) p. 134, l. 6; (3*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

Q. 43.—A Kunabî died, leaving two widows, *A* and *B*, one of whom, *A*, he had married as a virgin, and *B* as a widow. Can *A* mortgage her husband's Mirâs land?

A.—According to the Sâstra, *A* is the heir of her husband, and she can therefore mortgage his Mirâs land.

Poona, September 22nd, 1860.

AUTHORITIES.—(1) Vyav. May. p. 137, l. 7 (*see* Chap. II. Sec. 6A, Q. 17); (2*) Nirṇaya Sindhu (*see* Chap. II. Sec. 8, Q. 5).

Q. 44.—A Lingâyat married a virgin *A*, and a widow *B*. Which of them has the power of selling his immoveable property?

A.—*A* has the chief power of disposing of his property.

Dharwar, December 3rd, 1856.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2*) Vyav. May. p. 137, l. 7 (*see* Chap. II. Sec. 6A, Q. 11); (3*) Nirṇaya Sindhu. (*See* last Question.)

REMARK.—The marriage of the widow *B* to the deceased would be perfectly valid, the Lingayats ranking only as of the Śûdra caste. (*a*) (*See* Q. 35, 40.)

(*a*) *See* next Section, and *Gopâl Narhar* v. *Hanmant Ganesh*, I. L. R. 3 Bom. 273.

SECTION 6.—WIDOW.

B.—RE-MARRIED.

Introductory Remarks.

The remarriage by Pâṭ is so foreign to the purer Hindû notions, that the simple ceremony (Nâtrâ) cannot be performed for a woman who has not been married before. The same rule applies in some castes to males; in others a mere symbolical marriage of a man to a Sami tree or a cotton image qualifies him, though a bachelor, to take a previously married woman to wife. Such is the rule amongst the Surat Soothar Panchalis, Lohars, Mâlis, Khumbars, Dhobis, Mochis, and others who answered Mr. Borradaile's inquiries.

In some of the Dekhan castes, on a widow's marriage she has to give up to her first husband's family all her property except a prîti-datta or gift from her own family. (*a*) The nature of this property is discussed under the head of Strîdhana. Property in a wife is argued against by Nîlkantha (*b*) in terms which imply that by some of the learned even it was asserted. Such property would of course imply the wife's incapacity for property except a *peculium* in the proper sense. It would account too for the rule of some castes, that he who takes the widow, a part of the *familia* of a deceased, becomes thereby responsible for all his debts. See Introd. pp. 165, 271, 282.

Amongst the Jâts of Ajmir, custom requires that the member of the community who marries a widow shall repay to the family of the deceased husband the expenses of his marriage. (*c*) We have here a trace of a joint interest of the family in the wife or widow of each member of it which has been found to prevail in widely separated parts of the world. Without discussing the causes of this custom, we may perhaps gain a clearer view of the position of the widow, especially amongst the lower castes, by a consideration of the various social conditions through which she has reached her present capacities of freedom, complete or qualified, to dispose of herself, and of succession to property.

The levirate was at one time an institution generally recognized in India. (*d*) "It is declared," says Âpastamba, "that a bride is given

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(*a*) Steele, L. C. 169.

(*b*) Vyav. May. Chap. IV. Sec. I. para. 10.

(*c*) *Madda* v. *Sheo Baksh*, I. L. R. 3 All. 385.

(*d*) Gaut. XXVIII. 22, 23, 32. As to the Vedic period, Muir, S. T. vol. V. 459.

to the family (of her husband, not to the husband alone)." (*a*) Hence the husband could once procure children by the agency of a blood relative, (*b*) but that "is now forbidden on account of men's weakness," (*c*) "the hand (of a gentile relative like that of another is as) that of a stranger;" "the marriage vow is not to be transgressed;" and "the eternal reward to be gained by submitting to the restrictions of the law is preferable to obtaining offspring in this manner." (*d*) In Manu again (*e*) it is said that connection by one brother with the wife of another is degrading, "even though authorized, except when such wife has no issue"; but in that case it is approved. (*f*) Next follows a qualification of the rule limiting it to the procreation of one child on a widow by a kinsman, and lastly a prohibition of the practice to the twice-born classes. It is placed on a level with the marriage of a widow; (*g*) and the only remnant of the earlier law preserved by Manu is that commanding a man to take his brother's betrothed on the death of her

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(*a*) Âpast. Pr. II. Pat. 10, Kh. 27. Compare the existing customs described in Tupper, Panj. Cust. Law, Vol. II. pp. 118, 131, 189.

The *pallu* or dower of a widow is resumed in Gujarât by the deceased husband's family on her remarriage. They may in some castes escape from the liability to maintain her by giving her a formal license to remarry, without which she cannot, according to the caste usage, form a second union. In most instances a payment must be made to the family and in some to the caste.

(*b*) Gaut. XVIII. 4, 11. The Athenian heiress taken to wife by an aged husband was directed to supply his defects, should he prove unequal to his responsibilities, by the services of one of his agnatic kindred. *See* Petit, Leges Attic. p. 444. Baudhâyana, Tr. p. 226, might seem not to limit the choice of a subsidiary father to the family of marriage, but this appears from p. 234. Vasishtha XVII. 56 ss. 80, seems to intend that one of the family assembly shall be chosen.

(*c*) *i. e.* their incapacity now to resist the demoralizing effect of practices which would have left the higher sanctity of their predecessors unharmed. Comp. Âpast. Tr. p. 131.

(*d*) Âpast. *loc. cit.*

(*e*) Chap. IX. 58 ss, 120, 121, 143-147; Chap. III. 173. Nârada does not impose this condition. Pt. II. Chap. XII. Sec. 80 ff.

(*f*) *See* too Mit. Chap. II. Sec. 1, paras. 10-12, 18, 19.

(*g*) On this comp. Âpast. Transl. p. 130, and Viram. Tr. p. 61.

(intended) husband, in order to procreate one child. (*a*) A similar rule is found in Nârada, Pt. II. Chap. XII. 80, 81, 85, 86, with the condition of authorization by the relatives, failing which the offspring will be illegitimate. (*b*) Provision is made by Yâjñavalkya (*c*) for the son thus begotten (kshetraja) next to the son of the appointed daughter as heir to the nominal father. (*d*) By Vasishṭha he is made to precede the appointed daughter. (*e*) The idea of a woman's leaving her family of marriage and of sacrifice by marrying into another was one that to a Brâhman would appear far more monstrous than a simple succession of a brother or kinsman to the right of one deceased over his wife. (*f*)

The custom, softened as we have seen and gradually discredited amongst the higher castes, has been preserved amongst the less civilized tribes down to our own day. Many instances of it are given in Mr. Rowney's book on the Wild Tribes of India. It seems itself to have sprung (*g*) from an even coarser usage of polyandry (*h*) which still subsists amongst the aborigines of India. (*i*) The wife at one time held in common, passes on her sole owner's death as

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(*a*) *See* Viram. Tr. p. 106 ss.

(*b*) The viniyoga, or disposal of the widow by the husband's family, provided for in Nârada, Pt. II. Ch. XIII. para. 28, is a disposal of her to another lord.

(*c*) II. 128 ss ; Mit. Chap. I. Sec. XI. paras. 1, 5.

(*d*) *See* Mit. Ch. I. Sec. X.

(*e*) Vasishṭha XVII. 14, 15.

(*f*) Comp. Tupper. Panj. Cust. Law, Vol. II. p. 125, 131, 174. It seems that some Brâhmans have adopted or retained the levirate, *ib.* 132.

(*g*) *See* M. Müller's Hist. Sansk. Lit. p. 46 ss.

(*h*) *See* as to Seoraj, Lahoul and Spiti, Mr. Tupper's Collection, Panj. Cust. Law, vol. II. 186-188. To this custom perhaps may ultimately be referred the passage of Manu IX. 182 : " If among several brothers one have a son born, all are by his means fathers of a son." Though this is referred by Kullûka and other comparatively recent writers to adoption as prevented by the existence of a nephew, such could not have been the purpose when it was first uttered. For the polyandrous customs of the Tothiyars and Nairs, *see* Dubois, Manners, &c., p. 3; and above, p. 289.

(*i*) As once in Britain. *See* Cæsar De B. G. V. 14.

property to his brother. (*a*) In many cases she is a valuable property, as by tribal custom she has to do all or nearly all the agricultural work, (*b*) sometimes even the son has to take all his father's widows as his own wives, with the exception of his own mother. There is probably some mixture of humane feeling in such rules, as they provide a home for old widows, while they give the heir the benefit of the younger ones, (*c*) but they belong to a constitution of society in which women are not yet regarded as fully the subjects of rights. Amongst the Jews the levirate was part of a system in which a man's wife was regarded as his property, and he might sell his family, subject to return at the jubilee year. The capacity of daughters as heirs was grafted on to this system by a special revelation, and accompanied by a necessity of marrying within their own tribe. (*d*) In India their right grew out of the developed system of ancestor worship through their capacity to produce sons who could sacrifice to their fathers' manes. The widow's right grew out of her participation in her husband's domestic sacrifices. (*e*)

Such rights as these imply progress beyond the stage at which women were mere chattels, and when the law made no provision for them except by handing them over to a second master on the death of the first; (*f*) but the traces of the earlier system are

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(*a*) Amongst the Thiyens in Malabar an unseparated brother takes to wife the widow whose favours as wife of his brother he previously had a right to share.

In Spiti a brother even leaves a monastery to take his brother's widow and other property. No ceremony is thought necessary. Here however Thibetan influences are to be recognized. *See* Panj. Cust. Law, II. 189. For the semi-Afghans of Peshawar, *ib.* 228. *See* McLennan's Studies in Anc. Hist. p. 158 ss. In Rohtak the only Karewa or widow's remarriage recognized as proper is that to her late husband's brother. *See* Rohtak Settlement Report, p. 64.

(*b*) See Panj. Cust. Law, p. 194.

(*c*) *See* Tylor, Anthropology, 404; Tupper, Panj. Cust. Law. Vol. II. p. 125.

(*d*) Numbers XXVII. 1, 7; XXXVI; Lev. XXV. 10; Milman's Hist. of the Jews, Bk. V.

(*e*) *See* Manu IX. 45, 86, 87; III. 18, 262; Mit. Chap. II. Sec. 1, para. 6.

(*f*) Comp. the idea of the Vazirs that a woman is a chattel as much as a cow. Panj. Cust. Law, II. 236.

still plainly perceptible in the texts, and even more so in the customs of tribes and castes. It is not a wife in general whom the Smṛitis make a real heir; it is only the "patnî," a sharer in her husband's sacrifices. We can see the capture of wives succeeded by the sale of daughters, and this by their endowment when they had to be in some measure provided for otherwise than as mere slaves in their husbands' families; and then again their elevation to the rank of heirs to their husbands as competent to perform their Śrâddhs. But the older spirit reasserts itself, in cutting down the widow's interest to a life enjoyment, and then extending to all female successors a single dubious text which in terms applies only to widows. Tribal usage, generally oppressive to females in proportion to lowness in the scale of progress, has still in several instances hit on alleviations of their lot, and on means of giving them dignity and social status, which suggest that civilization might possibly have been worked out on quite a different type from that which has in fact prevailed. Side by side with the transfer and devolution of women as chattels amongst some tribes, (*a*) we find in other tribes, from the Gâros and Khâsias north of Assam to the Náyars of the south, a system of exclusive female kinship. The Khâsya Chief and the Râjah of Travancore alike succeed to their maternal uncles, and a sisterless and nephewless man has to adopt a sister to provide him with legal heirs, who are not according to custom the sons of her husband. The Gâro has to earn a place by service in his intended father-in-law's household. The scriptural example is sometimes followed in the Dekhan also. (*b*) The Koche bridegroom becomes a dependant of the bride's mother. (*c*) In some of these cases it is impossible to discover any degradation of the physical or moral being of the tribesmen below that of others placed in similar physical circumstances, (*d*) but the arrest, in all of them, of progress at a certain stage suggests the unfitness of these social schemes as a basis for a high form of civilization.

(*a*) *See* Rowney, Wild Tribes of India, *passim*.

(*b*) Steele, Law of Castes, p. 165.

(*c*) A similar custom in Sumatra is described in Marsden's History, p. 262, quoted Lubbock, Orig. Civil, p. 53. In Kulu and Spiti (Panjâb) a son-in-law is commonly taken into the family of a sonless man, Panj. Cust. Law, vol. II. pp. 186, 190. Similar to this is the custom of Illatom in Bellary and Karnool, see *Hanumantamma* v. *Rama Reddi*, I. L. R. 4 Mad. 272.

(*d*) *See* Panj. Cust. Law, vol. II. 195.

The Chundavand or patnîbhâg, prevalent alike though not general (*a*) in Madras and in the Panjâb, by which the property is distributed equally to each wife and her offspring, has probably descended from a state, of which there are still instances, of combined polygamy and polyandry coupled with a distinct recognition of women as the subjects of rights, a respect for them as the sources of families, and a tracing through them of all heritable rights in males. This was adopted into the Brâhmanical system so far that the estate was first divisible according to the mothers of the different classes, but the later development which forbade the inter-marriage of different classes (*b*) has deprived the rules in the present day of any practical application except under some special custom of which the instances are rare if not unknown. Some other traces of female gentileship remain, (*c*) which are noticed elsewhere. (*d*)

Amongst the lower tribes of the Bombay Presidency, the tribal ownership of property which in one form or another subsists in Malabar and in the Panjâb, is not to be found, owing chiefly perhaps to the absence of external pressure forcing the members into close aggregation rather than to a progress beyond the stage of common proprietorship. The advanced Brâhmanical law has had so much influence that the levirate in any form is not admitted as it still is in

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(*a*) Panj. Cust. Law, vol. II. p. 202.

(*b*) With this prohibition may be compared the expulsion from his tribe to which a man is still subject for marrying out of it in the Panjâb (Tupper, Panj. Cust. Law, vol. II. p. 111, 122) and elsewhere; the penalty of death imposed by the Theodosian Code on a Jew who should marry a Christian, and that of burning alive for the Christian who should take a Jewess as his mistress. *See* Lecky, Hist. of Rationalism, vol. II. 13, 275; Milm. Hist. Lat. Christ. Bk. III. Chap. V.; Döllinger, First Age of the Church (Eng. Trans.) vol. II. p. 235; and comp. Âpastamba, Pr. II. Pat. 10, Kh. 27, 8, 9; Gautama, XXIII. 14, 15, 32; Steele, L. C. 170, 33; Dubois, Manners, &c., p. 18.

(*c*) Perhaps the succession of a daughter to a son of the same mother (Coleb. Dig. Bk. V. T. 225) may be referred to this. Comp. the converse case, *supra* p. 285.

(*d*) See above, p. 284 ss. Inscriptions, giving the names of the mothers of princes, are not necessarily indicative of a rule of female gentileship, since, where polygamy prevails, some are still surnamed as of such and such a mother for the sake of distinction without any variation of the ordinary law.

the North of India, (*a*) but purchase is common and a simulated capture is not unknown. The communal right of the family of marriage in women (*b*) having given way to the notion of wedlock as a really connubial relation, but one arising in strictness only from a connection by means of the family sacrifices not allowed to the lower castes, the quasi-matrimonial union in those castes is easily dissolved, and at the same time the pât marriage of a widow is allowed amongst Śûdras to have full validity, (*c*) though so strongly condemned by the Brâhmanical law.

A husband may generally dismiss a wife at will, giving a "writing of divorcement" (*d*) which none of the higher castes are allowed to do; mere incompatibility of tempers is a recognized ground of separation; (*e*) and a paramour buys the husband's rights for money. (*f*) These rules show with sufficient plainness that those amongst whom they subsist have never risen to the Brâhmanical conception of marriage as a sacred and inseparable union. (*g*) Among some tribes and castes in Gujarât a mere agreement dissolves the union; (*h*) a fine may be paid as the price of renunciation (*i*) by either party or by the husband only. (*j*) Custom allows a woman to abandon her husband and take another, (*k*) subject only to the sanction of the caste. (*l*)

(*a*) *See* Tupper, Panj. Cust. Law, vol. II. p. 93 ss; C. S. Kirkpatrick in Ind. Antiq. for March 1878, p. 86; *Kesari* v. *Samardhan*, 5 N. W. P. R.

(*b*) *See* Tupper, *op. cit.* p. 101. In some instances it is not (except subordinately) recognized, and the wife set free by her husband is again sold by her father or her brothers.

(*c*) Ahmednagar Śâstri, 6th February 1850 MS; Steele, L. C. 166, 168.

(*d*) *Ib.*

(*e*) *Op. cit.* 169, 173.

(*f*) *Op. cit.* 172.

(*g*) Comp. Dubois, Manners, &c., p. 136; and *see* Baudhâyana quoted above, p. 86.

(*h*) Borr. MS. Bk. F. sheet 39, 57; G. Lohars, Khalpa Pattuni 40, 47.

(*i*) *Ib.* sheet 52. Koombar 6, Vaghree 23.

(*j*) *Ib.* sheet 56, 57, MS. G. Lohars, Sootars, G. sheet 40.

(*k*) Comp. p. 104 above, as to the Khonds. Amongst the Jâts of the Panjâb it is said a woman may desert her husband and live with another man, her offspring by whom are regarded as legitimate, *see* Panj. Cust. Law, vol. II. 160.

(*l*) *Reg.* v. *Dahee* in *Mathurá Náikin* v. *Esu Náikin*, I. L. R. 4 Bom. at p. 569.