The High Court has refused to recognize this authority in the caste, (*a*) but the usage itself shows how slight is in such cases the tie to which we give the name of marriage. The penalties of adultery are so trivial, (*b*) that the connexion guarded by them cannot be regarded as of a very sacred character. It is the injury to caste by carnal association with an inferior (*c*) rather than the loss of chastity which is looked on as a serious delinquency. (*d*) Even amongst the Brâhmans of the Dekhan simple adultery entails only a penance, after which the wife "may return to her husband's embraces." (*e*) This is a corruption, though one not without venerable authority, (*f*) supposing the connexion has not been with a man of a lower caste, but for adultery with a low caste man the husband may repudiate his wife, (*g*) while he himself incurs only a penance by keeping a low caste concubine. (*h*) Adultery by a wife is generally atoned for by penance

---

(*a*) *Ib.*, and *Reg.* v. *Sambhu Raghu*, I. L. R. 1 Bom. 347. Under the Greek and Roman laws a divorce might always be had by the will of the wife as well as of the husband, unless amongst the Romans she had come "in manum." Christian feeling was strongly opposed to this laxity. *See* Smith's Dict. Ant., Art. Divortium; Milman, Hist. Lat. Ch. Bk. III. Chap. V.

(*b*) Thus in Borradaile's Collection, Bk. G, under Durgee Meerâsee Soorti there is an entry that a woman who deserts her husband and marries another may be divorced, and the second must pay Rs. 10 to the caste (punchâyat) and take the woman. *See* too *Kally Churn Shaw* v. *Dukhee Bibee*, I. L. R. 5 Calc. 692. In the Gurgaon District, Panjâb, it appears that a wife cannot under any circumstances claim a divorce, *see* Tupper, P. C. L. vol. II. p. 130.

(*c*) Comp. Gaut. XXI. 9; XXIII. 14; Vasishṭha XXI. 1, 8, 10; Baudh. Tr. p. 232, 233; Nárada, Pt. II. Chap. XII. para. 112.

(*d*) Amongst the Nâyars a woman, it is said, may not cohabit with a man of lower caste, and therefore must not marry one. *See* letter quoted above under Strîdhana, p. 284 note (*b*); and Buch. Mysore, vol. II. p. 418, 513. Comp. Manu VIII. 365; Yajñ. II. 288, 294.

(*e*) Steele, L. C. 33, 172. Comp. Dubois, Manners, &c., 118, and Baudh. *loc. cit.*; Nárada, Pt. II. Chap. XII. paras. 54, 62, 78, 91, 98.

(*f*) *See* Âpast. Tr. p. 164, and the Vîramit. Tr. p. 153. But as to the evil of an adulterine son, Manu III. 175.

(*g*) Steele, L. C. 171, 172; Vyav. May. Chap. XIX. paras. 6, 12.

(*h*) *Ib.* 170. Baudhâyana, Tr. p. 218, pronounces a man outcaste who begets a son on a Śûdra woman, but for mere intercourse the penance is no more than some suppressions of the breath, *ib.* 313, *see* too p. 319. Comp. Manu VIII. 364; Yajñ. II. 286.

unless the husband chooses to discard her, (*a*) which he can equally do, though at the cost of some discredit, without any reason at all. (*b*)

A wife however who deserts her husband without sufficient cause is not entitled to separate maintenance, (*c*) and he who harbours her is liable to a suit by the husband. (*d*) The marriage of a second wife by the husband affords no excuse. (*e*)

Repudiation in practice seldom occurs except when the husband's patience has been worn out, or he has received a reward for setting his wife free. She is generally valuable to him as a servant; some mutual affection naturally grows up; and the children must be tended. But the whole system of association between the sexes is as far removed from the higher Brâhmanical conception (*f*) as on the other side from the rudest sexual communism. The texts of the Smṛitis, and for the most part the commentaries also, have no real application to wives and widows and remarried women under the dominion of usages which the Hindû law admits as governing those amongst whom they prevail, but at the same time utterly rejects as part of its own developed system. It recognizes no second marriage of a widow, which yet amongst the lower orders is common; and now is legalized for all classes by Act XV. of 1856. It could not be expected under such circumstances that the answers of the Śâstris should be perfectly consistent; they were not called on to expound caste custom, and had no particular acquaintance with it. They answered the questions put to them either by mere reference to the received texts against remarriage, without discrimination of whether these could be applicable to the particular cases, or by admitting the 'pâṭ' wife, and widow to the same position as the 'lagna' wife according to analogy, or an assumed caste

---

(*a*) Steele, L. C. 172.

(*b*) So amongst some low castes in Gujarât, Borr. MS. Bk. F. sheet 57, &c., and the Nâyars. This laxity brings a discredit on marriage which raises concubinage by comparison, and makes open licentiousness amongst the lower castes in no way disgraceful. The same effect followed amongst the Romans from the same cause. *See* Milm. Hist. Lat. Christ. Bk. III. Chap. V.

(*c*) *Sidalingappa* v. *Sidava*, I. L. R. 2 Bom. 634.

(*d*) *Yamunabai* v. *Narayan*, I. L. R. 1 Bom. 164.

(*e*) *Nathubhai Bhailal* v. *Javher Raiji*, I. L. R. 1 Bom. at p. 122.

(*f*) The High Courts naturally take the higher view as far as possible. Thus in a suit for maintenance between Lingayats it was said that the right and duty do not rest in the ordinary way (merely) on contract but spring from the jural relation of the parties, *Sidalingappa* v. *Sidava*, I. L. R. 2 Bom. 624.

custom. This custom has been greatly acted on by that of the superior castes, and the process of assimilation is hastened by every improvement in the material condition of the people. As they gain wealth they naturally strive to imitate their betters. (*a*) It is on custom that the rights of the widow in all the lower castes must really rest, (*b*) custom modified amongst them as in all cases, by the Act of the Legislature above referred to, and the equally important Act XXI. of 1850, which prevents loss of caste from affecting the right of inheritance. (*c*) An important provision (Sec. 5) of the former Act is, that a widow remarrying, while generally forfeiting her rights through her first marriage, shall otherwise have the same rights of inheritance as if her subsequent had been her first marriage. (*d*) This extends the favour conceded to the pâṭ wife only in particular castes to every widow remarrying. Another is that (Sec. 7) which gives the disposal in marriage of the minor widow to her father and his family instead of her husband's. (*e*)

The relation may or may not be created by contract, but once created it cannot, like ordinary contractual relations, be dissolved by contract, but constitutes a status itself the origin of special rights and duties imposed by the law.

(*a*) A striking instance of this is the decay of the polyandrous customs of the Nâyars under British rule. These have changed from an indulgence at will on the part of the women after a mere ceremony, to such strictness that even two husbands are now thought discreditable, a brother may not marry his sister-in-law either during his brother's life or after his death (Letter quoted above, p. 284, note *b*). Still however the Nâyar marriage is dissoluble at will, which places it in an entirely different category from the Brâhmanical or Christian marriage.

(*b*) Comp. Sarasvatîvilâsa, § 118.

(*c*) Mit. Chap. II. Sec. X.; Steele, L. C. 61, 26, 159.

(*d*) But it seems a marriage between persons of different castes is still generally impossible without a specific allowance by the caste law. See *Narain Dhura* v. *Rakhal Gain*, I. L. R. 1 Calc. 1. There is a *jus connubii* between many pairs of castes. See *ex. gr.* below, Sec. 7, Q. 6.

(*e*) The prevailing idea of marriage is that of a transfer of a woman as property to the family of her husband, who on his death have a right to dispose of her, even by sale, as in Gurgaon in the Panjab, and other districts. Pan. Cust. L. vol. II. p. 118. *See* Nâr. Pt. II. Chap. XIII. para. 28, referred to above.

Q. 1.—How far can a woman, married by "Pâṭ" ceremony, have a claim to her husband's property?

A.—She can claim a maintenance only.—*Dharwar*, 1846.

Authority not quoted.

REMARK.—For this and the following seven cases, *see* the Remarks subjoined to Chap. II. Sec. 6A, Q. 37, and Sec. 3, Q. 16.

Q. 2.—A man of the Marâṭhâ Kuṇabî caste died. He had no near relation except his "Pâṭ" wife. Can she inherit his immoveable property?

A.—If the deceased husband had declared himself separate from the other members of his family, and if he has not left a son, his widow can succeed to all his property.

Rutnagiri, May 22nd, 1849.

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).

Q. 3.—A man, not being on amicable terms with his first Pâṭ-wife, took another wife by the Pâṭ ceremony. The first Pâṭ-wife lived for 18 years with her daughter. The man is now dead. His second Pâṭ-wife having performed his funeral ceremonies and liquidated his debts, married another husband. The first wife has filed a suit against the second for a moiety of the property of the deceased. The question is, whether the claim is admissible, and whether the first or the second Pâṭ-wife has a right to dispose of the property left by the deceased husband?

A.—The widow has a right to prosecute her fellow-widow for the recovery of the property belonging to her husband, because he had not passed a deed of separation to her, according to the usage of his caste. As the second wife has married another husband, her right to the property of the deceased has become extinguished.

Khandesh, March 2nd, 1855.

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* Act XV. of 1856.

Q. 4.—Is the brother or a "Pâṭ" wife the heir to the property of a deceased man ?

A.—His brother is the heir.

Dharwar, December 20th, 1850.

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

Q. 5.—A deceased man of the Berada (*a*) caste has left a "Pâṭ" wife, her daughter, and a son of his brother. Who will be his heir ?

A.—If the deceased and his brother were separate, the widow will be the heir. If they were united in interests, the brother's son will be the heir.

Dharwar, July 12th, 1851.

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).

Q. 6.—There are two persons who claim the right of inheritance, viz. a "Pâṭ" wife, and a son of a separated brother. Which of these is the heir ?

A.—The "Pâṭ" wife.—*Dharwar, March 27th,* 1856.

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).

Q. 7.—Is a Pâṭ" wife or a cousin the nearer heir to a deceased individual ?

A.—If the cousin was separate in interest from the deceased, the "Pâṭ" wife is the nearer heir.

Dharwar, December 27th, 1851.

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

(*a*) A caste of cultivators in the Southern Marâṭhâ Country.

Q. 8.—A woman had a son by her first husband. On the death of the husband, she took her son to the house of the second husband, to whom she was married by the "Pâṭ" ceremony. The second husband died. Can the son and the widow be his heirs ?

A.—The "Pâṭ" wife will be the heir of the deceased, and not the son of her first husband.

Ahmednuggur, January 4th, 1849.

Q. 9.—A woman married by the "Pâṭ" ceremony to a Gujarâthi of the Bhanga-Sâlî caste, (*a*) twice went on a pilgrimage without his leave. When he died without issue, the wife returned and claimed his property. Should it be given to her, or to a cousin who lived separately, but performed the funeral rites of the deceased ?

A.—The wife, who disregarded her husband during his life, can have no claim to his property after his death. It will go to the cousin who lived separately from the deceased.

Rutnagiri, February 14th, 1846.

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

REMARK.—It is nowhere mentioned that simple disobedience of the husband's orders disables the wife from inheriting. The wife, therefore, will be her husband's heir.

SECTION 7.—DAUGHTER. (*b*)

Q. 1.—A man died, leaving a widow and a daughter. His property consists of a house. The widow married another husband. Which of these should be considered the heir to the house ?

(*a*) Bhanga-Sâlîs are shopkeepers.

(*b*) Some commentators have thought that the daughter came in only as a putrikâ. The Śmṛiti Chandrikâ contradicts this (Chap. XI. Sec. 2, p. 16). So too the Mitâkshará, Chap. II. Sec. 2, p. 5.

A.—The widow, having married herself to another husband by the "Pâṭ" ceremony, has forfeited her right of heirship. The daughter therefore is the heir.

Poona, April 3rd, 1850.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2) p. 137, l. 6; (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).

REMARKS.—1. According to the Hindû Law, as interpreted by some authorities, the widow loses her right to the estate of her first husband on account of her unchastity. (*See* Chap. II. Sec. 3, Q. 16. But *see* Chap. VI. Sec. 3 *c*, Q. 6.)

2. Though the re-marriage of a widow is legalized by Act XV. of 1856, a remarried widow is debarred from inheriting from her first husband by Sec. 2 of the same Act. (*a*)

3. In a divided family, the daughter excludes remoter relatives, (*b*) as divided brothers and their sons, (*c*) the son's widow, (*d*) not so in an undivided family with surviving members. (*e*) See *infra*, Questions 4 and 10.

The custom subsisting in some Narvadâri villages of excluding a daughter from succession to the village lands rests on a recognized inseparable connexion between the original proprietary families and their holdings. So "in the Panjâb where women do not transmit the right of succession to village lands; this is because they marry outsiders.....The exclusion.....is the means of keeping the land within the clan and within the village (community)." Panj. Cust. Law, vol. II. p. 58. Daughters are generally but not always excluded, *ib.* 145, 175, 177. In the same collection may be noticed a gradual growth of the right of the father to provide for his daughter out of tribal lands and to take her husband into his family very like what

---

(*a*) So as to the Maravers in Madras, though remarriage is allowed by the caste law, *Muragayi* v. *Viramakâl*, I. L. R. 1 Mad. 226.

(*b*) *Gorkha* v. *Raghu*, S. A. No. 216 of 1873, Bom. H. C. P. J. F. for 1873, p. 181.

(*c*) *Laxumon* v. *Krishnabhat*, S. A. No. 342 of 1871, *ibid.* for 1872, No. 23.

(*d*) 2 Macn. 43; and Coleb. in 2 Str. 234.

(*e*) *Vinayek Lakshman et al* v. *Chimnabái*, R. A. No. 44 of 1876; Bom. H. C. P. J. F. for 1877, p. 170.

occurred in Ireland and probably in other European countries in early times. (*a*)

A custom of male in preference to female inheritance to bhâgdâri lands in Gujarât was recognized in *Pranjivan* v. *Bai Reva*. (*b*)

4. There is no general usage of the Marâthâ Country excluding females from succession to ordinary inam property. A priestly office and the vṛitti or endowment appendant to it may stand on quite a different footing. (*c*) *See* above Chap. II. Sec. 6A, Q. 32. A widow may alien a vṛitti to provide for her necessary sustenance, Q. 689, MS. Surat, 19th March 1852.

5. As to the nature of the estate taken by a daughter, reference may be made to *Amritolal Bhose* v. *Rajonee Kant Mitter*, (*d*) quoted in the Introduction, p. 105. According to the Bengal Law, on the daughter's death, the property goes to her father's heirs, to the exclusion of her husband and daughter, (*e*) and she cannot alien to their detriment. (*f*) In Madras and Bengal indeed even under the Mitâkharâ the daughter is held to take only an estate similar to that of the widow. (*g*) In Bombay the doctrine of the Mitâkharâ and of Jagannâth has been maintained except as to widows. It was said that a daughter succeeds to an absolute and several estate in the immoveable property of a deceased father, and has full right over such property of disposal by devise. (*h*) In Bombay, a daughter succeeds to an absolute and several estate in the immoveable property of a deceased father, and has full right over such property, as to the share which she takes as one of two or more sisters. (*See* above, Introd. p. 106, 109, 330, 337.) The property descends as

---

(*a*) *See* Sullivan's Introd. to O'Curry's Lectures, Vol. I. p. 170 ss.

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

(*c*) *Vyankatrâv* v. *Anpurnâbâi*, R. A. No. 44 of 1874, Bom. H. C. P. J. F. for 1877, p. 302; *Duneshwur* v. *Deoshunkur*, Morris' Reports, Part I. p. 63.

(*d*) L. R. 2 I. A. 113.

(*e*) *See* Coleb. Dig. Bk. V. T. 420, Comm.; 2 Macn. Prin. and Prec. 57.

(*f*) *Doe dem. Colley Doss Bose* v. *Debnarani Koberanj*, 1 Fulton, R. 329; *Musst. Gyan Koowar et al* v. *Dookhurn Singh et al*, 4 C. S. D. A. R. 330; 2 Macn. H. L. 224; *Chotay Lall* v. *Chunnoo Lall et al*, 22 C. W. R. 496, C. R.

(*g*) *Chotay Lall* v. *Chunno Lall*, L. R. 6 I. A. 15; *Mutta Vaduganâdha Tevar* v. *Dorasinga Tevar*, L. R. 8 I. A. 99.

(*h*) *Haribhat* v. *Damodarbhat*, I. L. R. 5 Bom. 171, and cases there referred to; *Bábáji bin Nârayan* v. *Bálâji Gannesh*, I. L. R. 5 Bom. 660.

strîdhana to the daughter's heirs, not the husband's. (*a*) *See* Question 21. The Privy Council declined to pronounce on this in *Hurrydoss Dutt* v. *S. Uppoornath Dossee et al.* (*b*) But in *Mutta Vaduganâdha Tevar* v. *Dorasinga Tevar* (*c*) the Judicial Committee say definitively that the Mitâkshará is not to be construed as conferring on any "woman taking by inheritance from a male a Strîdhana estate transmissible to her own heirs." It would seem, therefore, that the heritage taken by daughters must in future be regarded as but a life interest, whether with or without the extensions recognized in the case of a widow, except in cases governed by the Vyavahâra Mayukha, Chap. IV. Sec. 10, para. 25, 26ss. (*d*) *See* 2 Macn. H. L. 57.

6. Many replies of the Śâstris pronounce an illegitimate daughter incapable of inheriting, but whether that would be so amongst Śûdras seems at least doubtful. *See* Steele, 180. She is entitled to maintenance and marriage expenses as a charge on the shares of both legitimate and illegitimate sons, according to *Salu* v. *Hari*. (*e*)

Q. 2.—A widow married a second husband. She has a daughter by her first husband. The question is whether the moveable and immoveable property of the first husband should be given to his daughter, who is a minor, or to the son of his separated cousin.

A.—The daughter is entitled to the property of her father as his legal heir.—*Tanna, July 20th,* 1857.

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

REMARKS.—*See* the preceding Question.

Q. 3.—A deceased person has left a daughter and another daughter's son. How will they inherit the deceased's property?

A.—If the daughter is not married, or if she is in poor circumstances, she will take the property of her father, and perform his funeral rites. The deceased daughter's son, who

---

(*a*) *Navalram* v. *Nandkishor*, 1 Bom. H. C. R. 209.

(*b*) 6 M. I. A. 433.

(*c*) L. R. 8 I. A. 99, 109.

(*d*) *Sengamalathammal* v. *Valayuda Mudali*, 3 M. H. C. R. 312.

(*e*) S. A. No. 315 of 1876 (Bom. H. C. P. J. F. for 1877, p. 34).

is a minor, is entitled to one-fourth of his grandfather's property. When both the daughters are married, and are in similar circumstances with regard to their means of livelihood, the surviving daughter and the deceased daughter's son will be equally entitled to the property. Each of them should therefore take a half of it.

Ahmednuggur, June 16th, 1848.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 (*see* Auth. 4); (2) p. 134, l. 6; (3) p. 156, l. 1; (4*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARK.—The daughter alone inherits, as the daughter's son is one degree further removed. He would however share the inheritance with his aunt, if his mother died after her father.

Q. 4.—A man's grandson died, leaving a widow. The man died afterwards. There are sons of his daughter. The question is, whether the daughter or her sons, or the widow of the grandson, will be the heir entitled to inherit the Watan of the deceased grandfather ?

A.—If the grandfather was a member of an undivided family, his grandson's wife cannot be his heir. The right of inheritance therefore belongs to his daughter and her sons.

Sadr Adálat, September 25th, 1838.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2) f. 58, p. 1, l. 5 and 9; (3) Vyav. May. p. 136, l. 4.

By undivided, the Śâstri means without partition having taken place between the grandfather and his son or grandson.

REMARK.—The deceased person's daughter alone inherits the estate. In the case at 2 Macn. Prin. and Prec. of H. L. 43, a daughter is preferred to a daughter-in-law. *See* also Q. 10, and *Musst. Murachee Koour* v. *Musst. Ootma Koour.* (*a*)

Q. 5.—A deceased person has left a step-mother and a daughter. Which of these is the heir ?

(*a*) Agra S. Reports for 1864, p. 171.

A.—If the step-mother is a separated member of the family, the daughter should be considered the nearest heir of the deceased.—*Ahmednuggur, May 19th,* 1859.

AUTHORITIES.—(1) Vyav. May. p. 129, l. 3; (2) p. 20, l. 3; (3) p. 28, l. 2; (4) p. 140, l. 1; (5) p. 137, l. 5; (6) Mit. Vyav. f. 46, p. 2, l. 11; (7) f. 15, p. 2, l. 16; (8*) f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

Q. 6.—A Tapodhana (*a*) died, leaving a son. He had also nominated his sister's son as his son. The son and the foster-son are both dead. The son has left a daughter. The foster-son has left a son. The daughter has been married to a Brâhman, whose caste is called Taulkîya Audîchya. It appears to be customary for the Tapodhana to intermarry with this caste. The question under these circumstances is, whether the right of inheritance belongs to the daughter of the son, or the son of the foster-son?

A.—A man who has a son has no right to nominate any other person as his son. It is further to be observed that a man of the Brâhman, or Kshatriya, or Vaiśya caste, cannot adopt a sister's son. The sister's son, therefore, is not the legal heir. The daughter, however she is married, in a Brâhman family, is the proper heir. Her right is not affected by her marriage into a higher caste.

Ahmedabad, October 17th, 1857.

AUTHORITIES.—(1) Vyav. May. p. 105, l. 8:—

"But a daughter's son and a sister's son are affiliated (*i. e.* allowed to be adopted) by Śûdras." (Borradaile, p. 70; Stokes, H. L. B. 61.)

(2) Vyav. May. p. 104, l. 7; (3) p. 134, l. 4 (*see* Auth. 5); (4) p. 137, l. 5; (5*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARK.—But see *Gunpatrav et al* v. *Vithobá et al.* (*b*) It is not clear, however, that the parties in that case were, as the headnote

---

(*a*) The occupation of this person is the same as that followed by Guravas in the Dekhan. It is washing idols, and having charge of a temple.

(*b*) 4 Bom. H. C. R. 130 A. C. J.

says, Vaiśyas, see *Gopál Narhar Sáfray* v. *Hanmant Ganesh Sáfray*, (*a*) and *Narsain* v. *Bhutton Lall* (*b*) referred to therein.

Q. 7.—There were two brothers who lived separate from each other. One of them died, leaving a daughter only. She did not spend any money for the funeral ceremonies of her father. The brother of the deceased incurred some expense on that account. The deceased has left a will, bequeathing a portion of the property to his daughter. Can she claim more than the bequest, on the ground of her being an heir of the deceased, or should the rest pass into the hands of his brother as heir ?

A.—A brother who lived separate from the deceased cannot be his heir merely because he performed his funeral rites. The daughter is the heir to the whole property; but if the deceased has left a will specifying the portion to which her claim should be confirmed, and transferring the rest to his brother, the brother will inherit according to the will of the deceased; otherwise the daughter should take the whole property, paying the expenses incurred on account of the funeral rites.—*Ahmednuggur, January 10th*, 1848.

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

REMARK.—A daughter succeeds in preference to a separated brother. (*c*)

Q. 8.—Two brothers lived separately from each other. One of them died. Will the daughter, brother, or step-brother of the latter succeed to his property ?

A.—If the deceased was separate, his daughter will be his heir; but if he had not separated, his brother or (if there be no brother) his half-brother will be his heir.

Poona, October 23rd, 1846.

(*a*) I. L. R. 3 Bom. 273.

(*b*) C. W. R. Sp. No. for 1864, p. 194.

(*c*) *Laxumon Guneshbhat* v. *Krishnabhat*, S. A. No. 342 of 1871 (Bom. H. C. P. J. F. for 1872, No. 23).

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

REMARK.—See *C. Hureehur Pershad Doss* v. *Gocoolanund Doss*. (*a*)

Q. 9.—There were two or three brothers, one of whom lived at the distance of three kos from the others. He was there for about 20 years. His daughter and son-in-law also lived with him as the members of the family. He is now dead, and the question is, whether his brother or daughter is his heir?

A.—As the deceased lived in a different village, and as he has not left a better heir, or adopted a son, his daughter will be entitled to his property.—*Dharwar, November* 18*th*, 1850.

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. 131, l. 8:—

"Nârada . . . . . Gift and acceptance; cattle, grain, houses, land, and attendants must be considered as distinct among separated brethren; as also the rules of gift, income, and expenditure. Those by whom such matters are publicly transacted with their co-heirs may be known to be separate, even without written evidence." (Borradaile, p. 97; Stokes, H. L. B. 82.)

Q. 10.—The son of a man died while his father was alive. The father died afterwards. His daughter-in-law is alive. He has also a separated brother, and a widowed daughter. The question is, which of these is the heir?

A.—The rule of succession laid down in the Śâstra provides that when a man, separated from his brother, dies without leaving male issue, his widow becomes his heir; that in her absence, his daughter; and that in the absence of the daughter, some other relatives have a right to inherit in succession. A daughter-in-law is not mentioned in the rule. She cannot, therefore, have any right to inherit the deceased's property. The daughter is the heir. A suitable provision must, however, be made for the support of the daughter-in-law.—*Surat, June* 19*th*, 1850.

(*a*) 17 C. W. R. 129 C. R.

AUTHORITIES.—(1) Vyav. May. p. 137, l. 7 (*see* Chap. II. Sec. 6A, Q. 11); (2) Vîramitrodaya, f. 203, p. 1, l. 13; (3*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARK.—*See* Remark to Question 4, *supra*; and Introd. p. 128.

Q. 11.—A man, who was himself adopted, died, leaving a daughter. There is a brother of the deceased, *i. e.* a son of his natural father, who belongs to the same family, but he is a distant relation of the branch represented by the deceased, being a cousin of five removes. Who will be the heir to the deceased's property, the daughter or the cousin?

A.—When a separated member of a family dies without leaving any male issue, his daughter is the heir. If the deceased had not separated from the other branch, his cousin is the heir.—*Poona, March 27th,* 1850.

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

Q. 12.—A person has died, leaving a daughter who is under age. Should the certificate of heirship be given to the daughter, or to the cousin of the deceased, with instructions to protect the property and the heir, and to get her duly married?

A.—If the cousin is united in interests with the deceased, he may be granted a certificate, but if he be separate, the daughter of the deceased should be declared the heir, and placed under the protection of her cousin.

Ahmednuggur, October 12th, 1846.

AUTHORITIES.—(1*) Mit. Vyav. f. 51, p. 1, l. 10:—

"But sisters should be disposed of in marriage, giving them, as an allotment, the fourth part of a brother's share." (*a*) (Colebrooke, p. 286; Stokes, H. L. B. 393.)

(*a*) Regarding the explanation of the passage, *see* Colebrooke on Inheritance, p. 286. (Mit. Ch. I. Sec. VII. paras. 4, 5.) Though the passage does not expressly prescribe that the unmarried sisters should receive maintenance, this of course follows from the injunction to marry them, and to give them a dower.

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

REMARKS.—1. If the deceased belonged to an undivided family, the son or sons of his brother or brothers will inherit, and not his daughter. But she has to be kept by her relations up to the time of marriage, and to be married at their expense.

2. If the deceased was divided from his relations, the daughter inherits. As she is a minor she must have a guardian till she is married, which guardian will be the next paternal relation. 1 Str. H. L. 72.

Q. 13.—A man died. There are his male cousin and a daughter of 10 years. Which of these is the heir? If the cousin be heir, who should be entrusted with the protection of the deceased's daughter?

A.—When a man, who has separated from his family, dies, his daughter becomes his heir. When a man, who is a member of an undivided family, dies, his daughter, as the nearest relation, is his heir. The cousin, however, will be the heir entitled to inherit the deceased's Watan and land, paying revenue to Government. The heir will be burdened with the obligation of getting the deceased's daughter married. If the daughter has already been married, the heir must afford her such protection as she would have received from her deceased father.—*Surat, December 29th*, 1846.

AUTHORITIES.—(1*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2*) f. 51, p. 1, l. 10 (*see* Chap. II. Sec. 7, Q. 12).

REMARK.—The doctrine of the Śâstri as to an undivided family is incorrect. *See* the preceding case. He gives the Bengal rule as laid down in the Dâya Bhâga, Chap. XI. Sec. II. para. 1. But as Mitramiśra points out in the Viramitrodaya, Transl. p. 181, Jîmûta Vahâna in another place (Dâya. Bhâg. Ch. III. Sec II. para. 37) says that in a partition portions are not taken by daughters as having a title to the succession, though the quotation from Devala is not there relied on as Mitramiśra supposed.

Q. 14.—A Kulakarani died. There are his daughter, some second cousins, and their sons. Which of them will inherit the deceased's Watan? These relations of the deceased

lived separate from him. The deceased received his share separately. When he and his wife died, his property was considered heirless, and sold as unclaimed. Who will be the heir to this property?

A.—If the deceased had declared himself separate, and had received his share of the property, including the Watan, separately, his daughter alone will be his heir. If the Watan was not divided, his cousins will be the heirs of the deceased.—*Ahmednuggur, June 30th,* 1848.

AUTHORITIES.—(1) Vyav. May, p. 83, l. 3; (2) p. 137, l. 5-7; (3) p. 157, l. 3; (4) p. 159, l. 5; (5) p 156, l. 5; (6) p. 155, l. 5; (7) Mit. Vyav. f. 46, p. 2, l. 4; (8) f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

Q. 15.—A daughter of a person, having orally renounced her right to her father's property, refused to perform his funeral rites. A cousin of the deceased, therefore, performed the rites. The daughter now asserts that she did not renounce her claim to the inheritance, and wishes to have it recognized. Who will be the heir under these circumstances, the daughter or the cousin?

A.—It appears that the deceased has left a will to the effect that his property should be given to him who should perform his funeral rites, whether it were his daughter or the cousin. If it could be proved that the former renounced her claim, and directed her cousin to perform the rites, and take the property of the deceased, her claim would be inadmissible; but if no proof of this be forthcoming, the daughter by law is the heir, and entitled to the inheritance. In this case the daughter would be obliged to pay the cousin the expenses which he might have incurred in performing the ceremonies.—*Tanna, December 29th,* 1848.

AUTHORITIES.—(1). Vyav. May. p. 134, l. 4 (*see* Auth. 4); (2) p. 137, l. 5; (3) p. 138, l. 3; (4*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

Q. 16.—Will a man's property descend to his married daughters or to his brother's wife ?

A.—If the deceased was a member of an undivided family, and has left no sons, his brothers will be his heirs, and in the absence of brothers their wives ; but if the deceased had separated [from his brothers] his daughters will be his heirs.—*Poona, December 31st,* 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).

REMARK.—The brother's widow inherits only in case the deceased (*A*) and his brother (*B*) were united in interests, and *A* died before *B*. For in this case the share of *A* would fall first to *B* (Authority 1), and next to B's wife (Authority 2).

Q. 17.—An inhabitant of Gujarâth had a daughter-in-law, who was pregnant at his death. He therefore transferred his property by a deed of gift to his son-in-law, on condition that if the result of the pregnancy should prove a son, the whole of his property should be given to him ; that if a daughter, her marriage expenses should be defrayed from the property, and his daughter-in-law supported during her lifetime from the same source. After having made a deed of gift to this effect, the man died. His death was followed by that of his daughter-in-law without issue, and of his son-in-law. There is only a daughter of the man, *i. e.* the widow of his son-in-law, who obtained the gift. Can she be considered the legal heir to the property ?

A.—When a man makes a gift of any thing, and at the same time retains his proprietary right to it, the transaction cannot be considered a gift. This is one of the rules of the Śâstra ; and another is, that when a man dies without leaving male issue, and wife, his daughter is his legal heir. In the case under reference, the man who made the gift of his property retained his right to it, as shown by the condition of the grant, that the property was wholly to pass to the

son of his daughter, in case he should come into existence. The deed of gift is therefore illegal; and when it is set aside, the daughter of the man succeeds.

Khandesh, January 4th, 1853.

AUTHORITIES.—(1) Vyav. May. p. 196, l. 5; (2) p. 134, l. 4 (*see* Auth. 4); (3) p. 121, l. 2; (4*) Mit, Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARK.—The gift may, however, be accompanied by a trust or duty to be fulfilled by means of it or in return for it. (*a*) It must be completed by possession; (*b*) at least as against a subsequent transferee from the donor. (*c*) When the purpose of a gift is not fulfilled, as by non-execution of the trust or other annexed duty, the Hindû Law annuls the donation, and this is so though the proposed consideration (for so it is regarded) fail but in part. (*d*) The gift is thus attended with a kind of condition subsequent of defeasance. Under the Roman law, as under the codes derived from it, a gift was revocable by the donor for ingratitude. (*e*) For non-satisfaction of charges it could be revoked by his successors. (*f*) The Indian Courts do not now cancel the gift: they enforce the annexed duty according to the equitable doctrine of trusts, (*g*) subject to the limitations noticed above, pp. 178 ss.

(*a*) *Rambhat* v. *Lakshman*, I. L. R. 5 Bom. 630.

(*b*) *Ib.*, *Vithalrao Vasudev* v. *Chanaya*, B. H. C. P. J. F. for 1877, p. 324; *Lallubhái* v. *Bái Amṛit*, I. L. R. 2 Bom. 299; *Harjíwan Anandrám* v. *Náran Haribhái*, 4 Bom. H. C. R. 31 A. C. J.

(*c*) 2 Macn. H. L. 207; 2 Str. H. L. 427.

(*d*) *See* Coleb. Dig. Bk. II. Chap. IV. T. 56, Comm.

(*e*) *See* Coleb. Obl. § 657 ss.

(*f*) Goud. Pand. p. 201.

(*g*) See the Transfer. of Property Act, IV. of 1882, Secs. 126, 129; Indian Trusts Act, II. of 1882, Secs. 1, 45, 56, 61; Specific Relief Act, I. of 1877, Sec. 54; Acts XXVII. and XXVIII. of 1866; *Ram Narain Singh* v. *Ramoon Paurey*, 23 C. W. R. 76. Acts II. and IV. of 1882 are not in force in Bombay, and where Act II. is in force its operation amongst Hindûs is much limited by Sec. I., which reserves the classes of trusts which most frequently form the subjects of litigation.

Q. 18.—Can the daughter of a deceased Mahâr dedicated as a Muralî, as well as her son, be considered heirs to his property?

A.—The Śâstras are silent as to the practice of dedicating females as Muralîs. The Muralî and her son would, however, according to the custom of the caste, succeed to the property left by her father.—*Dharwar, August 11th*, 1857.

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

Q. 19.—A deceased person has left no male issue, but has left four daughters. One of them became a widow when she was a child, and therefore lived in her father's house, making herself useful to him as a servant. The deceased has a nephew, who lived separate from him. Which of these two persons will be the heir?

A.—When a deceased person has no widow, his daughters are his heirs. Of these, the one who is not married has a superior claim; and when all are married, the one in poor circumstances has a superior claim. Those who are in good circumstances are, however, entitled to a small share of the property. Small shares of the property should be given to the wealthy daughters, and the rest to the one in poor condition. The nephew, whose interests are separate, has no right whatever.—*Ahmednuggur, September 21st*, 1847.

AUTHORITIES.—(1) Vyav. May. p. 137, l. 6:—

"If there be more daughters than one, they are to divide (the estate), and take each (a share). In case also where some of them are married and some unmarried, the *unmarried ones* ALONE (succeed), 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). From this text of Gautama:—'A woman's property goes to her daughters, unmarried, unprovided for. Unprovided, destitute of wealth. Those acquainted with traditional law, hold that the word

woman's (wife's) includes the father's also.'" (Borradaile, p. 103; Stokes, H. L. B. 86.)

(2) Vyav. May. p. 83, l. 3; (3) p. 157, l. 5; (4) p. 159, l. 5; (5) p. 156, l. 5; (6) p. 155, l. 5; (7) Mit. Vyav. f. 46, p. 2, l. 14; (8*) f. 58, p. 1, l. 5 (*see* Auth. 1).

REMARKS.—1. Comparative poverty determines the preference of married daughters to succeed. (*a*) Failing a maiden daughter, the succession devolves on an indigent married daughter though childless. (*b*)

2. The different position of daughters in relation to each other as heirs of their father's property in Bombay and elsewhere is considered in the Introd. above, p. 106-109.

3. In *Amritlal Bose* v. *Rajoneckaut Mitter*, (*c*) (a Bengal case), it is said that a heritable right vested in one of two sisters at her father's death is not extinguished by her becoming a childless widow, in whom as such the right could not have vested. She may therefore succeed to her sister who took at first as the preferable heir, and so exclude that sister's son, contrary to the law in Bombay. The Hindû law does not deprive, on account of supervening defects (not amounting to an incapacity for holding property), of an inheritance once actually taken or "vested in possession": see the case of the incontinent widow, below. But where successive heirs are provided to the same person, the analogy of the widow's estate and those following it, would seem to point to the temporary estate being regarded as a prolongation of the original one, and the claims of alleged heirs being estimated according to their condition at the end of the derived interest immediately preceding. The judgment therefore may be regarded as a substantial extension of the rights of those having latent interests at the death of a father.

Q. 20.—A man of the Sûdra caste has left two widowed daughters. Which of them will be his heir?

A.—The one who is wealthy cannot claim the property. The poor one will be his heir. If both are in similar circumstances, each should receive half the property.

Sholapoor, September 26th, 1846.

(*a*) *Bakûbâi* v. *Manchhabâi*, 2 Bom. H. C. R. 5; *Poli* v. *Nârotum Bapâ et al*, 6 Bom. H. C. R. 183, A. C. J.

(*b*) *Srimati Uma Deyi* v. *Gokoolanund Das*, L. R. 5 I. A. 40.

(*c*) L. R. 2 I. A. 113.

AUTHORITY.—*Vyav. May. p. 137, l. 6 (*see* Chap. II. Sec. 7, Q. 19).

REMARK.—*See* the Remark to Q. 19.

Q. 21.—A deceased person has left two daughters, one of whom has applied for a certificate that she is his heir. Should it be given to her ?

A.—The two daughters have equal right to the property of the deceased, and one of them may therefore have a certificate stating her right to one-half of it.

Poona, October 12th, 1846.

AUTHORITY.—Vyav. May. p. 137, l. 6 (*see* Chap. II. Sec. 7, Q. 19).

REMARK.—In the cases of *Kattama Nachiar et al* v. *Dorasinga* alias *Gaurivallaba*, (*a*) and *Radhakishen* v. *Rajah Ram Mundul et al*, (*b*) different views are taken of the devolution of the property inherited by daughters. *See* the Section on Strîdhana, p. 265 ss, and above, Q. 1.

SECTION 8.—DAUGHTER'S SON.

Q. 1.—A man died. There is a widowed daughter of his daughter, and a son of his other daughter. Which of these is the heir ? And if both are heirs, in what proportion should they share the property ?

A.—The daughter's son is the heir.

Surat, June 14th, 1853.

AUTHORITIES.—(1) Vîramitrodaya, f. 205, p. 2, l. 2 (*see* Auth. 2); (2*) Mit. Vyav. f. 58, p. 1, l. 9 :—

" By the import of the particle 'also' (Section I. § 2), the daughter's son succeeds to the estate on failure of daughters. Thus Vishṇu says, 'If a man leave neither son, nor son's son, nor (wife, nor female) issue, the daughter's son shall take his wealth. For in regard to obsequies of ancestors, daughter's sons are considered as son's sons.' " (Colebrooke, Mit. p. 342 ; Stokes, H. L. B. 441.)

(*a*) 6 M. H. C. R. 310.
(*b*) 6 C. W. R. 147.

REMARKS.—1. Daughters' sons take *per capita*. (*a*) They are excluded by the survival of any daughter. (*b*) But in *Radhakishen* v. *Rajnarain*, (*c*) a Bengal case, it was held that the son of a daughter, who was unmarried at the time of her succession, succeeds to the paternal estate, to the exclusion of her married sisters.

2. According to the Mitâkshará, a daughter's son takes his maternal grandfather's estate as full owner, and on his death such estate devolves on his heirs and not on the heirs of his maternal grandfather. (*d*)

Q. 2.—A man, having survived his son, died, leaving a daughter-in-law, and a daughter's son. Which of the two succeeds to his property ?

A.—The daughter-in-law, by virtue of her heirship to the son of the deceased, will be his heir. The daughter's son will not be the heir. His right is not superior to that of the daughter-in-law, because it is declared in the Śâstras that no son should be recognized as heir in the Kali age, other than the begotten and the adopted.—*Khandesh*, 1848.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2*) Mit. Vyav. f. 58, p. 1, l. 9 (*see* Chap. II. Sec. 8, Q. 1).

REMARKS.—1. The daughter's son inherits, according to Auth. 2, if the grandfather died after his son. Otherwise the daughter-in-law is to be preferred, as in *Mahalaxmi* v. *Grandsons of Kripa Shookul*; (*e*) contra *B. Sheo Sulrae Singh* v. *Balwunt Singh*. (*f*) In *Ambawow* v. *Rutton Krishna et al*, (*g*) it was held that a daughter's son precedes a grandson's widow. *See* Sec. 7, Q. 4.

2. The Śâstri's remark refers to "the putrikâ-putra," the son of an appointed daughter, who according to the ancient law was reckon-

---

(*a*) *Ram Swaruth Pandey et al* v. *Baboo Basdeo Singh*, 2 Agra H. C. R. 168; *Ramdhun Sein et al* v. *Kishenkanth Sein et al*, 3 C. S. D. A. R. 100.

(*b*) *Musst. Ramdan* v. *Beharee Lall*, 1 N. W. P. H. C. R. 114.

(*c*) 2 Wyman's R. Civil and Cr. Reporter, 152.

(*d*) *Sibta* v. *Badri Prasad*, I. L. R. 3 All. 134.

(*e*) 2 Borr. 557.

(*f*) Calc. S. D. A. R. for 1838, p. 490.

(*g*) Reports of Selected Cases (1820-40), 1st Ed. p. 132, 2nd Ed. p. 150.

ed amongst the "twelve sons," but whose heirship in that character would not now be recognized.

Q. 3.—A man died. There are a son of his daughter, and a second cousin. Which of these is the heir ?

A.—If the deceased was a separated member of the family, his daughter's son is the heir. If he and the second cousin have lived as members of an undivided family, the cousin will be his heir.—*Khandesh, August 25th,* 1853.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 ; (2) p. 138, l. 2 (*see* Auth. 4); (3*) Vyav. May. p. 136, l. 2 (*see* Chap. I. Sec. 2, Q. 3); (4*) Mit. Vyav. f. 58, p. 1, l. 9 (*see* Chap. II. Sec. 8, Q. 1).

Q. 4.—A Brahman died without male issue. Whilst the funeral rites, including the ceremony of "Sapiṇḍî," were performed from the first day by his brother's son, in conformity with the deceased's direction, his daughter's son performed them from the eleventh day. Which of these will be the heir of the deceased ? If the brother's son is entitled to the property, can the costs of the funeral ceremonies performed by the daughter's son be paid to her ?

A.—When a person who had separated from his family dies without male issue, his first heir is his widow. In her absence his daughter, and if a daughter is not in existence, her son is the heir. In the case under reference the daughter's son, who performed the funeral rites, is the heir. The nephew, who had separated from the deceased and who performed the rites in accordance with the written directions left by the deceased, cannot be considered the heir, though he is entitled to the costs of the rites.

Tanna, September 6th, 1847.

AUTHORITIES.—(1) Vyav. May. p. 138, l. 2:—

(Vishṇu):—"If a man leave neither son nor son's son, nor (wife, nor female) issue, the daughter's son shall take his wealth. For in regard to the obsequies of ancestors, daughter's sons are considered son's sons." (Borradaile, p. 103 ; Stokes, H. L. B. 87.)

(2) Manu IX. 136 :—

"By that male child whom a daughter, whether formally appointed or not, shall produce from a husband of an equal class, the maternal grandfather becomes the grandsire of a son's son; let that son give the funeral oblation and possess the inheritance." (Colebroke, Inh. p. 343; Stokes, H. L. B. 441.)

Q. 5.—Can the male offspring of a Śûdra woman by her second husband succeed to her father's property?

A.—As there is no prohibition in the Śâstra against remarriage by a woman of the Śûdra caste, it is generally resorted to. The male offspring by a remarriage will therefore be the legal heir to his maternal grandfather's property.

Sadr Adâlat, November 17th, 1838.

Authorities.—(1) Mit. Vyav. f. 55, p. 2, l. 1; (2) f. 58, p. 1, l. 9 (*see* Chap. II. Sec. 8, Q. 1); (3) Manu. IX. 132; (4*) Nirṇayasindhu, Par. III. Pra. I. fol. 63, p. 2, l. 7 :—

Since (the following passage) is quoted in the Hemâdri :—

"The remarriage of a married woman, the (double) share given to an elder brother, the killing of cows, the (appointment of a brother to cohabit with the) brother's wife, and (the carrying of) a water pot, these five (actions) ought to be avoided in the Kali (age)."

Remarks.—1. The Hindû Law of the Śâstras forbids the remarriage of widows of all classes. (*See* Auth. 4.) Consequently the son of a remarried woman is to be considered illegitimate, and as such not qualified to inherit except under caste custom. *See* Ch. II. Sec. 3, Q. 16.

2. As the marriage of widows is legalized by Act XV. of 1856, the Pâṭ wife's son inherits. *See* above, p. 413.

SECTION 9.—MOTHER.

Q. 1.—A person executed a bond and a deed of separation in the name of a woman and her son. Can the woman sue on the bond after the death of her son?

A.—The mother, being the heir of her son, can do so.

Poona, August 11th, 1845.

AUTHORITY.—*Mit. Vyav. f. 58, p. 1, l. 11:—

"On failure of those heirs, the two parents, meaning the mother and the father, are successors to the property.

"Although the order in which parents succeed to the estate do not clearly appear (from the tenor of the text, Section I. § 2), since a conjunctive compound is declared to present the meaning of its several terms at once, and the omission of one term and retention of the other constitute an exception to that (complex expression), yet as the word 'mother' stands first in the phrase into which that is resolvable, and is first in the regular compound 'mother and father,' when not reduced (to the simpler form, pitarau, 'parents') by the omission of one term and retention of the other; it follows from the order of the terms and that of the sense which is thence deduced, and according to the series thus presented in answer to an inquiry concerning the order of succession, that the mother takes the estate in the first instance, and on failure of her the father." (Colebrooke, Mit. p. 344; Stokes, H. L. B. 441-2.)

REMARKS.—1. On the mother's death the succession goes to the then next heir of the son, according to *P. Bachirajee* v. *V. Venkatappadu*. (*a*) *See* above, pp. 110, 328, 338.

2. Manu gives apparently contradictory directions as to the precedence of the two parents. (*See* Manu IX. 185, 217.) Vijñâneśvara's argument is controverted by Nîlakaṇṭha, Vyav. May. Chap. IV. Sec. 8, p. 14. The Smṛiti Chandrikâ too rejects it. *See* Chap. XI. Sec. 3. (*b*)

3. In Gujarâth the father is preferred to the mother as heir to their son. (*c*)

4. A mother of a Girasia was held entitled to receive the Girasi haks from Government, upon the death of her son. (*d*)

(*a*) 2 Mad. H. C. R. 402.

(*b*) In the oldest form of the Salic law the inheritance is given to the mother next after the sons. After her came the brother and sister on equal terms, and after them the mother's sister. In the next stage we have "if there be no mother or father"; then "if no father or mother." The "sorores patris" in like manner acquire precedence in the later law over the "sorores matris." But female succession, first to land at all, and then to the "terra salica" (probably the estate of the Hall *i. e.* for maintenance of the household) is throughout excluded. *See* Hessels and Kern, Lex. Sal. 379-386.

(*c*) *Khodhabhai Mahiji* v. *Badhar Dala*, I. L. R. 6 Bom. 541.

(*d*) *Bai Umedha* v. *The Collector of Surat*, R. A. No. 24 of 1867. Decided 30th November 1870 (Bom. H. C. P. J. F. for 1870).

Q. 2.—A son of 7 years of age, of a man of the Parît caste, died. His father is in prison. The son's mother has applied for a certificate of heirship. Can it be granted to her?

A. The father is the heir of his son if he should die before his marriage, and in the absence of the father, his mother is the heir.—*Poona, April 13th*, 1857.

AUTHORITIES.—(1) Vyav. May. p. 138, l. 3; (2) Mit. Vyav. f. 58, p. 1, l. 11 (*see* Chap. II. Sec. 9, Q. 1).

REMARKS.—1. There are no special rules regarding the succession to the property of an infant.

2. If the property of the deceased son is separate property, as the context of the question seems to indicate, consisting in presents from relations or friends, it falls under the general rules which regulate the succession to the property of a separated person who has no male issue, and consequently the mother inherits before the father.

See the case of *Narasapá Sakhárám*, (*a*) and the Introduction, Section on Stridhana. The estate which the mother takes in the property of her deceased son is according to the case similar to that which a widow takes in that of her deceased husband. *See* also *P. Bachiraja* v. *Venkatappadu*. (*b*)

Q 3.—In the case of some money being due to a deceased person, who has a right to claim the payment, his mother or his widow? the latter being notoriously adulterous, and pregnant by illicit intercourse.

A.—The mother has the right to recover the money, even if she be separate. The widow has forfeited her right in consequence of her bad conduct.

Ahmednuggur, September 25th, 1849.

AUTHORITIES.—(1) Vyav. May. p. 136, l. 8:—

"But a wife who does malicious acts injurious to her husband, who acts improperly, who destroys his effects, or who takes delight in being faithless to his bed, is held unworthy of separate property." (Borradaile, p. 102; Stokes, H. L. B. 86.)

(*a*) 6 Bom. H. C. R. 215 A. C. J.

(*b*) 2 M. H. C. R. 402.

(2) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (3*) f. 58, p. 1, l. 11 (*see* Chap. II. Sec. 9, Q. 1).

REMARK.—"Even if she be separate." It does not matter whether the mother lived with her son or not, since she inherits, on the exclusion of deceased's widow, as the nearest heir to a "separate, not reunited, person, who has no male issue."

Q. 4.—A man died, leaving two widows. One of them had a son, who also died afterwards. Which of the survivors is entitled to the property of the deceased as his heir?

A.—The son became heir of the deceased father, and when the son died, his mother became his heir. The step-mother is not his heir.—*Dharwar, October 13th,* 1852.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2) f. 55, p. 2, l. 7; (3) f. 58, p. 1, l. 11 (*see* Chap. II. Sec. 9, Q. 1); (4) Vyav. May. p. 83, l. 7.

Q. 5.—A man died, leaving two sons by two different wives. The son of the younger wife was a minor, and his share was therefore deposited by the father with a banker. The son afterwards died. Has his mother or his step-mother the right to inherit his property?

A.—The mother of the deceased.

Ahmednuggur, April 3rd, 1857.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 8; (2) f. 51, p. 1, l. 3; (3) f. 46, p. 1, l. 9; (4*) f. 58, p. 1, l. 11 (*see* Chap. II. Sec. 9, Q. 1); (5) Vyav. May. p. 2.

Q. 6.—On the death of a man his estate was entered in the public records in the name of his son. The son subsequently died, and there remained two claimants, namely, the son's mother, who was married by "Pât," and his step-mother, who was married by "Lagna." In whose name should the estate be entered?

A.—If the widows live together, the one who by age and abilities appears superior, should be considered entitled

to have the property registered in her name. If they are separate the mother of the deceased son should have a preference to the other.—*Dharwar, May 5th,* 1858.

AUTHORITIES.—(1) Mit. Vyav. f. 20, p. 1, l. 16; (2*) f. 58, p. 1, l. 11 (*see* Chap. II. Sec. 9, Q. 1).

REMARK.—The Śâstri seems to have thought of the case of two widows who after their husband's death became co-owners of his property. (*a*) In this case the land must be entered in the name of the deceased son's mother, since she is the sole heir of his property.

Q. 7.—A man died, leaving a widow and a son. He held a Desâigiri Watan, which was his ancestral property. The mother and the son used to manage the Watan conjointly. The son afterwards died, leaving a widow and a male child. The latter died subsequently. The question is, whether the mother or the grandmother of the male child is entitled by right of inheritance to take the Desâigiri and other property? Are both of them entitled as heirs?

A.—The mother is the nearest relation of the child. She is entitled to inherit the property of her son. She cannot, however, transfer the Desâigiri, &c., to others by sale, gift, or mortgage. She should live upon the proceeds of the property.—*Surat, July 20th,* 1854.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 13 (*see* Auth. 2); (2*) f. 58, p. 1, l. 11 (*see* Chap. II. Sec. 9, Q. 1); (3) Vyav. May. p. 138, l. 5 (*see* Auth. 2); (4) p. 135, l. 2 (*see* Chap. II. Sec. 6 A, Q. 6); (5) Manu IX. 187.

REMARK.—In *Narsappa* v. *Sakharam,* (*b*) it was held that a mother inheriting from a son takes the same estate as a widow from her husband. In *Sakharam* v. *Sitaba* (*c*) this is said to be settled law. The Śâstris in such cases as Q. 3, agreed with the answer here given that the mother inheriting becomes herself the *proposita* for any further descent. *See* further above, Introd. p. 330 ss. The Mitâkshará

(*a*) *Bhugwandeen Doobey* v. *Myna Baee,* 11 M. I. A. 487. Above, p. 103.

(*b*) 6 Bom. H. C. R. 215.

(*c*) I. L. R. 3 Bom. 353.

Chap. I. Sec. 1, paras. 12, 13, says that where there is heritage there is ownership, and in Chap. II. Sec. 1, paras. 12, 39, that the widow, and failing her the parents, take the heritage of a separated sonless man. The daughter's absolute right is recognized as arising under the same rule as applies to the widow and the parents. (*a*) The mother's estate therefore like the widow's must, according to the recent decisions, be regarded as anomalous, and limited by principles foreign to the Mitâkshará. (*See* above, p. 328, 332, 336.)

Q. 8.—A man possessed a house, and held some cash allowances called Desâigiri, Muglai, Sirpâva Chirdê, and Vazifa. He died leaving a widow and a son. The latter, who was a minor, died subsequently. The paternal uncle of the man received the Watan allowances. The house was also in his possession. He received a certificate declaring him to be the heir of his nephew. The man's widow has obtained a certificate declaring her to be the heir of her son. On the strength of this certificate, she claims the Watan allowances. These allowances are the ancestral property of the family. Supposing the deceased son's grandfather had divided his property between himself and his brother, to whom will the right of claiming the house and the allowances belong? and if the division has not taken place, to whom will the same right belong?

A.—On the death of a man, his son becomes his heir. His right is not affected by the separation or union of the father and other members of the family. According to this rule, the son in the question became heir of his father. On his death, his mother can claim to be the heir of her son. She therefore has a right to the Watan, house, and other property of the deceased.—*Surat, July 30th,* 1865.

AUTHORITIES.—(1) Vyav. May. p. 83; (2) Vîramitrodaya, f. 193, p. 1, l. 2; (3) Manu, IX. 137; (4) 163; (5) Mit. Vyav. f. 58, p. 1, l. 11 (*see* Chap. II. Sec. 9, Q. 1).

REMARK.—The mother inherits only in case her husband or son had separated from the rest of the family.

(*a*) See *Haribhat* v. *Damodharbhat*, I. L. R. 3 Bom. 171.

Q. 9.—A woman of the "Śûdra" caste had a son by her first husband. She married herself by the "Pâṭ" ceremony to another husband, with whom she and her son lived. When the son came to age he was married at the house of his mother's second husband. A few years afterwards the son and his wife died without issue. The question is who should be considered his heir?

A.—The mother is the heir, and not her second husband.
Poona, November 26th, 1851.

AUTHORITIES.—(1*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2*) f. 58, p. 1, l. 11 (*see* Chap. II. Sec. 9, Q. 1).

REMARK.—According to Act XV. 1856, Section II. the remarried mother cannot, it might seem, inherit from her first husband's son; but the decisions recognize her heritable right. (*See* also Bk. I. Chap. VI. Sec. 3 *c*, Q. 7.)

SECTION 10.—FATHER.

Q. 1.—Should the younger brother or the father of a deceased person receive the certificate of heirship?

A.—The father is the proper heir, but the younger brother may obtain the certificate if his father has no objection to it.
Rutnagherry, June 11th, 1846.

AUTHORITIES.—(1*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2*) Mit. Vyav. f. 58, p. 1, l. 11 (*see* Chap. II. Sec. 9, Q. 1).

REMARK.—Vide *Bajee Bapoojee* v. *Venoobai*, quoted in Section 11, Q. 1.

Q. 2.—A man brought up a son of another man and got him married. At the time of the marriage he bestowed certain necessary jewels and articles of dress on the bride. The son died subsequently without issue. His widow contracted a "Pâṭ" marriage with another man. It has therefore become necessary for the woman to restore the jewels and the clothes. The question is, whether the property should be taken by the father of the boy, or the widow of the man who brought him up?

A.—The son was not adopted, but was simply brought up and protected by the man. His father therefore has a right to the property mentioned in the question.

Surat, April 11th, 1850.

AUTHORITIES.—(1*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2*) f. 58, p. 1, l. 11 (*see* Chap. II. Sec. 9, Q. 1).

SECTION 11.—BROTHERS.

Q. 1.—Two brothers lived separately from each other for 32 years. One of them, who had brought up a girl and got her married, died. The question is, who should be considered his heir?

A.—The surviving brother is the heir, and not the foster-daughter.—*Rutnagherry, March 8th,* 1851.

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.—The brother inherits before the widow of a pre-deceased son. (*a*) A separated father would exclude a separated full brother, as well as half-brothers, who again, being united with their father, would exclude the full brother of the original proprietor. (*b*)

Q. 2.—A Paradeśî kept a woman, by whom he had some daughters. There are also his brothers. The Paradeśî is dead, and the question is, who should be considered his heir?

A.—The brothers.—*Tanna, June 4th,* 1852.

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

Q. 3.—A man had three sons and a nephew (brother's son), whose father died when he was only three days old. The man had brought the young child up with his sons. Two sons separated themselves from the rest of the family,

---

(*a*) *Venkapa* v. *Holyava,* S. A. No. 60 of 1873 (Bom. H. C. P. J. F. for 1873, No. 101).

(*b*) *Bajee Bapoojee* v. *Venoobai,* S. A. No. 282 of 1871; (*Ibid.* for 1872, No. 41).

while the third and the nephew lived as an undivided family. The nephew died, and his widow remained with the third son, who also afterwards died. The question is, whether the widow of the nephew or the two separated sons should succeed to the property of the deceased person?

A.—The wife of the nephew has a better claim, in case the nephew and the third son had an identity of interest.

Dharwar, September 30th, 1857.

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

REMARK.—The facts of the case appear to be these. One (*C*) of three brothers *A*, *B*, *C*, was united in interests with a married first cousin (bhrâtṛivya) *D*. The other two brothers had separated from the third. The first cousin *D* died. After his death, his share became the property of the brother *C*, as women cannot inherit in an undivided family. After *C*'s death his brothers, *A*, and *B*, will therefore inherit, and not *D*'s wife, because she is only a Sapiṇḍa relation excluded by co-owners.

Q. 4.—A person divided his property between his legitimate and illegitimate sons. One of the (illegitimate) brothers died without issue. Will the legitimate or illegitimate members of the family be his heirs?

A.—The relatives of the illegitimate branch will be the heirs.—*Nuggur,* 1845.

AUTHORITIES.—(1*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2) f. 58, p. 2, l. 5:—

"Among brothers, such as are of the whole blood take the inheritance in the first instance, under the text above cited; 'to the nearest sapiṇḍa the inheritance next belongs;' since those of the half-blood are remote through the difference of mothers." (Colebrooke, Mit. p. 347; Stokes, H. L. B. 445.)

REMARK.—It is not clearly stated whether the surviving relations of the deceased are all his brothers, or some brothers and some nephews, and it is therefore impossible to say whether the Śâstri's answer is correct. The order of inheritance is this—brothers of the whole blood, half-brothers, sons of brothers of the whole blood, sons of brothers of the half-blood. (*a*) (*See* above Sec. 3, Q. 12, and Introd. pp. 111, 112.)

(*a*) So in *Burdum Deo Roy* v. *Punchoo Roy,* 2. C. W. R. 123.

Q. 5.—A Mârwâdî had three wives, of whom the first had two sons, and the second and the third one each. The husband and two wives died. The widow who survived was the mother of the two sons. One of these sons died before marriage. The question is, who will be his heir, the uterine brother or the half-brothers?

A.—The order of heirs laid down in the case of death of a person who has no male issue, and who is a "Vibhakta," or a member of a divided family, is as follows:—The widow, daughter, daughter's son, father, mother, uterine brothers, and half-brothers; when one fails, the other succeeds. If the deceased had separated and was unmarried, his immediate heir will be his father, and in his absence, his mother. If he had not separated, his uterine and half-brothers, who would be entitled to equal shares of the deceased's property.

Khandesh, October 20th, 1849.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2*) f. 58, p. 1, l. 11 (*see* Chap. II. Sec. 9, Q. 1).

REMARKS.—*Father, Mother.*—It should be mother, father. (*a*) See Introd. p. 109.

In the case of *Gavuri Devamma Garu* v. *Ramandora Garu,* (*b*) there is an exposition of the law relating to impartible property belonging, as an undivided estate, to a Hindû family, or to one branch of such a family, jointly as to the members of the branch, but separately as to the other branches, with which a community of interests exists as to other property. The Court say (page 109):—

"We are of opinion, therefore, that the sound rule to lay down with respect to undivided or impartible ancestral property is that all the members of the family who, in the way we have pointed out, are entitled to unity of possession and community of interest according to the Law of Partition, are coheirs, irrespectively of their degrees of agnate relationship to each other, and that, on the death of one of them leaving a widow and no near Sapindas in the male line, the family heritage, both partible and impartible, passes to the survivors or survivor to the exclusion of the widow. But when her husband was

(*a*) See *Musst. Pitum Koonwar* v. *Joy Kishen Doss et al,* 6 Calc. W. R. 101 C. R.

(*b*) 6 M. H. C. R. 93.

the last survivor, the widow's position, as heir relatively to his other undivided kinsmen, is similar to her position with respect to his divided or self- and separately-acquired property."

2 A brother of the whole blood has precedence in succession over a half-brother in Bengal. (*a*) *Gavuri Devamma Garu* v. *Ramandora Garu* is discussed by the Judicial Committee in *Periasami* v. *Periasami*. (*b*) Their Lordships thought that the property, by the elder brother's renunciation, became that of the younger brothers as if it had fallen to them in an ordinary partition. *See* p. 75 of Report.

Q. 6.—A Sannyâsî is dead. There are his brother, a grandson of his other brother, and a widow of the third. Which of these will be his heir?

A.—That person will be the heir to whom the property might have been transferred previous to the man's becoming a Sannyâsî. But if the property was not transferred to any one, and if it constitutes what the man possessed before he became a Sannyâsî, it will be inherited by his brother, and in the absence of a brother by a brother's son; and when there is no such son, the widow of a brother. The property which may have been acquired during the time the man was Sannyâsî, such as his books, wooden sandals, math, &c., will be inherited by his virtuous disciple.

Ahmednuggur, September 2nd, 1849.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 (*see* Auth. 4); (2) p. 140, l. 1; (3*) Mit. Vyav. f. 58, p. 2, l. 5 (*see* Chap. II. Sec. 11, Q. 4; (4*) f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARKS.—1. Nephews cannot take by representation in competition with the surviving brothers of a deceased co-sharer. (*c*) *See* also Mit. Chap. II. Sec. 4, p. 8.

2. But it should be borne in mind that by the Mitâkshará law the rules of inheritance come into operation only as to the sole estate or

---

(*a*) *Sheo Sundri* v. *Pertheo Singh*, L. R. 4 I. A. 147.

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

(*c*) *Rampershad Tewary* v. *Sheochurn Doss*, 10 M. I. A. 504.

the separate estate of the *propositus*. In a united family there is no room for the succession of "brothers and their sons," the joint estate is theirs already; it is only a participator who is removed. Even the widow, the first in the series of heirs to a sonless man, succeeds only if he was separate. *See* Mit. Chap. II. Sec. 1, paras. 2 and 39. Much less can the daughter or brother succeed to the same estate. (*a*)

SECTION 12.—HALF-BROTHERS. (*b*)

Q. 1.—There were two half-brothers of the Rajput caste. One of them died, leaving his property in the possession of his widow. She contracted a "Pâṭ" marriage with another man. The question is, whether the widow or the half-brother has right to the property of the deceased?

A.—The widow of the deceased, having remarried by the rite of "Pâṭ," has forfeited her claim to her former husband's property. The nephew has right to inherit it.

Broach, June 29th, 1852.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 8; (2) f. 58, p. 2, l. 5 (*see* Chap. II. Sec. 11, Q. 4).

REMARKS.—Regarding the loss of the widow's rights, *see* also Act XV. 1856, Section 2.

2. According to the Vyav. May., a full sister inherits in preference to a half-brother. (*c*) Much more therefore in preference to remoter relatives. (*d*)

(*a*) *See* above, Chap. I. Sec. 2, Q. 6, Remark; and *Rajhubanand Doss* v. *Sadhuchurn Doss*, I. L. R. 4 Calc. 425.

(*b*) As to the precedence of half-brothers over full brothers' sons, the Smṛiti Chandrikâ, Chap. XI. Sec. 4, para. 5, follows the Mitâkṣharâ, while the Vyav. May. Chap. IV. Sec. 8, p. 16, reverses the order. Macn. vol. 2, p. 11, says that representation does not extend to collaterals, but the case of which he intends to give the effect goes only so far as to say that half-brothers take after full brothers and exclude half-brothers' sons.

(*c*) *Sakharam Sadáshiv Adhikari* v. *Sitabai*, I. L. R. 3 Bom. 353.

(*d*) *Ib.* 368 (note), 369.

SECTION 13.—BROTHER'S SON. (*a*)

Q. 1.—A person died, and there is his brother's son as well as a widow of another brother's son. Will the widow be the heir in preference to the nephew?

A.—No.—*Tanna, October* 11*th,* 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).

Q. 2.—A man died. His surviving relatives are four nephews and a wife of a nephew. The question is, which of these is the heir?

A.—The four nephews are heirs. The widow of a nephew cannot be the heir of the deceased.

Ahmedabad, July 18*th,* 1857.

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

REMARK.—In default of brothers, brothers' sons succeed, taking *per capita*. (*b*) They succeed directly as nephews, not by representation of their fathers. (*c*)

Q. 3.—Who will be the heir to a deceased person, a brother's son or a brother's daughter?

A.—The brother's daughter cannot be the heir.

Dharwar, 1845.

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

REMARK.—Nandapaṇḍita and Bâlambhaṭṭa give equal shares to the brother's daughters. *See* Stokes, H. L. B. 445. See *infra,* Bk. I. Chap. II. Sec. 15, B. II. (2).

(*a*) *See* Introduction, p. 116, 117; below Sec. 14 I. B. 1 *a*, Q. 1, and Nirṇayasindhu III. p. 95, l. 17, quoted in Bk. I. Chap. 14 I. B. *b*. 1, Q. 1. Brothers' sons exclude a son's widow, 2 Macn. 75. They are amongst the heirs specially enumerated. The Smṛiti Chandrikâ, Chap. XI. Sec. 4, para. 26, places the son of a half-brother next after a son of a full brother. Brother's sons exclude the widows of the deceased in a united family, *Totava et al* v. *Irapa*, R. A. No. 26 of 1869, decided 4th July 1871. (Bom. H. C. P. J. F. for 1871.)

(*b*) *Brojo Kishoree Dossee* v. *Shreenath Bose*, 9 C. W. R. 463. *See* Q. 6.

(*c*) *Brojo Mohun Thakoor* v. *Gouree Pershad et al*, 15 C. W. R. 70.

Q. 4.—A man died, leaving neither wife nor children. He has left two relatives, namely, a sister-in-law and a nephew. Which of these is the heir of the deceased? The sister-in-law has sold a house of the deceased without the consent of her son. Is this a legal sale?

A.—When a man dies without male issue, his widow becomes his heir. When there is no widow, his daughter, and in her absence, her son is the rightful heir. In the absence of a daughter's son, the parents, and in their absence, the uterine brothers, and in their absence, the nephews are the heirs. This is the rule of succession laid down in the Śâstra. According to it a sister-in-law cannot be the heir while there is a nephew alive. The sale effected by the widow without her son's consent cannot be considered legal.—*Ahmedabad, January 31st,* 1852.

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).

Q. 5.—A man died. His surviving relatives are a nephew and a son of another nephew. Which of these is his heir?

A.—The nephew is the heir. The son of a nephew cannot be considered the heir while a nephew is alive.

Ahmednuggur, July 8th, 1856.

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).

Q. 6.—If a deceased person has left a sister and some nephews, which of them will be his heir?

A.—If the deceased and his nephews were undivided in interest, the nephews will be his heirs; but if they were separated, the sister will be his heir.

Ahmednuggur, December 31st, 1846.

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

REMARKS.—The nephews (brother's sons) are the heirs in every case. They take *per stirpes* according to the Subodhini, but this is met by Bâlambhaṭṭa with the argument that, as a brother has not a vested interest like a son, he cannot transmit it, and therefore the brothers'

sons take *per capita*. (*See* 1 Macn. 27.) The discussion brings out the difference between the successive possibilities of ownership, each excluded by the preceding one, in "obstructed" as compared with the successive outgrowths of actual co-ownership in unobstructed "dáya," (= participation) commonly rendered "inheritance." *See* above, Introd. pp. 60, 63, 67.

2. Where there is no reunion, all co-sharers participate according to their relationship in the lapsed share of a deceased co-sharer in each of the several parts of the original estate in which his share was settled by agreement so as to constitute a partition. (*a*)

Q. 7.—A man separated from the rest of the members of his family. Afterwards he died. His sisters claim the right of inheritance. The grandmother and the nephew of the deceased have objected to their claim. The question is, which of these three relatives is the heir of the deceased?

A.—If the deceased was a separated member of his family, and if he had no son, his nephew is his heir. When there is no nephew, the mother of the deceased's father, and in her absence, his sisters are his heirs.

Surat, October 11*th*, 1845.

AUTHORITIES.—(1*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2*) Manu IX. 217:—

"The mother also being dead, the paternal grandfather and grandmother take the heritage on failure of brothers and nephews."

Q. 8.—Who will be the heir of a deceased person, his kept woman or his brother's son?

A.—The nephew is the heir, but the kept woman will be entitled to a maintenance.—*Dharwar*, 1846.

AUTHORITIES.—(1*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2*) f. 57, p. 1, l. 5 (*see* Chap. II. Sec. 3, Q. 3).

REMARK.—See *Vrindavandas* v. *Yemunabai*. (*b*)

Q. 9.—There were two brothers, Uderâm and Hûma. The latter had kept a woman, by whom he had a son. After his

(*a*) *Amrit Rav Vinayak* v. *Abaji Haibat*, Bom. H. C. P. J. F. for 1878, p. 293.

(*b*) 12 Bom. H. C. R. 229.

death Uderâm protected the son and got him married. The woman and Uderâm died. Can the illegitimate son of Hûma be the heir of the deceased Uderâm?

A.—He may be considered the heir, if, according to the custom of the Mârwâḍîs, there is no objection to his succession; but if it is contrary to the custom, he will be entitled to whatever he may have received from his uncle as a mark of his affection, and if the son is a minor, the Sirkâr should make a provision for his protection till he attains to the proper age, and the rest of the property may be taken by Government.—*Ahmednuggur, March 8th,* 1847.

AUTHORITY.—Vyav. May. p. 7, l. 1:—

"Thus Bṛihaspati says:—'Let all rules of each country, caste and family, that have been divided and preserved from ancient times, be still observed in the same way, otherwise the subjects will rise in rebellion.'" (Borradaile, p. 7; Stokes, H. L. B. 15. *Compare* also Manu VIII. 41.)

Q. 10.—A village was granted on hereditary Inâm tenure to a younger brother. The grantee subsequently died without issue, but there are sons of his brother. Can the Sanad, declaring the grant to be "Vaṁśaparamparâ," be construed to extend the benefit of the grant to the nephews of the grantee?

A.—The grantee was a Brâhman. By reason of the grant he became proprietor of the village. After his death, the surviving members of his family have a right to his property. A king is prohibited from taking any property of a Brâhman, even though he may have at his death left it without an heir. If the deceased has left no other heir than his nephews, they will be his heirs entitled to the village.

Sadr Adálat, September 8th, 1837.

AUTHORITIES.—(1*) Amarakośa, Bk. II. Chap. 7, 1:—Amarasiṁha here enumerates *vaṁśa* amongst the words for lineage. *See* also Wilson's Sanskrit Dictionary.

(2*) Vîramitrodaya, f. 204, p. 1, l. 1:—"A son and a daughter both continue the race of the father."

REMARKS.—1. By the term "Vaṁśa-paramparâ" are understood "male" and "female" descendants in the direct line, but never brothers or brothers' sons. Consequently the nephews, in the case stated, have no title to the property.

See above, Section 6A, Q. 8, for the case of a widow succeeding to separate property, such as an inâm would generally be. *See* also Bk. II. Introd.

2. A grant to a man and his heirs does not constitute an estate inalienable. (*a*)

*SECTION 14.—I. GOTRAJA SAPINDAS.

A.—HEIRS MENTIONED IN THE MITÂKSHARÂ AND VYAVAHÂRA MAYÚKHA.

1. *A.*—FULL SISTER. (*b*)

Q. 1.—A man died. He possessed certain property acquired by himself and his ancestors. The question is, whether the sister or the sister-in-law of the deceased is the heir?

A.—The sister, and not the sister-in-law, is the heir.

Surat, August 15th, 1858.

AUTHORITIES.—(1) Vyav. May. p. 140, l. 1:—

"In default of her (the grandmother) comes the sister; under this text of Manu: To the nearest Sapiṇḍa (male or female) after him in

(*a*) *Krishna Ráo Ganesh* v. *Rang Ráo et al*, 4 Bom. H. C. R. 1 A. C. J.; *Bahirji Tannaji* v. *Oodatsing et al*, R. A. No. 47 of 1871 (Bom. H. C. P. J. F. 1872, No. 33). As to grants, *see* Bk. II. Introd. 5 A 2.

(*b*) The Smṛiti Chandrikâ, Chap. XII. para. 35, admits the sister as successor to a reunited parcener on failure of children, wife, and father, though it excludes her as heir to a divided brother. Chap. XI. Sec. 5. See *Icharam* v. *Purmanund*, 2 Borr. R. 515. A sister succeeds to a brother, after the latter's widow has entered into a Natra marriage with another, under Act XV. of 1856, in the absence of custom excluding her from succeeding to Bhâgadâri Vatan, *Bhaiji Girdhur et al* v. *Bai Khusal*, S. A. No. 334 of 1872, Bom. H. C. P. J. F. for 1873, No. 63. *See* the next Section. *Biru valad Sadu* v. *Khandu valad Mari*, I. L. R. 4 Bom. 214.

Under the earlier Roman law a whole group of agnates standing equally near to the deceased succeeded together without distinction

* For references to the Introductory Remarks to this Section in the earlier editions, *see* now Introd. to Bk. I. p. 114 ss.

the third degree, the inheritance belongs." (*a*) (Borradaile, p. 106; Stokes, H. L. B. 89.)

(2) Mit. Vyav. f. 69, p. 1, l. 16; (3) f. 45, p. 1, l. 5; (4) f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARKS.—1. Hindû sisters inherit equally from their deceased brother; the unendowed has not a preference over the one provided for, as in the case of daughters inheriting from a mother. (*b*)

2. The sister (by adoption) of an adopted son succeeds before other kinsmen (deceased's uncle's widow). (*c*) A sister succeeds before remote kinsmen (males). (*d*)

A full sister is preferred to a paternal first cousin. (*e*)

In the case of *Sakharam* v. *Sitabai*, (*f*) one of two separated half-brothers having died was succeeded by his mother. On her death a contest as to the inheritance arose between her daughter and her step-son, which was disposed of in favour of the former. The judgment places her precedence (*g*) on the succession to reunited brethren which is referred to in Vyav. May. Chap. IV. Sec. IX. p. 25, and *Vinayak Anandrav* v. *Lakshmibai* is relied on as having not only on the authority of the Mayûkha but also on Nanda Pandita's and Nilakan-

---

of sex. The females being always dependent, no inconvenience arose from their joint ownership. When the Lex Voconia afterwards prohibited legacies to females they began to be thought unfit members of the heritable group of agnates, but an exception was maintained in favour of full sisters. It would seem that an analogous exception in favour of full sisters, in virtue of their consanguinity, may, at one stage of progress and in some provinces, have prevailed under the Hindu law. Str. H. L.; *see* Q. 4, Rem.

(*a*) *See* page 130 for Bâlambhaṭṭa's doctrine. The poverty qualification does not give a preferential claim amongst sisters as it does amongst daughters. See *Bhagathibai* v. *Baya*, I. L. R. 5 Bom. at p. 268.

(*b*) *Bhagirthibai* v. *Baya*, I. L. R. 5 Bom. 264.

(*c*) *Mahantapa* v. *Nilgangowa*, B. H. C. P. J. F. for 1870, p. 390.

(*d*) *Dhondu* v. *Ganga*, I. L. R. 3 Bom. 369.

(*e*) *Lakshmibai* v. *Dada Nanaji*, I. L. R. 4 Bom. 210.

(*f*) S. A. 34 of 1875, in which judgment was delivered on 3rd March 1879 (P. J. 335 of 1879; S. C. I. L. R. 3 Bom. 353.

(*g*) Vyav. May. Chap. IV. Sec. 8, p. 16, 20, (supported by a passage of Bṛihaspati, cited Col. Dig. Bk. 5, T. 407).

ṭha's interpretations of the Mitâkshará (making brethren include sisters) settled the law for the Bombay Presidency generally. Any divergence from the rule must, it is said, be supported by "an ancient and invariable usage to the contrary.....alleged and proved by him who uses it." The case was dealt with entirely on a consideration of who was heir to the pre-deceased son, not of who was heir to his mother. The mother, Mathurabai, it is laid down, "on succeeding on the death of her son Nana to his moiety of the immoveable property, took only such a limited estate in it as a Hindû widow takes in the immoveable property of her husband dying without leaving male issue."

There can be no doubt as to the sister's succession before the half-brother according to the Mayûkha and to Nanda Paṇḍita's and Bâlambhaṭṭa's construction of the Mitâkshará. But the same authorities give the deceased son's estate to his mother, so that for the further succession we should, according to them, seek her heirs, not the son's heirs. (*a*) The sister of the deceased Nana was entitled to the property, according to the native authorities, in succession to her mother, not to her brother. With the cases relied on of *Narsappa* v. *Sakharam* and *Bachiraja* v. *Venkatapadda* should be compared those cited in *Vijiyarangam's* case.

3. The property inherited by a sister from her brother is Strîdhana, passing on her death, in the first place, to her daughters. (*b*)

Q. 2.—A man died. He had no wife or children, and

(*a*) *See* above, p. 328. The same view is taken by the Vivâda Chint., by Jagannâtha, the author of Coleb. Dig., and in fact by all the authorities except the Dâya Bhâga and the works which have since adopted its forced construction of a single text applicable only to a widow succeeding to her husband's property. According to both the Mit. and the Mayûkha, property which a woman acquires by inheritance is strîdhana (*supra*, pp. 149, 270, 272, 298, 327), heritable by her heirs. The 'limited estate' which a widow takes from her deceased husband may be identical in kind with that which a mother inherits from her son, but the character of the estate must in each case now be determined by the decisions rather than by the doctrines of the principal native authorities recognized in Bombay. *See* above, pp. 150, 334.

(*b*) *Bhâskar Trimbak* v. *Mahadeo*, 6 Bom. H. C. R. 1 O. C. J; *Vinâyak Anandrâo et al* v. *Lakshmibai et al*, 1 Bom. H. C. R. 117, and 9 M. I. A. 516.

there is no member of his family except a sister. She has two daughters ; one of them is a widow, and the other is a married woman and has a male child. The question is, whether the son should be considered the heir of his mother's maternal uncle, in preference to the claims of his mother and grandmother?

A.—In the absence of a near relation, a distant relation becomes heir of a deceased person. The sister is a gotraja relation and must be preferred to all others mentioned in the question.—*Ahmedabad, May 28th,* 1847.

AUTHORITIES.—(1) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1) ; (2) p. 134, l. 4 (*see* Auth. 3); (3*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

Q. 3.—A man had two wives. The elder of them had a daughter. The daughter has three sons. The second, or the younger wife, had a son and two daughters. One of the last mentioned daughters died when her mother was alive. She has left a son. The second, or the younger wife, and her son died. Her surviving daughter has applied for a certificate of heirship of the deceased mother and brother. The deceased daughter's son, and the sons of the daughter of the elder wife, have brought forward objections to their claim. It must be observed that the uterine brother and sister of the applicant died when their mother was alive, and that the elder wife and her daughter died when the younger wife was alive. The question is, which of the survivors is the heir of the deceased younger wife?

A.—When a man dies, his widow, daughter, and other near relations become his heirs; and in the absence of these, the uterine sister ; and failing her and her son, the daughter is the heir of the deceased younger wife. In the absence of the daughter, the daughter's son will inherit the

property of his maternal grandmother. The applicant (*a*) is therefore the heir of the two deceased persons.

Surat, September 28th, 1857.

AUTHORITIES.—(1) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1); (2) p. 138, l. 4; (3) p. 137, l. 5; (4) p. 137, l. 8; (5) Mit. Vyav. f. 48, p. 1, l. 14:—

"The daughters share the residue of their mother's property after payment of her debts." (Colebrooke, Mit. p. 266; Stokes, H.L.B. 383.)

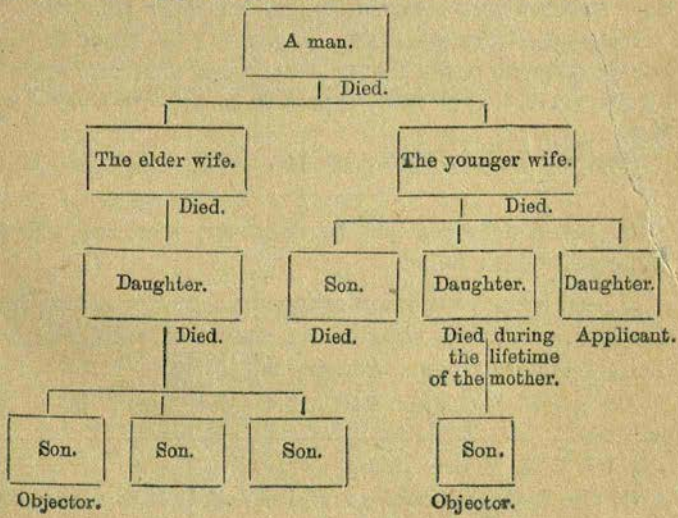
Q. 4.—A man died. He has left neither a wife nor children. His sister and her son claim to be his heirs. The question is which of them should be considered the heir?

A.—If there are none of the man's following relations, viz:—

A son,	A daughter's son,	A uterine brother,
A wife,	The mother,	A half-brother, and
A daughter,	The father,	A brother's son,

a gotraja relation becomes heir; and among the gotraja

(*a*) The following genealogical table will illustrate the answer:—



relations, the father's mother is to be preferred to all others. The next gotraja and heir is the sister, and then the sister's son.—*Ahmedabad, April 20th,* 1847.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 (*see* Auth. 3); (2) p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1); (3*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARKS.—In the case of *Sakharam* v. *Sitaram*, (*a*) it was held that a full-sister succeeds before a half-brother, both according to the Vyav. Mayûkha (Chap. IV. Sec. VIII. paras. 16—20) and according to the Mitâkharâ (Chap. II. Sec. IV. paras. 1, 6, and notes) construed according to Nanda Paṇḍita and Bâlambhaṭṭa so as to make "brothers" include sisters. (*b*) It is strange that the Mitâkharâ, if it intended "brothers" to include "sisters," did not say so; but amongst reunited brethren at any rate it is clear from Mit. Chap. II. Sec. IX. paras. 12, 13, that Vijñâneśvara recognized full sisters as having a right with full brothers preferable to that of half-brothers as heirs to a deceased member.

Regarding the sister's son, *see* Introductory Note to Chap. II. Sec. 15, Cl. 4.

Q. 5.—Who is entitled to inherit from a deceased person, his sister or the sister's son?

A.—If there is a sister, she succeeds first; a sister's son does so after her.—*Ahmednuggur, November 1st,* 1847.

AUTHORITIES.—(1) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1); (2) p. 134, l. 4 (*see* Auth. 6); (3) p. 141, l. 7; (4) p. 181, l. 5; (5) p. 142, l. 8; (6*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARK.—*See* Introduction, pp. 115, 134.

Q. 6.—A deceased man has a sister, who has two sons. Who will be the heir?

A.—If a nearer relation cannot be found, a sister will be the heir, and in the absence of a sister her sons will be the heirs.—*Ahmednuggur, January 6th,* 1846.

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

(*a*) I. L. R. 3 Bom. 353.

(*b*) See *Thakoorain Sahiba* v. *Mohun Lall,* 11 M. I. A. at p. 402.

Q. 7.—A woman's husband died, and she married another man. On his death, she lived with her son by her first husband, and they both acquired property. The son afterwards died without issue. His sister lives with her husband in his house. Is the sister or the mother the heir of the deceased ?

A.—The mother does not belong to the family of her first husband. The sister alone is the heir of the deceased.

Sholapoor, August 27th, 1846.

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

REMARK.—The mother would lose her right to inherit from her first husband but not, according to the cases, from the son (*a*) under Act XV. 1856, Sec. 2. (*See* Sec. 9, Q. 9).

I. *A.* 2.—HALF-SISTER.

Q. 1.—Is a step-mother or a half-sister the heir of a deceased man ?

A.—The right of a full mother is recognized by the Śâstra, but that of a step-mother is nowhere defined. The right of a brother is likewise recognized by the Śâstra, and it is stated that on failure of a brother, a half-brother has the right of inheritance. The right of a sister is also admitted by the Śâstra ; and by inference, a half-sister may be considered an heir. A half-sister is born in the gotra, and she will therefore have a better right than the step-mother to inherit the deceased's property.

Sadr Adâlat, June 10th, 1844.

AUTHORITIES.—(1) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1); (2) p. 142, l. 6 ; (3) Nirṇayasindhu III. f. 98, l. 26.

REMARKS.—1. The Śâstri appears to have followed the Mayûkha, which places the sister immediately after the paternal grandmother ; at the same time he must have understood the term 'bhaginî,' 'sister,' to include the sister both of the full and of the half-blood. This interpretation is from a philological point of view admissible.

(*a*) See *Okhorah Soot* v. *Bheden Barianee,* 10 C. W. R. 35 C. R. ; 11 C. W. R. 82 C. R.

According to the Mayûkha's interpretation of the term Gotraja as *born in the same family as the deceased*, (*a*) the step-mother could not inherit before the half-sister; she being necessarily descended from a different stock, but that Nîlakaṇṭha does not confine Gotraja to this sense is plain from his calling the grandmother the first of the gotrajas in the order of succession. Custom, however, seems to have given to natural birth in the family of the propositus precedence over the second birth by marriage into the same family, though the latter also is a source of heritable right. *See* below, I. A, 4, Q. 9. In *Kesserbai* v. *Valab Ravji*, (*b*) even a half-sister is preferred to a step-mother and a paternal uncle's widow.

The marginal note in *Sreenarain Rai* v. *Bhya Jha*, (*c*) to the effect that in Mithila a half-sister ranks as a sister, goes much beyond the Vyavasthâ in the text. All that the Śâstri says is that if custom assigns the half-sister this rank it will not be inadmissible according to the method of interpretation adopted by the Mithila law writers. In this he refers *inter alia* to Vâchaspati in the Vivâda Chintâmani (Translation, p. 240), who construes the text of Bṛihaspati (Coleb. Dig. Bk. V. T. 85) so as to make mâtarah include step-mothers. *See* below, Rem. 2. As between step-mother and half-sister this mode of interpretation would give precedence to the former. The Vyav. Mayûkha, Ch. IV. Sec. VIII. p. 16, 20, refuses recognition to half-blood except in virtue of descent from a common ancestor; and except in the case of a sister makes no provision for representation of a collateral line by a daughter. See *supra*, p. 130,131. The passages cited below, Sec. 15 B. II. (2), Q. 1, are those at Stokes, H. L. B. 86, pl. 10, and p. 89, pl. 19, which relate only to the succession of a daughter to her father and of a sister to her brother. Nîlakaṇṭha assigns no place to the brother's daughter or to the grandfather's daughter (paternal aunt). Her son is a Bandhu, *infra*, Sec. 15 B. I. (1). The Śâstri at Sec. 14 I. B. *b*. 2, Q. 3 *infra*, refers to the passages, Stokes, H. L. B. p 85, pl. 7, to Bṛihaspati, quoted *ibid*, p. 89 pl. 19, and *ibid*, p. 93 pl. 5. See *supra*, p. 342, Q. 4. Those passages do not support a doctrine of female representation. If half-sisters are brought in by analogy that can only be by a mode of interpretation which concurrently makes step-mothers, mothers, as in Vyav. Mayûkha Chap. IV. Sec. 4, pl. 19. Still however the half-sister is a gotraja-sapiṇḍa according to Vyav. May. 1, Ch. IV. Sec. VIII. p. 19, as said by the Śâstri.

(*a*) *See* Introduction, p. 131 *supra*.

(*b*) I. L. R. 4 Bom. 188. Herein may be found a support for the doctrine propounded by Sir M. Westropp, C. J., in *Tuljaram's* case, *supra*, p. 336.

(*c*) 2 Calc. S. D. A. R. 28.

2. Regarding the right of the step-mother to inherit (*a*) as recognized in the case just discussed, Sir T. Strange, H. L. 144, states that "step-mothers, where they exist, are excluded;" against this opinion it may be remarked that Bâlambhaṭṭa asserts that they inherit immediately after mothers, as in his opinion the term mâtâ stands for jananî, "*genitrix*," and sâpatnamâtâ "*noverca*." Most likely his opinion is based on a verse attributed to Manu, (*b*) which declares that all the father's wives are mothers, as well as on Manu IX. 183:—"If among all the wives of the same husband, one bring forth a male child, Manu has declared them all, by means of that son, to be mothers of male issue;" but it is inadmissible, as the arguments brought forward by Vijñâneśvara in the discussion on the claims of the mother do not apply to the step-mother, and this author consequently cannot have included step-mother by the term '*mother*.' (*c*) Nevertheless it is not probable that either Vijñâneśvara or Nîlakaṇṭha intended to exclude step-mothers entirely from inheriting. The high reverence which, according to Manu, is to be paid to step-mothers, as well as the fact that step-sons inherit from their step-mothers, may furnish an *à priori* argument, that Hindû lawyers who admit women, though not authorised by special texts, to inherit, would not object to the step-mother's claims, and in fact if the interpretations of the terms "Sapiṇḍa" and "Gotraja" given above in the Introduction to Bk. I. pp. 128, 131, hold good, then, according to the doctrines of both the Mitâkṣharâ and the Mayûkha, step-mothers must be allowed to inherit. The Mayûkha adopts the Mitâkṣharâ doctrine of Sapiṇḍa relationship. *See* p. 120 above.

(*a*) The grandmother takes before the step-mother, Macn. Cons. H. L. 64. In Bengal the latter seems excluded. *See* 1 Calc. S. D. A. R. 37, (*Bishenpirea Munee* v. *Ranee Soogunda*); 2 Macn. Prin. and Prec. 62; *Lala Joti Lall* v. *Musst. Durani Kower*, Beng. L. R. 67, F. B. R., rules similarly under the Mitâkṣharâ. In Madras a male gotraja sapiṇḍa, grandson of the great-grandfather of the propositus, inherits before either his half-sister or his step-mother, *Kumaravêlu* v. *Vîrana Goundan*, I. L. R. 5 Mad. 29. Reference is made to *Kutti Ammal* v. *Rada Kristna Ayyana*, 8 M. H. C. R. 88, to show that even a full-sister is postponed to a gotraja sapiṇḍa, which rank she has not, according to the Smṛiti Chandrikâ, Chap. XI. Sec. 5. *See* above, p. 129 note (*a*), p. 130 note (*c*). In Madras, as in Bengal, a step-mother is postponed to a paternal grandmother, *Muttamâl* v. *Vengalakshmi Ammâl*, I. L. R. 5 Mad. 32. *See* above, p. 113.

(*b*) Nirṇayasindhu, III. Pûrvârdha, f. 6, p. 1, l. 12.

(*c*) *See* Mit. Chap. II. Secs. 3, 32, 51; and Colebrooke's note to 1 Calc. S. D. A. R. 37 (*Bishenpirea Munee* v. *Ranee Soogunda*).

According to the Mitâkshará a step-mother would be by her marriage a "Gotraja" relation of her step-son, and for the same reason also a "Sapiṇḍa" relation. Consequently she would take inheritance amongst the Gotraja-Sapiṇḍa relations. According to the opinion of the learned Śâstri who assisted in the original compilation of this Digest, she ought to be placed, on account of her near relationship to the deceased, immediately after the paternal grandmother, up to whom only the succession is settled by special texts.

According to the Mayûkha the step-mother would not be Gotraja, in the sense of *born* in the same family as the step-son, but certainly a Sapiṇḍa relation. The Vyavahâra Mayûkha, Chap. IV. Sec. 4, p. 19, assigns to step-mothers and step-grandmothers an equal share with mothers and grandmothers on partition amongst their husbands' descendants. The passage of Vyâsa, on which this rests, and a corresponding text of Bṛihaspati, are discussed in Colebrooke's Digest, Bk. V. T. 84, 85, Comm. The limitations proposed by Jîmûtavâhana and Raghunandana are there rejected, and the declaration of Bṛihaspati that *janani* and *mâtarah* are entitled to equal shares is taken as showing that *mâtarah* means step-mothers. The Dâya Krama Sangraha also (Chap. VII. pl. 7, 8) refers the rights of the step-mother, admitted by the Mithila School, to a similar interpretation. If Nîlakaṇṭha can be supposed, in accepting its consequence, to have adopted this construction of the texts, his doctrine would not differ materially from that of the Mitâkshará, as above stated. (*a*) The alternative seems to be that in omitting step-mothers from the Gotrajas, whose claims he discusses he intends to exclude them. According to this view, they would rank only as Sapiṇḍas, and consequently inherit like other Sapiṇḍas, sprung from a different family after the Bandhûs (*see* Section 15). The step-mother's right of maintenance, it was said, is not that of a parent such as can be dealt with by an order under Section 10 of Act XX. of 1864. (*b*)

(*a*) In answer to Q. No. 1832 MSS, the Śâstri at Ahmedabad said that step-sons were bound to support their step-mother in virtue of Manu's text, commanding children to maintain aged parents. *See* also next section, Q. 2. A step-son succeeds to the Strîdhana of his stepmother, *Teencowree Chatterjee* v. *Dinanath Banerjee et al*, 3 Calc. W. R. 49. A step-mother's heritable right is recognized in the answer to Q. 3 in Chap. IV. B, Sec. 6 II. B. The first and last of these cases being from Ahmedabad seem to show how the law is understood in Gujarâth.

(*b*) *Lakshmibai* v. *Vishvanath Narayan*, S. A. No. 352 of 1875 (Bom. H. C. P. J. F. for 1876, p. 23).

In the Vyav. May. Chap. IV. Sec. 4, p. 19, it is said that the step-mother is entitled to a share on partition. This is the rule of the Benares School, though the Vîramitrodaya contends (Transl. p. 79) that mother, being used as strictly correlative to "sons," the sons dividing, the step-mother cannot, under the text of Yâjnavalkya, take a 'like' share, but is entitled only to a maintenance, and the Śâstris, at 2 Macn. 63, say that 'mâtâ' (=mother) in the Mitâkharâ &c. includes step-mother, whose right to a share the Vîramitrodaya (Tr. p. 79) admits to be recognized though erroneously by the Mit. Chap. I. Sec. 7, para. 1, on a partition by sons after their father's death. But the position and the right of step-mothers to inherit at all are questioned by Macn. 2 H. L. 64, note.

I. *A.* 3.—THE PATERNAL UNCLE.

Q. 1.—A man died. His uncle is absent in a distant Native State. The aunt has applied for a certificate of heirship. Should it be granted to her?

A.—The aunt has no right to be the heir of the deceased, because her husband is alive.—*Poona, June 30th,* 1855.

AUTHORITIES.—(1) Vyav. May. f. 134, l. 4 (*see* Authority 3); (2) p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1); (3*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (4*) f. 58, p. 2, l. 13:—

"On failure of the paternal grandmother, the (Gotraja) kinsmen sprung from the same family with the deceased, and (Sapiṇḍa) connected by funeral oblations, namely, the paternal grandfather and the rest, inherit the estate. For kinsmen sprung from a different family, but connected by funeral oblations, are indicated by the term cognate (Bandhû). Here, on failure of the father's descendants, the heirs are successively the paternal grandmother, the paternal grandfather, the uncles, and their sons. On failure of the paternal grandfather's line, the paternal great-grandmother, the paternal great-grandfather, his sons and their issue inherit. In this manner must be understood the succession of kindred belonging to the same general family and connected by funeral oblations." (*a*) (Colebrooke, Mit. p. 350; Stokes, H. L. B. 446-7).

Q. 2.—The paternal uncle of a deceased person claims his

(*a*) According to the Sanscrit text, the words "to the seventh degree" ought to be added. As to the translation, see *Lulloobhoy* v. *Cassibai*, L. R. 7 I. A. at p. 235; above, p. 2 (*g*).

property. The deceased's wife wishes to marry another husband, and has consequently no objection to the uncle's application. The deceased's father has left a "Pâṭ" wife who stands in the relation of a step-mother to the deceased. Who will be the heir?

A.—So much of the property of the deceased as will suffice for the maintenance of the mother should be given to her, and the rest to the applicant.

Dharwar, August 30th, 1846.

AUTHORITY.—*Mit. Vyav. f. 58, p. 2, l. 13 (*see* Chap. II. Sec. 14 I. A. 2, Q. 1).

REMARKS.—1. Regarding the legalization of Pâṭ marriages, *see* Chap. II. Sec. 6 B.

2. Regarding the right of step-mothers to inherit, *see* Chap. II. Sec. 14 I. A. 2, Q. 1; above, p. 471.

I. *A.* 4.—FATHER'S BROTHER'S SON.

Q. 1.—Will a Brâhman's illegitimate son, or his cousin who has declared himself separate, be his heir?

A.—The cousin is the legal heir. The illegitimate son will be entitled to whatever he may have received from his father, as a mark of his affection, or as a reward for service.

Ahmednuggur, February 27th, 1847.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2) f. 55, p. 1, l. 11 (*see* Chap. II. Sec. 3, Q. 1); (3*) f. 58, p. 2, l. 13 (*see* Chap. II. Sec. 14 I. A. 3, Q. 1); (4) Vyav. May. p. 98, l. 6; (5) p. 236, l. 6; (6) Manu IX. 155. (*a*)

Q. 2.—Who will be the heir of a deceased Śûdra? his father's brother's son or his sister's son?

A.—The right of the sister's son will be superior to that of the cousin.—*Tanna, April 27th*, 1850.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 (*see* Auth. 4); (2) p. 140, l. 1; (3*) Mit. Vyav. f. 58, p. 2, l. 13 (*see* Chap. II. Sec. 14 I. A. 3, Q. 1); (4*) f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

(*a*) As to the grant to the illegitimate son, *see* above, Introd. p. 263.

REMARK.—The father's brother's son inherits, since he is a Gotraja Sapiṇḍa, whilst the sister's son is only a Sapiṇḍa. The Śâstri has taken "brothers and their sons," in Vyav. May. Chap. IV. Sec. 8, pl. 1, as including "sisters and their sons." *See* Bâlambhaṭṭa cited in Introduction, p. 130.

Q. 3.—There were four cousins who lived separate from each other. One of them died, leaving a widow, and another without issue or widow. The question is, who will be the heir of the latter ? whether the two cousins, or they and the widow ? If the widow is not to be counted an heir, give reasons for her exclusion.

A.—The two cousins must be considered the heirs of the deceased. The widow must be excluded, because she has no son. Had her husband been alive at the time of the death of the cousin, he would have been counted an heir, and he having become an heir, in this way would have been able to transmit his right to his widow.

Dharwar, April 10th, 1856.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 (*see* Auth. 4); (2) p. 130, l. 5; (3*) Mit. Vyav. f. 58, p. 2, l. 13 (*see* Chap. II. Sec. 14 I. A. 3, Q. 1); (4*) f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARK.—Regarding the reason of the widow's exclusion, *see* Introduction, p. 132.

Q. 4.—A man died. There are sons of his maternal and paternal uncles. Which of these is the heir of the deceased ?

A.—So long as there is a son of the paternal uncle, the son of the maternal uncle cannot be his heir. The son of his paternal uncle is his heir.—*Broach, August 21st,* 1848.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2*) f. 58, p. 2, l. 13 (*see* Chap. II. Sec. 14 I. A. 3, Q. 1).

Q. 5.—A deceased person has left a cousin, some daughters, their sons, and a son of a cousin twice removed. The

daughters and their sons state that they have no objection to the cousin realizing the debt due to the deceased. Which of these relations will be the legal heir of the deceased?

A.—If the daughters and their sons resign their claims to the property, the cousin and the son of another cousin twice removed will be the heirs.—*Sholapoor, January 25th,* 1856.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 (*see* Auth. 4); (2) p. 138, l. 4; (3*) Mit. Vyav. f. 58, p. 2, l. 13 (*see* Chap. II. Sec. 14 I. A. 3, Q. 1); (4*) f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARK.—According to Authority 3, the cousin alone will be the heir, in case the daughter and her sons refuse the inheritance.

Q. 6.—A man, who had already separated from his kinsman, died. There are two cousins who have separated from the deceased, the son of a separated cousin and the daughter of a sister. The question is, which of these is the heir?

A.—The order of heirs laid down in the Śâstra does not mention the daughter of a sister. The nearest kinsmen therefore are the two cousins, and they are the heirs of the deceased.—*Surat, November 24th,* 1855.

AUTHORITIES.—(1*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2*) f. 58, p. 2, l. 13 (*see* Chap. II. Sec. 14 I. A. 3, Q. 1); (3) Manu IX. 187 (*see* Auth. 4); (4*) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1).

Q. 7.—A Gujar died. There are his cousins and cousin's sons. Which of these are his heirs?

A.—The rule for finding the proper heir is to take the one that is the nearest among the Gotraja and Sapiṇḍa relatives. According to this rule, the cousins appear to be the nearest in degree (and heirs).

Khandesh, October 18th, 1855.

AUTHORITY.—* Mit. Vyav. f. 58, p. 2, l. 13 (*see* Chap. II. Sec. 14 I. A. 3, Q. 1).

Q. 8.—A man of the Brâhman caste died. The surviving relatives are, a daughter of a daughter, a cousin who has separated, and some second cousins. They have all applied for certificates of heirship, to enable them to succeed to the Inâm property of the deceased. The question is, which of them should be recognized as heir?

A.—If the deceased has left no wife or son, the cousin who separated will become his heir. The second cousins and the grand-daughter are not the heirs.

Tanna, December 18th, 1851.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2*) f. 58, p. 2, l. 13 (*see* Chap. II. Sec. 14 I. A. 3, Q. 1).

REMARK.—A second cousin excludes a third. (*a*)

Q. 9.—A Desâi died. The right of inheritance is claimed by the following persons:—

(1) A sister's son whom the deceased has by his will constituted his sole heir.

(2) Two widowed sisters-in-law of the deceased. They have applied to have their right to heirship recognized, on the ground that the deceased was the uterine brother of their husbands, and that the deceased was not married.

(3) Four cousins and three of his father's cousins. They apply for a certificate of heirship in regard to the Desâi Watan, &c.

The question is, which of these is the heir of the deceased?

A. 1.—A man may give away his moveable and immoveable property when it was acquired by his own industry, and when he is not married. When a man possesses immoveable property acquired by his ancestors, he cannot make a gift of it. The son of the deceased Desâi's sister cannot therefore be heir to the whole of his property under the will made in his favour.

(*a*) *Mahabeer Persad et al* v. *Ramsurun*, 3 Agra S. D. A. R. 6 A. C.

2.—The two sisters-in-law are "Sagotra" (Gotraja) and "Sapiṇḍa" relatives of the deceased. Their husbands, when they were alive, took their shares of the family property and separated. The sisters-in-law, however, cannot be said to be "Sapiṇḍa" relations in the fullest sense of the word, and consequently they are not heirs.

3.—Of the four cousins and three sons of the father's paternal uncles the three grand-uncles' sons are "Sapiṇḍa" and "Gotraja" relations, but they are very distantly related to the deceased. The cousins are "Sapiṇḍa" and "Gotraja," and very nearly related to the deceased. The cousins are therefore the legal heirs.—*Ahmedabad, September 28th*, 1848.

AUTHORITIES.—(1*) Vyav. May. p. 133, l. 2 :—

"Nârada states the duties of separated co-heirs :—When there are many persons, sprung from one man, who have their (religious) duties (dharma) apart and transactions (kriyâ) apart, and are separate in the materials of work (karmaguṇa), if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth." (Borradaile, p. 98 ; Stokes, H. L. B. 82.)

(2*) Mit. Vyav. f. 46, p. 2, l. 13 ff:—

"The following passage, 'Separated kinsmen, as those who are unseparated, are equal in respect of immoveables, for one has not power over (the whole) (*a*) to make a gift, sale or mortgage,' must be thus interpreted : 'among unseparated kinsmen the consent of all is indispensably requisite, because no one is fully empowered to make an alienation, since the estate is in common ; but among separated kindred the consent of all tends to the facility of the transaction, by obviating any future doubt whether they be separate or united : it is not required, on account of any want of sufficient power in the single owner, and the transaction is consequently valid even without the consent of separated kinsmen.'" (Colebrooke, Mit. p. 257; Stokes, H. L. B. 376).

REMARKS.—1. According to the two passages quoted, the deceased would have been entitled to give away his immoveable property during his life-time. It would seem therefore that there is no reason to alter the dispositions made by him. *See* also 1 Str. H. L. 26, Note (*a*), Bk. II. Ch. I. Sec. 2, Q. 8. (*b*)

(*a*) Lit. "over them" *i.e.* "the immoveables."

(*b*) *Muttayan Chetti* v. *Sivâgiri Zamindár*, I. L. R. 3 Mad. at p. 378.

2. Regarding the Śâstri's decision, that the sister-in-law is not "Sapiṇḍa in the fullest sense of the word," *see* Introduction, p. 130.

Q. 10.—There were two brothers who had no male issue. The elder of them adopted a son. The younger died, and his widow, having permission from her husband, adopted a son. She gave one-half of the property of her husband to her adopted son, and left the other half for charitable purposes. As her adopted son was young, she appointed an Agent to take care of the property. Subsequently she and her adopted son died. The adopted son of the elder brother has filed a suit for the recovery of the whole property. The Agent who represents the family from which the adopted son was selected, has raised objections. The question is, who should be considered entitled to the property?

A.—The portion set aside by the woman for charitable purposes could not have been claimed even by the deceased adopted son. It should therefore be applied to the intended purposes by the Agent, under the superintendence of the adopted son of the elder brother. The portion allotted to the deceased adopted son of the widow should be given to the adopted son of the elder brother.

Poona, January 23rd, 1857.

AUTHORITIES.—(1*) Mit. Vyav. f. 58, p. 2, l. 13 (*see* Chap. II. Sec. 14 I. A. 3, Q. 1); (2) Vyav. May. p. 127, l. 6; (3) p. 198, l. 2:—

Kâtyâyana:—"What a man has promised in health or sickness for a religious purpose, must be given, and if he die without giving it, his son shall doubtless be compelled to deliver it." (Borradaile, p. 169; Stokes, H. L. B. 136.)

REMARK.—*See* above, Sec. 2, Q. 3 and 4; Coleb. Dig. Bk. II. Chap. IV. Sec. 2, T. 45, 46; Bk. V. T. 111; above, pp. 206, 300.

I. *A.* 5.—PATERNAL GRANDFATHER'S BROTHER'S SON.

Q. 1.—A man died. There are a daughter of his uterine sister and a grand-uncle's son. Which of these is the heir of the deceased?

A.—The grand-uncle's son being a "Sagotra" (Gotraja) relation, the daughter of the sister cannot be his heir.

Surat, April 3rd, 1847.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2*) f. 58, p. 2, l. 13 (*see* Chap. II. Sec. 14 I. A. 3, Q. 1); (3) Vyav. May. p. 140, l. 1 (*see* Auth. 4); (4*) Manu IX. 187 (*see* Chap. II. Sec. 14 I. B. *b.* 1, Q. 1).

Q. 2.—Two men died. There is a grand-uncle's son and a son of their father's sister. Which of these is the heir?

A.—The grand-uncle's son is the heir. The son of their father's sister cannot be the heir.—*Broach, July 23rd,* 1849.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2*) f. 58, p. 2, l. 13 (*see* Chap. II. Sec. 14 I. A. 3, Q. 1).

I. *B.*—HEIRS NOT MENTIONED IN THE LAW BOOKS.

a.—MALES.

1.—BROTHER'S GRANDSON.

Q. 1.—A deceased man has left three sons of his first cousin. Which of these is the heir?

A.—If any one of these cousin's sons was united in interests with the deceased, he will be the heir; but if all are separate, all are equal heirs.—*Dharwar, May 17th,* 1853.

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* Introd. p. 118.

Q. 2.—Who will be the heir to a deceased man when there are his brother's grandson and daughter's grandson?

A.—The brother's grandson is the heir.

Ahmednuggur, December 13th, 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).

REMARK.—*See* Introd. p. 133, 137, and Introductory Remarks to Sec. 15, Clause 4; *Brojo Kishore Mitter* v. *Radha Govind Dutt et al.*(*a*)

I. *B. a.* 2.—PATERNAL UNCLE'S GRANDSON.

Q. 1.—Can a man's paternal uncle's grandson be his heir after his death?

A.—The deceased has left a sister, and a son of a first cousin. Of these the latter is his heir.—*Dharwar*, 1845.

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

REMARKS.—1. *See* Introd. p. 128; and Introductory Remarks to Sec. 15, Clause 4.

2. Great-grandsons, through different sons of the same man, are Gotraja Sapiṇḍas.(*b*)

I. *B. b.*—FEMALES.

1.—DAUGHTER-IN-LAW.

Q. 1.—The father of a widow's deceased husband died. He had certain rights in land and other property. There is no male member of the family who has any claim to the property. Can the widowed daughter-in-law of the deceased claim the property?

A.—There being no better heir than the daughter-in-law, and she being the nearest relation of the deceased, she is the legal heir.—*Surat, December 15th*, 1853.

AUTHORITIES.—(1) Manu IX. 187:—

"To the nearest Sapiṇḍa, *male or female*, after him in the third degree, the inheritance next belongs; then, on failure of Sapiṇḍas and of their issue, the Samânodaka or distant kinsman, shall be the heir; or the spiritual preceptor, or the pupil or the fellow-student of the deceased."

(*a*) 3 B. L. R. 435 A. C., 12 C. W. R. 339.

(*b*) *Brojo Kishore Mitter* v. *Radha Gobind Dutt et al*, *supra*.

(2) Nirṇayasindhu III. p. 95, l. 17:—

It is stated in the Smṛiti Sangraha:—"The son, the son's son, the son's son's son, and the daughter's son, the wife (*patnî*), the brother, the brother's son, the father, the mother, and the daughter-in-law,(*a*) the sister, the sister's son, the Sapiṇḍas and Sodakas; in default of the first-mentioned, the latter-mentioned persons are said to present the funeral oblation."

REMARK.—1. *See* Introd. p. 132, and above, Bk. I. Ch. II. Sec. 8, Q. 2.

2. The second passage seems to be intended as an explanation of the term "Sapiṇḍa," which the Śâstri understood to mean "connected by giving funeral oblations."

3. A daughter precedes a daughter-in-law.(*b*) So does a separated brother, being one of the enumerated heirs.(*c*) So does a brother's son, (*d*) but the widow and daughter-in-law were preferred in a claim advanced by divided distant cousins. (*e*) *See* Chap. II. Sec. 7, Q. 10; Chap. IV. B. Sec. 6 II. f. A daughter-in-law was preferred in succession to a widow as heir to a first cousin (paternal uncle's son) of the deceased husband. The Court said "the question is which of these two is to be preferred as heir to Sarasvati's (deceased widow's) husband."(*f*)

I. *B. b.* 2.—BROTHER'S WIFE.

Q. 1.—In the case of a Brâhman's death, will his sister-in-law or sister's son be his heir?

A.—The sister-in-law is the heir (*g*).

Tanna, February 28th, 1852.

(*a*) This is cited in the Śrâddha Mayûkha, referred to in Mayûkha, Chap. IV. Sec. 8, p. 29.

(*b*) *Musst. Murachee Koour* v. *Musst. Ootma Koour*, Agra S. R. for 1864, p. 171; 2 Macn. H. L. 43.

(*c*) *Venkuppa* v. *Holyawa*, S. A. No. 60 of 1873, Bom. H. C. P. J. F. for 1873, No. 101.

(*d*) *Wittul Rughoonath* v. *Huribayee*, S. A. No. 41 of 1871, decided 12th June 1871, *ibid.* 1871.

(*e*) *Baee Jetha* v. *Huribhai*, S. A. No. 304 of 1871, Bom. H. C. P. J. F. for 1872, No. 38.

(*f*) *Vithaldás Mánickdás*, v. *Jeshubái*, I. L. R. 4 Bom. 219.

(*g*) *See* Bk. I. Chap. II. Sec. 14 I. A. 1, Q. 4 to 6.

AUTHORITIES.—(1) Vyav. May. p. 140, l. 1 (*see* Auth. 2); (2*) Manu IX. 187 (*see* Chap. II. Sec. 14 I. B. *b*. 1, Q. 1).

REMARK.—*See* Introd. p. 130, 132, and Chap. II. Sec. 11, Q. 6.

Q. 2.—A man died. There are his sister-in-law and a male cousin, who have separated from the deceased. Which of these is the heir?

A.—The sister-in-law, though separate, is nearer, and the preferable heir.—*Khandesh, September 5th,* 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.—1. *See* Introd. p. 125 ss.

2. If the male "cousin" is a brother's son, he inherits, according to Authority 2 (comp. Sec. 12), before the sister-in-law.

3. The Śâstri puts the widow next to her husband erroneously in this particular case, on account of the express specification of brother's sons after brothers. *See* Introd. pp. 128, 132.

Q. 3.—Three brothers lived as an undivided family. The eldest of them died leaving a widow, afterwards the second and the youngest died successively. The widow of the eldest has applied for a certificate of heirship. A distant member of the family, four or five times removed from the deceased, has objected to the application. The question is, which of these relations is the heir?

A.—All the brothers died as members of an undivided family. Each surviving brother therefore became heir of the predeceased. The last surviving brother therefore was the heir of the two who died before him. The widow of the eldest brother, being the nearest heir to the deceased, is entitled to inherit the property.

Surat, August 10th, 1853.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2) Manu IX. 187 (*see* Chap. II. Sec. 14 I. B. *b*. 1, Q. 1).

REMARK.—*See* Introd. p. 125 ss.

I. *B. b.* 3.—PATERNAL UNCLE'S WIDOW.

Q. 1.—A dumb son of a deceased man lived, with his property, under the protection of his sister. He afterwards died, leaving his sister and a paternal uncle's widow. Which of these is his heir?

A.—The aunt, though she may have separated herself from the deceased, is his heir. If the aunt had no existence, the sister, according to the rule laid down in the Mayûkha, would have been the heir, and in her absence other relatives would have succeeded to the property.

Ratnagherry, February 4th, 1852.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 (*see* Auth. 3); (2) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1); (3*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARKS.—1. *See* Introd. pp. 117, 125, and Sec. 14 I. A. 1.

2. In the case of *Upendra Mohan Tagore et al* v. *Thanda Dasi et al*,(*a*) it is said that the uncle's widow does not succeed, but this is not the law in Bombay. *See* below, *b* 4.

Q. 2.—If there are a paternal uncle's wife and a maternal uncle of a deceased person, which of them will be his heir?

A.—If the deceased has left no male issue, his heir will be the paternal uncle's wife, and not the maternal uncle.

Ahmednuggur, October 16th, 1846.

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

REMARK.—*See* Introd. p. 125, and Introductory Remarks to next Section.

Q. 3.—A man died, and there are his father's second cousin and paternal aunt. Which of these will be his heir?

A.—If the father's second cousin had not separated from the deceased, he will be the heir; but if he had, the aunt will be the heir.—*Tanna, June 25th,* 1852.

(*a*) 3 B. L. R. 349 A. C. J.

AUTHORITIES.—(1) Vyav. May. p. 136, l. 4; (2) p. 144, l. 8; (3) p. 140, l. 1 (*see* Auth. 5); (4*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (5*) Manu IX. 187 (*see* Chap. II. Sec. 14 I. B. *b.* 1, Q. 1).

REMARK.—*See* Introd. p. 125.

I. *B. b.* 4.—PATERNAL UNCLE'S SON'S WIFE.

Q. 1.—A man died. Is his cousin's wife or her daughter-in-law his heir?

A.—The cousin's wife, and not the daughter-in-law, is the heir.—*Ahmednuggur, May 4th,* 1854.

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.—1. *See* Introd. p. 125.

2. The widow of a first cousin of the deceased on the father's side was held to have become by her marriage a Gotraja Sapiṇḍa of her husband's cousin's family, and to have a title to succeed to the estate of that cousin on his decease, in priority to male collateral Gotraja Sapiṇḍas, who were seventh in descent from an ancestor common to them and to the deceased, who was sixth from that common ancestor.(*a*)

At Allahabad, on the other hand it was held that according to the Mitâkshará none but females expressly named can inherit, and that the widow of the paternal uncle of a deceased Hindu, not being so named, is not entitled to succeed to his estate in preference to the deceased's father's sister's two sons. (*b*) These, however, being but Bandhus, could not come in until the Gotrajas were exhausted. (*c*)

I. *B. b.* 5.—THE WIDOW OF A GENTILE WITHIN THE FOURTH DEGREE.

Q. 1.—A man died. A widow of his distant male cousin, four times removed from the deceased, is alive, and the question is, whether she is his heir?

(*a*) *Lallubhai* v. *Cassibai*, I. L. R. 5 Bom. 110, S. C. L. R. 7 I. A. 212.

(*b*) *Gauri Sahai* v. *Rukko*, I. L. R. 3 All. 45.

(*c*) *See* Mit. Chap. II. Sec. 1, para. 2, and *Lallubhai's* case, *supra*.

A.—If there is no nearer relation of the deceased, the widow of a cousin four times removed from the deceased may inherit from him.—*Surat, September 17th,* 1845.

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

REMARKS.—1. *See* Introd. p. 125.

2. The widow of a joint cousin succeeds in preference to descendants of a long severed branch. (*a*) The Śâstri said the widow's right was equally good to joint and to separately acquired property of her husband's cousin, but he seems to have grounded his opinion partly, if not wholly, on the widow's having lived in community with the cousin.

3. The widow of a collateral does not, it has been ruled, take an estate in the property of her husband's Gotraja Sapiṇda which she can dispose of by will after her death. (*b*)

II. SAMÂNODAKAS.

(GENTILES WITHIN THE THIRTEENTH DEGREE.)

Q. 1.—Should a deceased person have no near relation, can a distant relative inherit his property? and what may be the degree of distance?

A.—In the absence of a near relation, if it can be shown that the party claiming to be the heir and the deceased are descendants of the same ancestor, he will be the heir.

Ahmednuggur, December 24th, 1851.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 (*see* Chap. I. Sec. 2, Q. 4); (2) p. 140, l. 1 and 6; (3*) Mit. Vyav. f. 58, p. 2, l. 15:—

"If there be none such (Sapiṇdas) the succession devolves on kindred connected by libations of water, and they must be understood

---

(*a*) *Musst. Bhuganee Daiee et al* v. *Gopaljee,* Agra S. R. for 1862, Part I. p. 306.

(*b*) *Bharmangavda* v. *Rudrapgavda,* I. L. R. 4 Bom. 181. *See* Introd. p. 335 ss. *See* Tupper's Panj. Cust. Law, vol. II. p. 148, where a widow of a collateral ending the line, or one of a group of brothers ending it, takes the share that would have fallen to her husband had he been alive.

to reach seven degrees beyond the kindred connected by funeral oblations of food, or else as far as the limits of knowledge as to birth and name extend." (Colebrooke, Mit. p. 351; Stokes, H. L. B. 448.)

REMARK.—*See* Introd. p. 132.

Q. 2.—A Brâhman, who held the Joshi and the Kulakaraṇi Watans, died. His surviving relations are distant eight or nine removes. Can they inherit the Inam?

A.—Yes, they can.—*Poona, August 29th*, 1851.

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

REMARKS.—1. *See* the preceding case, and *Nursing Narain et al* v. *Bhuttun Lall et al* (*a*); *Musst. Dig. Daye et al* v. *Bhuttun Lall et al.* (*b*)

2. A great-grandson of the 5th in ascent from propositus succeeds before his father's sister's son. (*c*)

3. In *Thokoorain* v. *Mohanlâl* (*d*) it was held that a sister's son does not inherit according to the Mitâkshará. His position as a Bandhu had been abandoned, and the decision only excluded him from the nearer Sapiṇḍas.

4. A male descendant in 5th degree from great-grandfather of propositus succeeds before sister's son. (*e*) The possibility of the latter's succession only is questioned.

SECTION 15.—BANDHUS. *i.e.* COGNATES. (*f*)

INTRODUCTORY REMARKS.

1. Under the heading Bandhu, "cognate kindred," the Mi-

(*a*) C. W. R. for 1864, p. 194.

(*b*) 11 C. W. R. 500.

(*c*) *Thakoor Jeebnath Singh* v. *The Court of Wards*, L. R. 2 I. A. 163.

(*d*) 11 M. I. A. 386.

(*e*) *Kooer Goolabsingh et al* v. *Rao Kurum Sing*, 10 Beng. L. R. 1 P. C. S. C., 14 M. I. A. 176.

(*f*) In Bengal, the Bandhus come next after the nearer Sapiṇḍas, *i.e.* before descendants from ascendants beyond the great-grandfather,

tâkshârâ, Chap. II. Sec. 6, clause 1, and the Mayûkha, Chap. IV. Sec. 8, p. 22, enumerate nine persons only, namely:—

The man's own cognates.	1.	The father's sister's sons.
	2.	The mother's sister's sons.
	3.	The maternal uncle's sons.
His father's cognates.	4.	The father's paternal aunt's sons.
	5.	The father's maternal aunt's sons.
	6.	The father's maternal uncle's sons.
His mother's cognates.	7.	The mother's paternal aunt's sons.
	8.	The mother's maternal aunt's sons.
	9.	The mother's maternal uncle's sons.

Or, in other words, sons of the paternal aunt and of the maternal aunt and uncle (1, 2, 3), and the same relatives of father (4, 5, 6), and of mother (7, 8, 9).

The enumeration may perhaps be intended to mark merely the extreme terms of the Sapiṇḍa-relationship, the connection on one side or both being established through a mother, and extending only to four steps between the persons regarded as Bandhus. It seems very likely that an extension was given to the terms seven and five as marking the gradation of Gotraja Sapiṇḍaship and Bandhuship corresponding to that devised by the Canon lawyers on the basis of the Roman law. By this the degrees were counted only upwards from the more remote of two collateral descendants to the common stock which had previously been counted both up and down to determine the nearness of relationship. It would seem appropriate that when definite connexion with names for each grade must be traced on the father's side from the same great-grandfather, it should on the mother's side be traced from one point lower or from the same grandfather. This is confirmed by the early laws of the other Aryan nations. But in the modern law there is no doubt but that the four steps may be counted upwards on either side to coincidence of origin. *See* above, Introd. p. 242.

2. From this enumeration, and the fact that the word Bandhu is frequently used to designate these nine relations exclusively, it might be inferred that the list was intended to be exhaustive, and to preclude the wider interpretation of Bandhu in the sense of "relation," or "distant relation" in general. Consequently the other relations, as the maternal uncle, maternal grand-uncle, &c., would be excluded from inheriting.

Roopchurn Mohapater v. *Anundlal Khan*, 2 C. S. D. A. R. 35; *Deyanath Roy et al* v. *Muthoor Nath Ghose*, 6 C. S. D. A. R. 27. But according to *Inderjeet Singh et al* v. *Musst. Her Koonwar et al*, Calc. S. D. A. R. for 1857, p. 637, Gotraja Sapiṇḍas and Samânodakas are preferred to Bandhus.

3. This inference, however, becomes very improbable if another passage of the Mitâkshará is taken into account, where Vijñáneśvara apparently gives a different interpretation of the word Bandhu. (*a*) He says that the term "gentiles," Gotrajas, includes "the paternal grandmother, Sapiṇḍas (relations within the sixth degree), and Samánodakas (relations within the thirteenth degree)." Pursuing the same subject he adds (*ibid.* in cl. 3), "on failure of the paternal grandmother, the kinsmen sprung from the same family as the deceased, and Sapiṇḍas (within the sixth degree).....inherit the estate. For kinsmen within the sixth degree (Sapiṇḍas), and sprung from a different family, are indicated by the term Bandhu." So also the Vyavasthá referred to, though doubted by, the Privy Council in *Thakoorain Sahiba* v. *Mohun Lall.* (*b*) Hence it would seem that Vijñáneśvara interpreted Yájñavalkya's term "Bandhu" as meaning "relations within the sixth degree, who belong to a different family," or at least that all such persons who come under the term "Sapiṇḍa," according to the definition given in the Achárakáṇḍa (*see* Introd. p. 118), are included by the term Bandhu: consequently the maternal uncle, the paternal aunt, &c., would also be entitled to inherit as Bandhus. In the passage translated, Mit. Chap. II. Sec. 12, p. 2, the word "Mátṛibandhu" is explained as including the maternal uncles, and Goldstücker (On the Deficiencies, &c.,) refers to Vijñáneśvara's Commentary on Yájñ. III. p. 24, for the same sense.

4. For the correctness of this wider interpretation, a passage of the Vîramitrodaya may be adduced, where Mitramisra likewise contends that other relations, "the maternal uncle and the rest," are comprised by the term Bandhu. (*c*) For, says he, if maternal uncle's sons were allowed to inherit and their fathers not, this would be very improper, as nearer relations would be excluded to the advantage of more distant kindred. (*d*) A similar opinion was given by the Śástris also in *Musst. Umroot et al* v. *Kulyandass et al.* (*e*) They state that the Bhinnagotra Sapiṇḍas, or blood relations within seven degrees, not belonging to the deceased's family, inherit. But this assertion is too wide and vague to be of use, because Yájñavalkya

(*a*) Coleb. Mit. Inh. Chap. II. Sec. 5, Cl. 1; Stokes, H. L. B. 446.

(*b*) 11 M. I. A. 386.

(*c*) The father's maternal uncle inherits, *Gridhari Lall Roy* v. *The Bengal Government*, 12 M. I. A. 448.

(*d*) Vîramitrodaya, f. 209, p. 21, l. 6, Tr. p. 200. *See* also Macnaghten's Principles and Precedents, Ed. H. H. Wilson, p. 37, note.

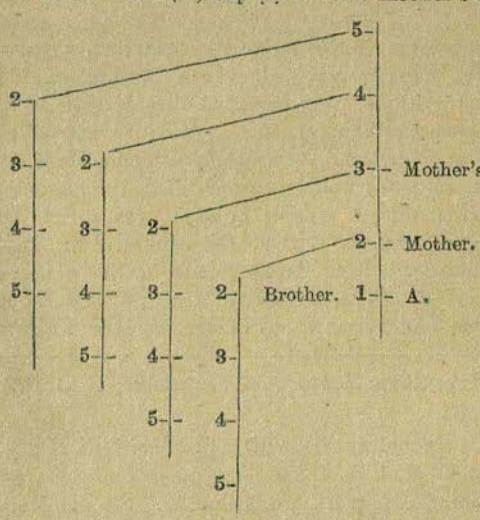
(*e*) 1 Borr. R. 323.

I. 53 (*a*) says that, in the mother's line, the Sapiṇḍa relationship ceases with the fifth person. (*b*) Consequently a man's Sapiṇḍas in his mother's family cease with her great-grandfather in the direct ascending line, and with her grandfather's fifth descendant in the collateral line. (*c*) This principle must also be borne in mind in the case of descendants from daughters of gotraja relations. Thus the deceased's great-great-granddaughter's son would be no longer a Sapiṇḍa. The view here taken has been adopted by the Privy Council in *Gridhari Lall* v. *The Government of Bengal*. (*d*) In the answers to the questions of the following section, the Śâstris allow, besides the so-called nine Bandhus, the following Bhinnagotra Sapiṇḍas to inherit—1, sister's son; 2, maternal uncle; 3, brother's daughters; 4, sister's daughters. They quote as authorities partly the passage of Yâjñavalkya authorising the Bandhus to inherit, partly the verse of Manu, which prescribes "that the nearest Sapiṇḍa inherits," and for the maternal uncle, the passage of the Vîramitrodaya above cited.

(*a*) *See* Introduction, p. 137.

(*b*) It is for this reason that the prohibition to marry a person of the same kindred extending on the father's side to the 7th, extends, on the mother's side, only to the 5th degree, Nârada Pt. II. Chap. XII. para. 7. So Vyav. May. (as to an adopted son) Chap. IV. Sec. 5, pl. 32.

(*c*) Table of a man's (A) Sapiṇḍas in his mother's family:—



(*d*) 1 B. L. R. 44, P. C. S. C.; 12 M. I. A. 448.

The passage, cited in the Vyav. May. Chap. IV. Sec. 10, p. 30 (Stokes, H. L. B. 106), is quoted in the Dâya Bhâga, Chap. IV. Sec. 3, p. 31 (Stokes, H. L. B. 257), and in Coleb. Dig. Bk. V. T. 513, to show the order of succession to woman's property. The nearness of the relationship is by Jîmûta Vâhana made a ground of succession through the benefits conferred by the oblations offered by a sister's son, &c., and a passage of Vṛiddha Śâtâtapa is quoted to prove the obligation to present these oblations. In translating this, Colebrooke has confined its import to offerings for the wives of the maternal uncle, sister's son, &c., but Goldstücker, "On the Deficiences, &c." p. 11, says that the duty is, according to the comment of the Dâyanirnaya, reciprocal between the maternal uncle and his nephew, and that it is due by a son-in-law, a pupil, a friend, and a daughter's son to their several correlatives. As the maternal uncle thus performs a Śrâddha for his nephew, he is on this theory entitled to succeed to his property, and before the cousin, more remotely beneficial to the manes of the ancestors of the propositus.

5. Regarding the order in which the Bhinnagotra Sapiṇḍas succeed to each other, it is difficult to speak with certainty. It would seem however that the "nine Bandhus" mentioned in the law books ought to be placed first, if effect is to be given to the principle of the Mayûkha, that "incidental persons are placed last." (*a*) Amongst the other Sapiṇḍas, 'nearness to the deceased' ought, as the Śâstris also seem to indicate, to be the principle regulating the succession. (*b*)

(*a*) *See* Mayûka, p. 106, Borradaile; Stokes, H. L. B. 88. So also the Śâstris in *Musst. Umroot et al* v. *Kulyandass et al*, 1 Borr. Rep. p. 323.

(*b*) A sister's son was preferred to a maternal aunt's son, *Gunesh Chunder Roy* v. *Nilkomul Roy et al*, 22 C. W. R. 264 C. R. The great-grandson, through his mother, of an ancestor, common to a great-grandson by purely male descent, is not in Madras heir to the latter, *K. Kissen Lala* v. *Javallah Prasad Lala*, 3 M. H. C. R. 346. (See *supra*, page 481.) A paternal uncle's daughter's son is an heir according to Bengal law, *Guru Gobind Shaha Mandal et al* v. *Anand Lal Ghose et al*, 5 Beng. L. R. 15 F. B. S. C., 13 C. W. R. 49 F. B., which apparently supersedes *Raj Gobind Dey* v. *Rajessuree Dossee*, 4 C. W. R. 10 C. R. The Śâstris at 1 Borr. 323 (*Musst. Umroot et al* v. *Kulyandass et al*) say that descendants through the daughter of propositus, to the 7th degree, are his asagotra sapiṇḍas. The grandson of a maternal grandfather's brother is an heir by Bengal law, *Brajakishor Mitter* v. *Radha Gobind Dutt*, 3 Beng. L. R. 435. A propositus being third in descent, a collateral, 5th in descent from the common

In the case of *Mohandas* v. *Krishnabai*, (*a*) it was held that this latter principle must prevail over the rule as to incidental persons even amongst the Bandhus, and that a mother's sister's son was excluded by maternal uncles of the propositus. Reference is made to *Amrit Kumari Debi* v. *Lakhinarayan*, (*b*) as well as to *Gridhari Lall Roy's* case, (*c*) and it may probably be considered as now finally settled that the mention of the Bandhus in the rule is not exhaustive, and does not give precedence to any one enumerated over others nearer to the propositus in the same line of connexion. The following cases have been arranged on the same principle as those regarding the Gotrajas.

SECTION 15.—BANDHUS OR COGNATES.

A.—Mentioned in the Law Books.

1.—FATHER'S SISTER'S SON.

Q. 1.—A man died, and none of his relatives are alive except his father's sister's son, who performed his funeral rites and receives emoluments as priest from his clients. Is he the heir of the deceased, and is he responsible for his debts?

A.—If the deceased has no wife, his father's sister's son will be his heir, and he, having received the emoluments belonging to the deceased, is responsible for his debts.

Surat, January 31st, 1846.

Authority.—*Mit. Vyav. f. 59, p. 1, l. 2 :—

"On failure of gentiles, the cognates are heirs. Cognates are of three kinds, related to the person himself, to his father, or to his mother, as is declared by the following text :—

---

ancestor, inherits to him in preference to his paternal aunt's son, *T. Jibnath Sing* v. *The Court of Wards*, 5 Beng. L. R. 443.

Two female links in the same line of descent are not recognized in any of these cases. It is doubtful whether the right transmitted through a female passes without being realized by actual succession more than one step further. *See* below, B. II. (3).

(*a*) I. L. R. 5 Bom. 597.

(*b*) 2 Beng. L. R. 28.

(*c*) 12 M. I. A. 448.

"The sons of his own father's sister, the sons of his own mother's sister, and the sons of his own maternal uncle, must be considered as his own cognate kindred." (Colebrooke, Mit. p. 352; Stokes, H. L. B. 448.)

REMARK.—The Dâyabhâga, Chap. XI. S. 6, p. 9, says that the grandsons through daughters of ascendants inherit through a connexion with their mothers' gotra of birth by the oblations that they must offer to her father in each instance. They thus stand in a manner on a par with grandsons through sons. (*See* Smriti Chandrikâ, Chap. XI. S. 5, para. 15.)

A. 2.—MATERNAL UNCLE'S SON.

Q. 1.—Can a deceased male's mother's brother's son be his heir?

A.—Yes.—*Nuggur and Khandesh,* 1845.

Authority not quoted. *See* the preceding case.

Q. 2.—A man died. There is a son of his maternal uncle. He claims to be the heir of the deceased, and he is not opposed by the near relations. Can he, under these circumstances, be recognized as heir?

A.—If the maternal uncle's son is not opposed by any near relation of the deceased, there is no objection to his claim on the ground of the Hindû law.

Surat, January 25th, 1855.

AUTHORITY.—Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1).

B.—NOT EXPRESSLY MENTIONED IN THE LAW BOOKS.

I.—MALES.

(1)—SISTER'S SON.

Q. 1.—Can a man's sister's son be his heir?

A.—Yes.—*Tanna, October 5th,* 1855.

AUTHORITY.—Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1).

REMARKS.—1. See Introductory Remark to Section 15, Clause 4.

2. According to the Mithila law and to that of Madras, a sister's son, it was once held, does not inherit as a Bandhu. (*a*) But a sister's son is a Bandhu (*b*) and inherits in this character though not as a gotraja-sapiṇḍa. (*c*) The Nirṇaya Sindhu, quoted above (Sec. 14 I. B. *b*. 1, Q. 1), expressly names a sister's son as heir, (*d*) and gives to the sister's son a place amongst those who may present funeral oblations, and this is adopted in the Śrâddha Mayûkha referred to in the Vyavahâra Mayûkha, Chap. IV. Sec. 8, pl. 29.

3. Sister's sons have no right so long as a sister survives, but take before sister's daughters. (*e*)

(*a*) *Thakoorain Sahiba* v. *Mohun Lall*, 11 M. I. A. 386; *Doe Dem. Kullammal* v. *Kuppu Pillai*, 1 M. H. C. R. 85.

(*b*) *See* Prof. H. H. Wilson's works, vol. V. p. 14; Introductory Remarks to this Section; 2 Macn. Prin. and Prec. 84; *Omrit Koomari Dabee* v. *Luchee Narain Chuckerbutty*, 10 C. W. R. 76 F. B.; *Amrita Kumari Debi* v. *Lakhinarayan Chuckurbutty*, 2 B. L. R. 29; *Srinivas Ayangár* v. *Rengasami Ayyangar*, I. L. R. 2 Mad. 304, followed in *Sadashiv* v. *Dinkar*, Bom. H. C. P. J. F. 1882, p. 17.

(*c*) *Amrita Kumari Debi* v. *Lakhinarayan*, 2 Beng. L. R. 28 F. B.; *Chelikani Tirupati* v. *R. S. Venkata Gopala Narasimha*, 6 M. H. C. R. 278; *Gridhari Lall Roy* v. *The Bengal Government*, 12 M. I. A. 448.

(*d*) *Amrita Kumari Debi* v. *Lakhinarayan*, 2 Beng. L. R. 28 F. B.

(*e*) *Icharam* v. *Purmanand*, 2 Borr. 515. In Madras it has been ruled that a sister is indeed in the line of heirs as being a bandhu, but that she is to be postponed to a sister's son. (*f*) The doctrine of sapiṇḍa relationship explained above, Introd. p. 120 ss., and adopted in Bengal as that of the Mitâkharâ, (*g*) is fully accepted by the learned judges; but combined with that of a woman's losing her sagotraship by passing into another family. Nilakaṇṭha, as we have seen, says this is not decisive, as the right of a sister depends on an original consanguinity which cannot be lost. In Bombay, as the Śâstri's reference shows (though it is not pointed), the Mitâkharâ is not thought to be opposed to the precedence of a sister over a sister's son, and the preference which in a collateral line of gotraja sapiṇḍas may be claimed by a son over his own mother or grandmother rests on his connexion with the main stem through his father, whose place he may be supposed to take in preference to the

---

(*f*) *Lakshman Ammal* v. *Tiruvengada*, I. L. R. 5 Mad. 241; *Kutti Ammal* v. *Radakrishna Aiyan*, 8 M. H. C. R. 88.

(*g*) *Umard Bahadur* v. *Udvi Chand*, I. L. R. 6 Calc. 119.

4. In a Vyavasthâ of the Śâstris of the Sadar Court, N. W. P., dated 28th December 1860, the sister's son, it is said, inherits before the paternal aunt's son, (*a*) and a sister's son was preferred to a maternal aunt's son. These cases are opposed to the general principle that the persons actually specified take before those only implied, unless the specification in this case be meant merely to indicate the extreme points of heritable connexion. *See* above, pp.—134, 492.

5. In *Laroo* v. *Sheo* (*b*) the property came to a deceased intestate, apparently from his maternal uncle, and the Sadr Adálat decided that property inherited through the female (maternal) heir, must continue to descend in that line.

6. A fifth descendant from the grandfather takes precedence of the sister's son. (*c*)

Q. 2.—A man died. His property is in the possession of his sister's son. There is, however, a half-sister's son besides the sister's son. The question is, which of these is the heir?

A.—The sister's son is the heir. The half-sister's son is not the heir.—*Surat, August 5th,* 1845.

AUTHORITIES.—(1*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap I. Sec. 2, Q. 4); (2*) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1).

REMARK.—*See* Sec. 14 I. A. 2, Q. 1.

B. I. (2)—MATERNAL UNCLE.

Q. 1.—Can a maternal uncle be the heir of his nephew?

A.—Yes.—*Tanna, February 12th,* 1859.

---

widow. In the case of a male deriving his right only through his mother, this reason for preferring him to her or to one standing on an equality with her in relation to the propositus does not exist, the mother or her sister stands one degree nearer to the propositus in the same line as the son. See *Mohandas* v. *Krishnabai*, I. L. R. 5 Bom. 597.

(*a*) *Gunesh Chunder Roy* v. *Nil Komul Roy et al,* 22 C. W. R. 264.

(*b*) 1 Borr. 80.

(*c*) *Kooer Goolab Sing et al* v. *Rao Kurun Sing,* 10 Ben. L. R. 1.

AUTHORITY.—Vîramitrodaya, f. 209, p. 2, l. 6, Transl. p. 200:—

"In the law-book of Manu the word Sakulya (which is used in verse IX. 187): On the failure of them (Sapiṇḍas) the Sakulyas are (heirs of a separated male), or the teacher, or also a pupil: includes Sagotras (gentiles within the sixth degree), Samânodakas (gentiles within the thirteenth degree), the maternal uncles, and the other (Sapiṇḍas belonging to a different family), and the three (classes of relations called) Bandhu. In the passage of Yogiśvara (Yâjñavalkya, *see* Chap. II. Sec. 2, Q. 2) also the word Bandhu indicates the maternal uncle. Otherwise, if the maternal uncles were not included (by the word Bandhu), a great impropriety would take place, since their sons would be entitled to inherit, and they who are more nearly related (to the deceased) than the former, would not have the same right."

Q. 2.—If a man applies for a certificate of heirship on the ground that the deceased was his foster-son, should this application be granted?

A.—In the case to which this question refers, it appears that the deceased was applicant's sister's son. He should therefore call the deceased not his foster-son but his nephew, and as the maternal uncle of the deceased, he should be granted a certificate.—*Dharwar, November 16th,* 1846.

AUTHORITY.—*Vîramitrodaya, f. 209, p. 2, l. 6. *See* the preceding case.

B. II.—FEMALES.

(1)—GRAND-DAUGHTER.

Q. 1.—Has a grand-daughter the same right to the property of her grandfather as a grandson?

A.—No.—*Tanna, September 15th,* 1851.

AUTHORITY.—Mit. Vyav. f. 50, p. 1, l. 7.

REMARKS.—1. In an undivided family the grand-daughter cannot inherit.

2. In a divided family she might inherit on failure of nearer heirs as a "Sapiṇḍa relation belonging to a different family." *See* Introductory Remark to Section 15, Clause 5.

3. It has been ruled at Madras that a grand-daughter's son is not entitled to inherit to a second cousin, great-grandson in a male line of the same ancestor, (*a*) but this is not so in Bombay. *See* the Introductory Remarks to this Section.

B. II. (2)—BROTHER'S DAUGHTER.

Q. 1.—A man, who was not married, died. There are two daughters of his brother. One of these daughters has a son. The son's father is his guardian. He claims the possession of the deceased's property. The daughters have no objection to the claim of the son's father. The question is, whether the son of a daughter can be recognized as heir, while there are two daughters of the deceased ? and whether the father of the son has right to be his guardian ?

A.—The brother's two daughters are the nearest relations of the deceased. They are therefore legal heirs, and while they are alive, the son of one of them cannot be considered an heir. It is therefore unnecessary to discuss the question of the right of the father to be the guardian of his son.

Ahmedabad, March 25th, 1855.

AUTHORITIES.—(1) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1); (2) p. 137, l. 4.

REMARKS—1. *See* Introductory Note to Section 15, Clause 4.

2. In the case of *Choorah Monee Bose et al* v. *Prosonno Coomar Mitter*, (*b*) it was held that a brother's daughter's son is not an heir, and so in *Govindo Hureehar* v. *Woomesh Chunder Roy*. (*c*) But the Śâstris in *Umroot* v. *Kulyandas* (*d*) pronounce in favor of the niece's sons and even grandsons. And a brother's daughter's son was recognized as an heir in *Musst. Doorga Bibee et al* v. *Janaki Pershad*. (*e*) The brother's daughters were postponed to a first cousin once removed (first cousin's son) in the male line, in *Gangaram* v. *Ballia et al.* (*f*) Comp. Q. 2, p. 498.

(*a*) *K. Kissen Lala* v. *Javallah Prasad Lala*, 3 M. H. C. R. 346.
(*b*) 1 C. W. R. 43.
(*c*) C. W. R. F. B. R. 176.
(*d*) 1 Borr. R. 314.
(*e*) 10 Beng. L. R. 341.
(*f*) S. A. No. 519 of 1873 (Bom. H. C. P. J. F. for 1876, p. 31).

B. II. (3)—SISTER'S DAUGHTER.

Q. 1.—A man died. There were three daughters of his sister. Two are alive, and one died before the man's death, leaving a son. The question is, which of these is the heir?

A.—The two surviving daughters of the sister are the heirs. The son of the third daughter, who died before the man's death, has no right to inherit from the deceased.

Ahmedabad, June 26th, 1855.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 (*see* Auth. 3); (2) p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1); (3*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4).

REMARK.—*See* Introductory Note to Section 15, Clause 4.

Q. 2.—Can a "Bhâchî," or a daughter of a sister, of a man of the goldsmith caste, be his heir?

A.—Yes.—*Ahmednuggur, December 28th,* 1853.

AUTHORITIES.—(1*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2*) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec 14 I. A. 1, Q. 1).

REMARKS.—1. Grand-nephews through the mother of a deceased succeed to him, *Musst. Umroot et al* v. *Kulyandas et al.* (*a*) A sister's daughter's son is, it is said, an heir according to the Mitâksharâ; and as such can question a gift by the deceased's widow as invalid in law, *Unaid Bahadur* v. *Udoichand.* (*b*) This, however, seems questionable. "It is clear that a son of a daughter of a father's brother is much further removed in the order of succession than the son of a father's brother or a son of such a son." (*c*) Thus the intervention of even one female link is a cause of postponement. Much more where the heritable right is traced through a daughter and then again through her daughter to a grandson or granddaughter. The sacrificial connexion which at least indicates heritable relation is lost in the case of a maternal grandmother's family: only one female link is properly admitted between the claimant and the stem, but it is not certain, as the case cited shows, that the principle will be rigorously followed by the Courts.

(*a*) 1 Borr. 314.

(*b*) I. L. R. 6 Calc. 119.

(*c*) Pr. Co. in *Rani Anand Kunwar* v. *The Court of Wards,* I. L. R. 6 Calc. at p. 772.

2. A maternal grand-niece inheriting property takes it with the same power of alienation as a daughter or sister. (*a*)

3. The grandson of the maternal uncle of the mother of propositus is in the line of heirs. (*b*)

4. A sister's grandson succeeds to property inherited from her father by a woman in preference to her own daughter under the Bengal Law. (*c*) The Pandit relied on Vishṇu's Dharmaśâstra, (Transl. p. 68.) A nephew's daughter is not an heir according to Bengal Law. (*d*)

CHAPTER III.

HEIRS TO MALES WHO HAVE ENTERED A RELIGIOUS ORDER.

SECTION 1.—HEIRS TO A YATI.

Q. 1.—Can the relatives of a "Sannyâsî" claim his property?

A.—No relative can claim any property acquired by a man during the time he was "Sannyâsî."—*Dharwar*, 1846.

AUTHORITY.—* Mit. Vyav. f. 59, p. 1, l. 15:—

"A virtuous pupil takes the property of a yati or ascetic. The virtuous pupil, again, is one assiduous in the study of theology, in retaining the holy science, and in practising its ordinances." (Colebrooke, Mit. p. 355; Stokes, H. L. B. 451.)

Q. 2.—How should property be divided among three disciples of a deceased Guru? and if some of them are absent should their shares be held in deposit, or made over to those that are present?

A.—The Śâstras do not provide for division of a Guru's property among his disciples. One of them should there-

(*a*) *Tuljaram Morarji* v. *Mathuradas Dayaram*, I. L. R. 5 Bom. 662.

(*b*) *Ratnasubbu Chetti* v. *Ponappa Chetti*, I. L. R. 5 Mad. 69.

(*c*) *Sheo Sehai Singh et al* v. *Musst. Omed Konwur*, 6 Calc. S. D. A. R. 301.

(*d*) *Radha Pearee Dossee et al* v. *Doorga Monee Dossia et al*, 5 Calc. W. R. 131 C. R. See *Lallubhai* v. *Mankiwarbai*, I. L. R. 2 Bom. 435, and above, p. 487 (*f*).

fore take it and perform the funeral rites of the deceased, according to custom.—*Ahmednuggur, September 26th,* 1845.

Authorities not quoted. *See* the preceding question.

SECTION 2.—HEIRS TO A NAISHṬHIKA BRAHMACHÂRÎ.

Q. 1.—Is an Âchârya or Guru the heir of his disciple?

A.—Yes.—*Sholapoor, October 27th,* 1846.

AUTHORITY.—* Mit. Vyav. f. 59, p. 1, l. 14:—

"It has been declared that sons, grandsons (or great-grandsons) take the heritage, or, on failure of them, the widow or other successors. The author (Yâjñavalkya) now propounds an exception to both those laws. The heirs of a hermit, of an ascetic, and of a professed student, are, in their order, the preceptor, the virtuous pupil, and the spiritual brother and associate in holiness.

"The heirs to the property of a hermit, of an ascetic, and of a student in theology, are in order, that is in the inverse, the preceptor, a virtuous pupil, and a spiritual brother belonging to the same hermitage.

"The student (Brahmachârin) must be a professed or perpetual one (Naishṭhika), (*a*) for the mother and the rest of the natural heirs take the property of a temporary student (Upakurvâṇa); (*b*) and the preceptor is declared to be heir to a professed student as an exception [to the claim of the mother and the rest]." (Coleb. Mit. 354; Stokes, H. L. B. 450-1.)

REMARK.—Only if the deceased was a Naishṭhika Brahmachârî, *i. e.* a student, who had renounced the world and professed his intention to live all his life with his preceptor.

Q. 2.—Can a preceptor (Guru) be the heir of his disciple (Śishya)?

(*a*) *See* Smṛiti Chandrikâ, Chap. XI. S. 7. Naishṭhika is derived from *nishṭhâ*, "fixed resolve," and means literally a person who has taken the fixed resolution (to stay with his preceptor until death).

(*b*) Upakurvâṇa means literally a person who pays or gives a present (to the preceptor at the end of his studentship).

A.—As the parents of the disciple had devoted him to the service of the Guru, and as he was not married, the Guru is his heir.—*Sholapoor, July 15th,* 1846.

Authority not quoted. *See* the preceding Question.

CHAPTER IV.

HEIRS TO A FEMALE.

A.—Heirs to an Unmarried Female. (*a*)

SECTION 1.—BROTHER.

Q. 1.—Can a brother inherit his sister's property?

A.—Yes.—*Dharwar,* 1846.

Authority.—*Mit. Vyav. f. 62, p. 1, l. 7 :—

"But her uterine brothers shall have the ornaments for the head and other gifts, which may have been presented to the maiden by the maternal grandfather (or the paternal uncle) or other relations, as well as property which may have been regularly inherited by her. For Baudhâyana says :—'The wealth of a deceased damsel let uterine brothers themselves take. On failure of them it shall belong to the mother; or if she be dead, to the father.'" (Coleb. Mit. 373; Stokes, H. L. B. 465.)

Remarks.—1. The text of Vijñâneśvara quoted refers in the first instance to a maiden who died after her betrothal, but before her marriage. As Baudhâyana's passage contains no such restriction, its rules seem to apply also to a girl who died before her betrothal. So Nârada quoted in the Dâya Krama Sangraha, Chap. II. Sec. 1. (Stokes, H. L. B. 487.)

2. Regarding the case of a married sister, *see* Chap. IV. B. Sec. 7, II. *b*.

A.—SECTION 2.—THE FATHER.

Q. 1.—If a daughter has no relative except her father, will he be her heir?

(*a*) The uncles and cousins of an unmarried damsel, daughter of their deceased coparcener, exclude her from inheritance, but are bound to defray her marriage expenses out of the joint estate, 2 Macn. H. L. 47.

A.—Yes.—*Ahmednuggur, January 10th*, 1846.

Authority not quoted.

REMARKS.—1. *See* the preceding case.

2. Regarding the father's succession to the estate of a married daughter, *see* Chap. IV. B. Sec. 7.

A.—SECTION 3.—THE SISTER.

Q. 1.—Can a sister of a deceased Muralî be her heir?

A.—Yes.—*Poona, September 23rd*, 1852.

AUTHORITIES.—(1) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1; (2*) Manu IX. 187 (*see* Chap. II. Sec. 14 I. B. *b*. 1, Q. 1).

REMARK.—The above text of Manu, declaring the "nearest Sapiṇḍa entitled to inherit," applies in the first instance to the succession to a male's estate. In the Mayûkha, p. 159, l. 5 (Stokes, H. L. B. 105), Nîlakhaṇṭha uses it in regard to a female's estate also.

B.—MARRIED.

SECTION 1.—DAUGHTER.

Q. 1.—A woman of the Kunabî caste died. Her daughter, who was abandoned by her husband, lived with her mother for about six years. Can this daughter be the heir of the deceased mother?

A.—As there are no other and better heirs, the daughter will be the heir of the deceased. If the daughter, however, is a notoriously bad character, the Sirkâr should pay the expenses of the funeral rites, assign a maintenance to the daughter, and hold the rest in deposit, pending a reform in her character.—*Ahmednuggur, January 14th*, 1847.

AUTHORITIES.—(1) Vyav. May. p. 142, l. 2; (2) p. 137, l. 5; (3, p. 156, l. 5; (4) p. 159, l. 5; (5) p. 136, l. 8; (6) p. 162, l. 1; (7) Mit. Vyav. f. 45, p. 1, l. 5; (8) f. 58, p. 1, l. 7; (9) f. 58, p. 2, l. 16; (10) f. 57, p. 1, l. 5; (11*) f. 60, p. 1, l. 13; (12) f. 60, p. 2, l. 2; (13) f. 60, p. 2, l. 1; (14*) f. 48, p. 1, l. 13:—

"It has been declared, that sons may divide the effects after the death of their father and mother. The author states an exception in regard to the mother's separate property:—'The daughters share

the residue of their mother's property after payment of her debts.' Let the daughters take their mother's effects remaining over and above the debts; that is, the residue after the discharge of the debts contracted by the mother. Hence the purport of the preceding part of the text is, that sons may divide their mother's effects, which are equal to her debts or less than their amount. The meaning is this: a debt incurred by the mother must be discharged by her sons, not by her daughters; but her daughters shall take her property remaining above her debts." (Colebrooke, Mit. p. 266; Stokes, H. L. B. 383.)

(15) Mit. Vyav. f. 61, p. 1, l. 16:—

"In all forms of marriage, if the woman 'leave progeny,' that is, if she have issue, her property devolves on her daughters." Colebrooke, Mit. p. 368; Stokes, H. L. B. 461.)

Q. 2.—Who will be the heir of a deceased widow? her daughter or her husband's illegitimate son?

A.—A daughter only is entitled to inherit her mother's Strîdhana; an illegitimate son of the deceased widow's husband has no right to it. If the parties concerned be of the Śûdra caste, a daughter and an illegitimate son will be entitled to equal shares of their father's property. If the property is Strîdhana, a daughter has a prior and superior right to it. The illegitimate son and the daughter should therefore take equal shares of the property of the deceased.

Ahmednuggur, January 31st, 1848.

AUTHORITIES.—(1) Vyav. May. p. 99, l. 1; (2) p. 151, l. 2; (3) p. 155, l. 7; (4) p. 156, l. 5; (5) p. 157, l. 7; (6) p. 159, l. 5; (7*) Mit. Vyav. f. 48, p. 1, l. 13 (*see* Chap. IV. B. Sec. 1, Q. 1); (8) f. 55, p. 1, l. 11 (*see* Chap. II. Sec. 3, Q. 1).

REMARK.—The Śâstri in his last direction treats the property as that of the predeceased husband, and applies to it the construction of Yâjñavalkya's text supported by Devâṇḍa Bhaṭṭa in the Dattaka Chandrikâ, Sec. 5, pl. 31 (Stokes, H. L. B. 660).

Q. 3.—A woman died leaving a son by her first and a daughter by her second husband. She had taken no property belonging to her first husband. The deceased's property was left in possession of her daughter and son-in-law.

The question is, whether the daughter or the son should be considered the heir?

A.—If there is no proof that the property in question did not belong to her first husband, the daughter alone is the heir.—*Khandesh, March 4th,* 1851.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2*) Mit. Vyav. f. 48, p. 1, l. 13 (*see* Chap. IV. B. Sec. 1, Q. 1).

REMARK.—The words "did not belong" are evidently a mistake for "belonged."

Q. 4.—A woman died leaving a daughter and a son of a predeceased daughter. Which of these will be heir of the deceased?

A.—The grandson is a distant relation. The daughter should be considered the heir of the deceased.

Khandesh, October 22nd, 1847.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2*) Mit. Vyav. f. 48, p. 1, l. 13 (*see* Chap. IV. B. Sec. 1, Q. 1).

Q. 5.—A woman died. She possessed some waste land. She had had three daughters. The second is alive, the eldest died leaving a son. The youngest died without issue, but her husband is alive. The question is, how the land should be divided among the heirs?

A.—The land should be equally divided between the daughter's son and the surviving daughter. The husband of the deceased daughter has no right to any part of the property.—*Surat, October 12th,* 1857.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1; (2*) f. 48, p. 1, l. 13 (*see* Chap. IV. B. Sec. 1, Q. 1); (3) Vîramitrodaya, f. 205, p. 2, l. 2.

REMARK.—The daughter's son will inherit only in case his mother died after his grandmother. In this case he inherits his mother's share of the grandmother's property. If his mother died before his grandmother, the surviving daughter of the latter takes the whole.

Q. 6.—A man had two sons. The younger of these died, leaving a widow. The elder subsequently died, leaving a son. The last mentioned died, leaving a widow and a daughter. The widow also died, and the question has arisen, whether the daughter of the deceased or the widow of the younger son who died first should be considered the eldest son's heir?

A.—The widow of the last deceased man is his heir, and on her death the right of inheritance devolves on her daughter. The widow of the younger son who died first cannot have any right to inherit the property of her husband's elder brother's son.—*Bombay, Sadr Adálat, July 30th,* 1857.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (2*) f. 48, p. 1, l. 13 (*see* Chap. IV. B. Sec. 1, Q. 1).

Q. 7.—A deceased woman of the Sonâra caste has left a daughter and a grandson of her husband's cousin. The daughter incurred the expense of the funeral ceremonies of her mother. The grandson underwent the ceremony of shaving his head and actually performed the obsequies. He was separate, but used to keep up a friendly intercourse with the deceased as a relation. Which of the two will be her heir?

A.—The daughter must be recognized as the heir, her relationship being nearer than that of the grandson.

Khandesh, May 31st, 1848.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2*) Mit. Vyav. f. 48, p. 1, l. 13 (*see* Chap. IV. B. Sec. 1, Q. 1).

Q. 8.—A woman died. Her surviving relatives are a daughter who has no issue, and a separated member of the family of her husband. The question is, which of these is the heir?

A.—The rule is, that when a separated member of a family dies, his wife becomes his heir. In the absence of a wife, his

daughter is the legal heir. If the daughter, however, is a widow, and without male issue, she cannot be the heir. The separated member of the family of her husband will be her heir.—*Surat, February 10th*, 1846.

AUTHORITY.—*Mit. Vyav. f. 48, p. 1, l. 13 (*see* Chap. IV. B. Sec. 1. Q. 1).

REMARK.—The daughter alone is the heir. The Mitâkshará and the Mayûkha do not mention barrenness as an impediment to a daughter's inheriting. The Surat Śâstri seems here, as in some other instances, to have given Bengal law. (*See* Dâyabhâga, Chap. XI. Sec. 2.)

Q. 9.—*A*, a man, and *B*, his son, lived separate. When *B* died, his son *C* inherited his property. When *C* died, *D*, the widow of *B*, inherited her son's property. *D* died leaving two married daughters. *A*, the father-in-law of *D*, is alive. The question is, who has the right of inheriting the property of *D*?

A.—As *A*, the father-in-law of *D*, was separate from *B*, the husband of *D*, the daughters are the legal heirs. (*a*)

Bombay, Sadr Adálat, August 6th, 1849.

AUTHORITIES.—(1) Mit. Vyav. f. 61, p. 1, l. 16 (*see* Chap. IV. B. Sec. 1, Q. 1); (2) f. 45, p. 1, l. 5; (3) f. 55, p. 2, l. 1; (4*) f. 48, p. 1, l. 13 (*see* Chap. IV. B. Sec. 1, Q. 1).

Q. 10.—It cannot be ascertained whether the husband and brother-in-law of a woman were separate or united in interests. It cannot also be ascertained whether, after the death of her husband, the woman was supported by her father-in-law or brother-in-law. Will the daughter or the brother-in-law of the woman, under these circumstances, inherit the property acquired by the woman?

A.—When two uterine brothers are separate, and one of them dies, his widow will become his heir, and after the widow's death her daughter. The daughter alone can inherit the property acquired by the woman alluded to in the

---

(*a*) This case illustrates pp. 328, 332, 336, 338.

question. The brother-in-law, whether separate or otherwise, can have no right to it.—*Surat, January 25th,* 1845.

AUTHORITIES.—(1) Vyav. May. p. 137, l. 5; (2) p. 157, l. 3 (*see* Auth. 3); (3*) Mit. Vyav. f. 61, p. 1, l. 16 (*see* Chap. IV. B. Sec. 1, Q. 1).

REMARK.—A sum of money, on the death of her husband, was given to a widow by his undivided brother in lieu of maintenance. With this she bought land. It was held that the property was her own absolutely, and being disposable *inter vivos* at her pleasure, could be equally disposed of by her will. (*a*) *See* above, pp. 181, 219, 315, and also Book II. Introduction, 'PARTITION BETWEEN BROTHERS.'

Q. 11.—Can a daughter inherit all her mother's property or only her Strîdhana?

A.—If the mother should have no son, the daughter will be her sole heir; but if the mother has a son, the daughter can inherit only her "Strîdhana." The rest will pass into the hands of her sons.—*Dharwar,* 1845.

AUTHORITY.—*Mit. Vyav. f. 48, p. 1, l. 13 (*see* Chap. IV. B. Sec. 1, Q. 1).

REMARK.—The Śâstri seems to have intended to express the Mayûkha doctrine. (*See* Introduction to Book I. p. 146.)

Q. 12.—A woman died. Her husband had a Vatan. She has two daughters, one of whom has some children and the other has none. There are distant relations of the husband. The question is, whether the husband's relations or the daughter of the deceased woman has a right to inherit the Vatan?

Should a custom prevalent in a family or caste be respected, when it is inconsistent with the law of inheritance laid down in the Śâstra?

A.—In the above case it appears that the wife inherited her husband's property. On her death her daughter becomes the heir.

(*a*) *Nellaikumara Chetty* v. *Marakathammal,* I. L. R. 1 Mad. 166, referring to *Doorga Daye et al* v. *Poorun Daye et al,* 5 C. W. R. 141 C. R., and to *Rajah Chandranath Roy* v. *Ramjai Mazumdar,* 6 B. L. R. 303.

If a custom has uniformly and for a long time been respected by a family or caste, and if the observance of it is not prejudicial to the rights of any individual, or contrary to religion or morality, it may continue to be respected.

Bombay, Sadr Adálat, May 17th, 1847.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2) p. 137, l. 4; (3) p. 7, l. 1 (*see* Chap. II. Sec. 13, Q. 9); (4) Mit. Âchâra, f. 52, l. 1, p. 13 (*see* Auth. 3); (5) Vîramitrodaya, f. 9, p. 2, l. 6 (*see* Auth. 3); (6*) Mit. Vyav. f. 48, p. 1, l. 13, and f. 62, p. 1, l. 16 (*see* Chap. IV. B. Sec. 1, Q. 1).

REMARK.—It is obvious that the rights of the individual must themselves depend on the custom in so far as the custom is binding. *See* above, p. 155, Sec. 6. As to the conditions of a good custom, *see Mathura Naikin* v. *Esu Naikin.* (*a*)

Q. 13.—A man of the Vâṇî caste died. His wife also died shortly after him, leaving a daughter-in-law who was a widow, and three daughters, two of whom were young and unmarried, and consequently under the protection of the daughter-in-law. The last mentioned has applied for a certificate of heirship to the deceased, and the question is, whether the two daughters have a right to any portion of the property of their mother, or whether the whole should be made over to the daughter-in-law alone?

A.—The daughter-in-law is the heir to all the property left by her mother-in-law. If the mother-in-law should have any property which can be called her "Strîdhana," the daughters would be entitled to it. Those daughters who are unmarried will have a superior claim to it. Out of this property these daughters must be maintained and married, and the remainder, if any, should be equally divided among the married and the unmarried.

Ahmednuggur, October 21st, 1851.

AUTHORITIES.—(1*) Mit. Vyay. 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. 137, l. 5; (4) p. 151, l. 1; (5) p. 159, l. 5; (6) p. 156, l. 5; (7) Vyav. May. p. 157, l. 3:—

(*a*) I. L. R. 4 Bom. 545, 571.