"These distinctions are declared by Gautama:—'A woman's property goes to her daughters, unmarried or unprovided.'" (Borradaile, p. 125; Stokes, H. L. B. 103).

REMARKS.—1. The Śâstri's answer is right only if the son died after his father, since in this case only his widow (the daughter-in-law of the question) would inherit his property.

2. If the son died before his father, his rights revert to the latter. (*a*) After the father's death, his widow inherits the property, and from her, her daughters. *See* above, pp. 146, 150, 324.

Q. 14.—A Lingâyat woman died. Her step-son has lived separate from her for the last 20 years, and her daughter is a married woman. Which of these will be her heir?

A.—The daughter will inherit her mother's Strîdhana, and the son will inherit such property of his father as may have remained in the possession of the deceased.

Dharwar, August 6th, 1851.

AUTHORITIES.—(1) Vyav. May. p. 83, l. 7; (2) p. 158, l. 4; (3*) Mit. Vyav. f. 48, p. 1, l. 13 (*see* Chap. IV. B. Sec. 1, Q. 1).

REMARK.—The Śâstri, as in answer to Q. 11, intends to give the Mayûkha doctrine. (*See* Borradaile, 126; Stokes, H. L. B. 104.)

B.—SECTION 2.—GRAND-DAUGHTER.

Q. 1.—There are two relatives of a deceased woman. The one is her daughter's daughter, and the other her husband's brother's daughter. Which of these should succeed to the deceased's property?

A.—The daughter's daughter is the heir to the property.

Dharwar, December 24th, 1847.

AUTHORITIES.—(1) Vîramitrodaya, f. 217, p. 1, l. 15; (2) Mit. Vyav. f. 61, p. 2, l. 5:—

"On failure of daughters, her grand-daughters in the female line take the succession under this text; 'if she leave progeny, it goes to her (daughter's) daughters.'" (Colebrooke, Mit. p. 369; Stokes, H. L. B. 462.)

(*a*) See *Udâram Sitârâm* v. *Rânu Pândujee et al,* 11 Bom. H. C. R. 76.

B.—SECTION 3.—DAUGHTER'S SON.

Q. 1.—A woman who held a Kulakaraṇi Vatan died. There are her relations of ten days, (*a*) and a son of her daughter. Which of these should succeed to the Vatan ?

A.—There is an order of heirs laid down in the Śâstras in the case of persons who, having separated themselves from, and not having reunited with, the other members of a family, have died without male issue. The order commences with wife, who is followed by other relatives having a right to succeed one after another. The Śâstra also declares that all the heirs of a man living and about to come into life expect to inherit his Vatan, and that no man should therefore alienate it to his family's prejudice. From these, it appears that the daughter's son should inherit all the property of the deceased, except the Vatan, which should be given to the (nearest) relations of the same Gotra as the deceased.—*Khandesh, October 5th,* 1853.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 (*see* Auth. 3.); (2) p. 196, l. 3 ; (3) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. 1, Sec. 2, Q. 4); (4*) Mit. Vyav. f. 61, p. 2, l. 7 :—

"On failure of daughter's daughters, the daughter's sons are entitled to the succession. Thus Nârada says : 'Let daughters divide their mother's wealth; or on failure of daughters, their male issue.' For the pronoun refers to the contiguous term 'daughters.'" (Colebrooke, Mit. p. 370 ; Stokes, H. L. B. 462.)

REMARK.—The decision as to the Vatan is based on the supposition that the Vatan is not Strîdhana, or separate property subject to the ordinary rules of descent. But *see* Chap. I. Sec. 2, Q. 5, and Chap. II. Sec. 8, Q. 1.

(*a*) Ten days here show the duration of the mourning and the impurity supposed to result from the death of a relation. The more remote the relationship, the less is the duration. Hence relations are called in Marathi according to their various degrees, as of ten days, three days, one day, or of ablution (Sapiṇḍas).

B.—SECTION 4.—SONS.

Q. 1.—A woman died. Her husband and son have survived her. Which of these is her heir? And who has a right to inherit her Palu?

Supposing the husband has a right to inherit her Palu, will his right be destroyed, because the Palu has been applied towards the purchase of some property, and because the deed of purchase sets forth that the property purchased was intended for the benefit of the woman's children?

A.—It is not mentioned in the question whether the woman had obtained her Palu from her husband or from her father, or whether it was earned by her by following any particular trade. It is not also stated whether the deceased woman has any daughter.

The son of a deceased woman has a right to inherit all the property of his mother. When a woman has children, her husband has no right to her property. In the absence of a daughter, a son has a right to inherit her Palu. Though the Palu has been applied towards purchasing some property, the husband can have no claim on it.

Surat, June 14th, 1848.

AUTHORITIES.—(1) Mit. Vyav. f. 48, p. 1, l. 14 (*see* Chap. II. Sec. 14 I. A. 1, Q. 3); (2) Vyav. May. p. 156, l. 1; (3*) Mit. Vyav. f. 61, p. 2, l. 9:—

"If there be no grandsons in the female line, sons take the property; for it has already been declared the (male) issue succeeds in their default." (Colebrooke, Mit. p. 370; Stokes, H. L. B. 462.)

Q. 2.—A woman received a house from her father. She had two sons. One of them died, leaving a widow. The mother died after the death of her son. The question is, whether the surviving son or the daughter-in-law should inherit the house given to the woman by her father?

A.—The son, and not the daughter-in-law, has the right to inherit the property of his maternal grandfather.

Surat Adálat, June 7th, 1827.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1; (2) f. 61, p. 2, l. 9 (*see* Chap. IV. B. Sec. 4, Q. 1).

REMARK.—The son inherits the property as heir of his mother, not as heir of his maternal grandfather.

Q. 3.—A woman of the Śûdra caste died. One of her sons is in jail undergoing the sentence of imprisonment for life. The other died, leaving a son. The question is, whether the grandson or the son is the heir to the woman's property?

A.—The grandson, as well as the son, has a right to inherit the property.—*Poona, May 13th,* 1851.

AUTHORITIES.—(1) [Vyav. May. p. 90, l. 2]; (2*) Mit. Vyav. f. 61, p. 2, l. 9 (*see* Chap. IV. B. Sec. 4, Q. 1).

REMARK.—If the grandson's father died before his mother, the grandson cannot inherit, as grandsons inherit their mother's Strî-dhana on failure of sons only.

Q. 4.—A man died, and his property was taken possession of by his mother. After the death of the mother, her daughter came into possession of the property. On the death of the daughter, her son assumed the possession. He is now sued by a separated cousin of the original proprietor for the recovery of the property, and the question is, whether it should be made over to him?

A.—The several successions described in the question appear to be legal, and the possession of the grandson cannot be disturbed.—*Rutnagherry, September 3rd,* 1855.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2) [p. 151, l. 2]; (3) p. 157, l. 3; (4) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (5) f. 61, p. 1, l. 16 (*see* Chap. IV. B. Sec. 1, Q. 1); (6*) f. 61, p. 2, l. 9 (*see* Chap. IV. B. Sec. 4, Q. 1).

Q. 5.—*A* married a woman, *B*, who had been previously married, and who brought to his house the son *C*, whom she had borne to her first husband. *A* died without having either a son or a daughter born of his marriage with *B*. On his death, his wife *B* inherited his property. After *B*'s death,

will the property of *A* pass to his blood relations, or to *C*, the son of *B* by her first husband?

A.—If *A* died without issue, his widow *B* was his heir, and any property, which she inherited from *A*, became her Stridhana. As she had neither a son nor a daughter by *A*, and had a son by her former husband, this son will be her heir, and on her death will succeed to the property of which she may die possessed, in preference to any relatives of her husband *A.*—*Broach, September 11th,* 1851.

AUTHORITIES.—(1) [Mit. Vyav. f. 60, p. 2, l. 16]; (2*) f. 61, p. 2, l. 9 (*see* Chap. IV. B. Sec. 4, Q. 1).

REMARK.—*See* above pp. 149, 324, 331; but also pp. 334, ss. A step-son has, as such, no right of succession to his step-father's property. (*a*) He can claim only maintenance.

Q. 6.—A woman of the Marâṭhâ caste adopted a son. The witnesses have proved the fact. Can the adopted son be legal heir to the property of the deceased?

A.—It having been proved that the adoption was solemnized with due ceremonies, the adopted son is the proper heir.—*Rutnagherry, September 26th,* 1845.

Authority not quoted.

REMARK.—There is no special authority to show that the adopted son inherits his adoptive mother's Stridhana. It follows from his occupying in all respects the position of a son where there is not one by birth.

B.—SECTION 5.—HUSBAND.

Q. 1.—A woman died. Her husband lived with his father as a member of an undivided family. His age was about 19 years. Is he or his father entitled to receive the "Palu" of the deceased woman?

A.—If the deceased has left no children, her husband has the right to receive her "Palu."—*Surat, March 28th,* 1848.

(*a*) Comp. Tupper, Panj. Cust. L. Vol. II. p. 150. It is as heir to his mother's estate that he is entitled. As to the *quantum* of this estate *see Brij Indar's* case, L. R. 5 I. A. at p. 14.

AUTHORITY.—(1) Mit. Vyav. f. 61, p. 1, l. 12 :—

"The property of a childless woman married in the form denominated Brâhma, or in any of the four (unblamed modes of marriage), goes to her husband; but if she leave progeny, it will go to her (daughter's) daughters; and in other forms of marriage (as the Âsura, &c.) it goes to her father (and mother on failure of her own issue)."

"Of a woman dying without issue as before stated, and who had become a wife by any of the four modes of marriage denominated Brâhma, Daiva, Ârsha, Prâjâpatya, the (whole) property, as before described, belongs in the first place to her husband." (Colebrooke, Mit. p. 368; Stokes, H. L. B. 460.)

REMARK.—According to Manu, whose view is adopted in the Vyav. May., the property of a woman married according to the Gândharva form of marriage, goes likewise to the husband. The reason is that Manu and others consider the Gândharva rite as lawful for the Kshatriya. (*a*) As to the Bengal law of inheritance to Strîdhana, see *Judoonath Sircar* v. *Bussunt Coomar Roy* (*b*).

Q. 2.—A woman received certain property from her father at or after the time of her marriage. She is now dead. Who is entitled to this property, her husband or her relations on the side of her father?

A.—The property which may have been granted to the woman by her father on the occasion of her marriage or afterwards, must be considered her Strîdhana. After her death, her children are entitled to inherit it. If she has no children, her husband will be her heir. Her father has no right whatever to such property.

Broach, February 12th, 1852.

AUTHORITY.—Mit. Vyav. f. 61, p. 1, l. 12 (*see* Chap. IV. B. Sec. 5, Q. 1).

REMARK.—Similarly ruled in *Judoonath Sircar* v. *Bussunt Coomar Roy*, (*c*) and *Bistoo Pershad* v. *Radha Soondernath*. (*d*)

(*a*) *See* May. Borr. p. 178; Stokes, H. L. B. 106.

(*b*) 11 B. L. R. 286, 295; S. C. 19 C. W. R. 264, which over-rules the decision at 16 C. W. R. 105.

(*c*) *Supra.*

(*d*) 16 C. W. R. 115.

Q. 3.—A woman received some property, consisting of a house and other things, from her father. She has neither a son nor a daughter. In case of her death, can her "Pâṭ" husband inherit her property?

A.—By the custom of the caste, the "Pâṭ" husband is the heir.—*Sadr Adálat, April 2nd*, 1852.

AUTHORITIES.—(1) Mit. Vyav. f. 61, p. 1, l. 12 (*see* Chap. IV. B. Sec. 5, Q. 1); (2) f. 61, p. 1, l. 10; (3) Mit. Âchâra, f. 8, p. 1, l. 8; (4) Vyav. May. p. 160, l. 2; (5) Nirṇayasindhu, p. 203, l. 26.

REMARK.—As re-marriages of widows have been legalized by Act XV. 1856, the decision seems in accordance with the present law.

Q. 4.—A woman, leaving her husband, lived with a man, from whom she obtained some ornaments. On her death the authorities seized her property, and treated it as heirless. A creditor, who holds a decree against her husband, attached the ornaments. The question has therefore arisen, whether the ornaments should be held liable for her husband's debts, or restored to the man who originally presented them to her, or considered as heirless property?

A.—As the ornaments are not the property of the woman's husband, his creditor cannot attach them. If the woman lived and died as a faithful concubine of the man who presented her with the ornaments, he will inherit her property. If the woman died as a public prostitute, the Sirkar may spend a suitable sum for her funeral rites, and take the rest as heirless property.—*Ahmednuggur, November 1st*, 1848.

AUTHORITIES.—(1) Vyav. May. p. 236, l. 4; (2) p. 199, l. 4; (3) p. 200, l. 3 and 7; (4) p. 202, l. 17; (5) p. 24, l. 1; (6) Mit. Âchâra, f. 16, p. 1, l. 13; (7) Mit. Vyav. f. 68, p. 2, l. 16; (8) f. 60, p. 2, l. 12; (9) f. 57, p. 1, l. 5; (10) f. 61, p. 1, l. 12 (*see* Chap. IV. B. Sec. 5, Q. 1).

REMARK.—If the ornaments were the property of the deceased, and her husband had not been divorced from her, he will be her heir, and consequently his creditors may attach them.

Q. 5.—A Kunabî kept a woman in his house. Her husband was then alive. The Kunabî gave her some ornaments,

a nose ring, &c. She died, and the question is, who is the heir to her ornaments ?

A.—The Kuṇabî is the heir to the woman's ornaments, even though they may have been given to her as a present or as a token of his affection ; for the heir of a slave is her master. If they were granted merely for her use, his right to them cannot be considered to have ceased.

Ahmednuggur, February 17th, 1847.

AUTHORITIES.—(1) Vyav. May. p. 152, l. 8; (2) p. 153, l. 8; (3) p. 202, l. 7.

REMARKS—1. According to the Hindû Law, the woman, who commits herself into the keeping of a man, becomes his slave (*see* Vyav. May. p. 171, Borradaile ; Stokes, H. L. B. 137, and above Chap. II. Sec. 3, Q. 12), and gifts made to her revert at her death to her master. But as any title to property based on slavery is abolished by Act V. of 1843, the property of the woman will, if she was not divorced from her husband, fall to the latter.

2. The acceptance of property earned by a wife by prostitution would be sinful on the part of the husband. But the sin may be expiated by penance, and cases, where this actually has been done, are said to have occurred only recently.

Q. 6.—A woman of the Śimpî (Tailor) caste, having lived the life of a prostitute, died during the absence of her husband. Her husband's brother has applied for the property of the deceased. Can he get it ?

A.—If the deceased woman had acquired her property by prostitution, and if she was out of the caste, her husband's brother can have no right to it. If the property in her possession belongs to her absent husband, his brother cannot claim it while he is alive. After his death, his brother can inherit it.—*Poona, December 17th,* 1859.

AUTHORITY.—Mit. Vyav. f. 61, p. 1, l. 12 (*see* Chap. IV. B. Sec. 5, Q. 1).

REMARK.—The property acquired by the woman belongs to her husband. *See* preceding cases.

B.—SECTION 6.—THE HUSBAND'S SAPIṆDAS.

Introductory Remarks.

1. The same discrepancy which prevails between the Mitâkshará and the Mayûkha in regard to the definition of Strîdhana, or 'woman's property,' shows itself again in the rules on the succession to this kind of property, and the difficulties arising herefrom are considerably increased by the circumstance that the Vîramitrodaya also departs from the line laid down by the Mitâkshará.

2. Vijñâneśvara, who declares every kind of property acquired by a woman by any of the recognised modes of acquisition to be Strîdhana, (*a*) gives the simple rule (*b*) that the property of a childless wife goes, if she was married according to the Brâhma, Daiva, Ârsha, or Prâjâpatya rites, to her husband, and on failure of him, 'to his nearest Sapiṇdas.' If she was married according to the Âsura, Gândharva, Râkshasa, or Paiśâcha rites, it goes to her mother, her father, and their nearest Sapiṇdas successively. The latter part of this rule has no immediate interest, as no case, in which the inheritance to a woman married according to the last four rites, was disputed, occurs amongst the Questions which follow. (*c*)

It will therefore only be necessary to consider the first part of the rule. According to the passage from the Âchârakânda of the Mitâkshará, quoted in the Introduction pp. 120, 121, *supra*, it appears that the term 'Sapiṇda' includes, on the father's side, all blood relations within six degrees, together with the wives of the males, and on the mother's side, those within four degrees. As regards the expression *tat pratyâsannânâm*, 'to his nearest,' Mitramiśra in the Vîramitrodaya, (*d*) and Kamalâkara in the Vivâdatândava both explain it to mean, "the Sapiṇdas of the husband succeed according to the degree of their nearness to him."

(*a*) Colebrooke, Mit. Chap. II. Sec. 11, cl. 2 ff. (*See* above, Introd. Sec. 11, pp. 265 ss.)

(*b*) *Ibid*, cl. 11 and 25.

(*c*) *See* the case of *Vijiarangam* v. *Lakshaman*, 8 Bom. H. C. R. 244 O. C. J :—"The husband's nearest kinsman is heir to a woman's separate property." (Coleb. in 2 Str. H. L. 412.)

(*d*) Vîramitrodaya, f. 219, p. 1, l. 3 :—"On failure of him (the husband) the succession goes to the husband's nearest (Sapiṇdas). For, as it is by the husband that the nearness to the possessor is barred, the nearness to the husband must be made the principal consideration." *See* Transl. p. 240.

Moreover, Kamalâkara is of the opinion that the 'nearness' is to be determined by the rule given in the Mitâkshará (*a*) in regard to the succession to the property of a male who died without male descendants, and that, consequently, first, the wife, *i.e.* the rival wife of the deceased, succeeds; next, the daughter, *i.e.* the deceased's step-daughter; thirdly, the deceased's step-daughter's son; fourthly, the husband's mother, and so on.

This opinion seems to be based on the consideration that, as the Sapiṇḍas inherit only through the husband, they virtually succeed to property coming from him, and that consequently they must inherit in the order prescribed for the succession to a male's estate. Against this it may indeed be urged, that the word 'pratyâsanna,' 'nearest,' if employed in regard to persons generally, has the sense of 'nearest by relationship,' and that the list of heirs to a man without male descendants is not made solely with regard to nearness by relationship, since, for instance, it places the daughter's son before the parents and brothers, though he is further removed than the former, and not nearer related than the latter. If the objection be admitted, we should take the word 'pratyâsanna' in its first sense, and assume that Vijñâneśvara really intends 'nearness by relationship' to be the principle regulating the succession of the Sapiṇḍas.

On this interpretation the heirs of childless widows in the first instance would be those kinsmen related to the husband in the first degree, *i.e.* rival wives of deceased, their offspring, and the husband's parents, all inheriting together; next the kinsmen related to the husband in the second degree, as the husband's brothers, deceased's step-children's children, &c., and so on to the sixth degree inclusive. (*See* Bk. I. Chap. IV. B. Sec. 6 II. c, Q. 2.) But the identity of the wife with her husband being accepted as a leading principle of the Mitâkshará, the rule seems on the whole most consonant to it, whereby precedence, in heritable relation to him, gives a like precedence, and order of succession in relation to his widow. Such appears to be the rule too which custom has preferred in this part of India.

3. In opposition to these doctrines, Nîlakaṇṭha in the Mayûkha makes a two-fold division of the Stridhana of a childless woman (*b*) —I. into *páribhâshika* 'Stridhana proper' as defined by the texts of Manu, Kâtyâyana, and others, *i.e.* property presented at the time of marriage (*yautaka*), and subsequent presents of the relations

(*a*) Colebrooke, Mit. Chap. II. Sec. 1, cl. 2; Stokes, H. L. B. 427.

(*b*) *See* Borradaile, May. Chap. IV. Sec. 10, cl. 26 and 27; Stokes, H. L. B. 105.

(*anvâdheya*), and of the husband (*prîtidatta*); and II, into *pâribhâshikâtiriktavibhâgakartanâdilabdha*, Strîdhana other than Strîdhana proper, acquired by division and the like, *i.e.* property acquired by division, inheritance, or any of the other recognised modes of acquisition. For each kind he gives a different order of heirs; I, 'Strîdhana proper' goes (a) if the woman was married according to the Brâhma, Ârsha, Prâjâpatya, Daiva, or Gândharva rites, to the husband, and (b) if she was married according to the Âsura, Râkshasa, or Paiśâcha rites, to her parents. (*a*) The next heirs after the husband and the parents are in either case (*b*) 1, the widow's sister's son; 2, the husband's sister's son; 3, the husband's brother's son; 4, the widow's brother's son; 5, the son-in-law; 6, and the husband's younger brother. After these 'the woman's Sapiṇdas in the husband's family according to the degree of their nearness to her through him,' (*c*) inherit if she was married according to one of the five first mentioned rites. If she was married according to one of the last mentioned three rites, her father's Sapiṇdas succeed. (*d*) II, 'Property other than Strîdhana proper,' devolves, according to the rules which are given for the descent of a separated male's property, on the sons, son's sons, &c. (*e*) *See* Stokes, H. L. B. 105.

4. As the Mitâkshará is the highest authority in this Presidency, the subjoined questions have been mainly arranged according to the principle laid down in that work. There occurs, however, one deviation from it. The Sapiṇdas have been divided into Sagotra or Go-

(*a*) *See* Borradaile, May. Chap. IV. Sec. 10, cl. 28, 29; Stokes, H. L. B. 105-6.

(*b*) Borradaile, *ibid.* cl. 30; Stokes, H. L. B. 106. *See* also Stokes, H. L. B. 499. The Smṛiti Chandrikâ, distinguishing between the constituents of Class I. and those of Class II. assigns the *yautaka* to the unmarried daughters alone in equal shares. The *anvâdheya* and the *prîtidatta* it assigns in equal shares to sons and daughters. The second class it assigns in equal shares to the unmarried daughters and the married ones, who are indigent. (*See* Smṛiti Chandrikâ, Chap. IX. S. 3.)

(*c*) Borradaile, *ibid.* cl. 28; Stokes, H. L. B. 105.

(*d*) The Smṛiti Chandrikâ, l. c. para. 30, quotes Kâtyâyana, to the effect that gifts from kinsmen go only on failure of kinsmen to the husband. In case of an *Âsura* marriage, the kinsmen who actually gave, Devânda Bhaṭṭa says, take back their property. The Śulka goes in every case to the uterine brothers, Mit. Chap. II. Sec. 11, p. 14; Stokes, H. L. B. 461.

(*e*) Borradaile, May. *ibid.* cl. 26; Stokes, H. L. B. 105. *See* above, Introd. p. 150.

trajas, *i.e.* those belonging to the same family as the husband, bearing the same name; and Bhinnagotras, *i.e.* those belonging to a different family, and the former, as a body, have been placed before the latter. The opinion that the Sagotras inherit before the Bhinnagotras, seems to have been held by most of the Śâstris also, who wrote the following Vyavasthâs, and was shared by the Law Officer who assisted in the compilation of the Digest. It is based on the principle which prevails in the case of a male's property, namely, that no property should be allowed to pass out of the family through inheritance, as long as a single member of the family survives. Though the Mitâkshará does not expressly state that this principle holds good in the case of Strîdhana also, this may be inferred, not only from the general consideration that Hindû lawyers regard the family connected by name as a closely united whole, but especially also from the circumstance, that according to the Mitâkshará the soulless husband's property merges on his death in the Strîdhana. In accordance with these principles, the questions referring to the rights of Sapiṇdas in general have been placed first (Sec. 6, I.); next come those referring to the rights of Gotraja-Sapiṇdas (Sec. 6, II.); and lastly those referring to the Bhinnagotra-Sapiṇdas (Sec. 6, III.). Both the Gotrajas and Bhinnagotras have been arranged according to the degree of the nearness of their relationships.

B.—SECTION 6.—THE HUSBAND'S SAPIṆDAS.

I.—Sapiṇdas in General.

Q. 1.—A widow died. A relation claims to be her heir. He is the sixth descendant, while the widow's husband was the fifth descendant from one and the same ancestor. Should he be declared her heir?

A.—Yes.—*Tanna, February 16th,* 1847.

Authorities.—(1) Mit. Vyav. f. 55, p. 2, l. 1; (2) f. 58, p. 2, l. 16; (3) f. 61, p. 1, l. 14:—

"On failure of him (the husband) it (the woman's property) goes to his nearest kinsmen (Sapiṇdas) allied by funeral oblations." (Colebrook, Mit. p. 368; Stokes, H. L. B. 461.)

Q. 2.—A man claims to be the heir of a deceased woman. He appears to be her husband's relation by consanguinity. Can he be her heir?

A.—As the man belongs to the same family he will be the heir of the deceased.—*Ahmednuggur, November 27th,* 1848.

AUTHORITIES.—(1) Vyav. May. p. 159, l. 3 (*see* Auth. 5); (2) p. 151, l. 7; (3) p. 142, l. 8; (4) p. 181, l. 5; (5*) Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1).

REMARK.—Provided that the claimant, if a Gotraja, is related to the deceased's husband within the sixth degree; or if a Bhinnagotra-Sapiṇḍa, within the fourth degree.

Q. 3.—A widow of the Prabhu caste lived with her brother, who not only afforded her maintenance but defrayed the expenses of her pilgrimages. She inherited no property from her husband. So situated the woman died, and the question is, whether her brother or the relatives of her husband are entitled to her property?

A.—As the woman did not inherit any property from her husband, and as she lived under the protection of her brother, the latter is the heir.

Ahmednuggur, February 14th, 1850.

AUTHORITY.—Vyav. May. p. 159, l. 2.

REMARKS.—1. According to the Mitâkharâ Vyav. f. 61, p. 1, l. 14, the husband's Sapiṇḍa relations are the heirs. (*See* Chap. IV. B. Section 6 I. Q. 1.)

2. According to the Mayûkha, the property would fall to her brother only if she was married by one of the three blameable rites. (*See* Introductory Remarks, cl. 3.) (*a*)

II. HUSBAND'S SAGOTRA SAPIṆDAS.

a.—STEP-SON.

Q. 1.—Will a man inherit the property of his step-mother?

A.—If the step-mother has neither a daughter nor a son, her step-son will be her heir.

Ahmednuggur, July 30th, 1846.

AUTHORITY.—*Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1).

(*a*) This would not generally occur or be presumed except in a caste in which the purchase of wives is recognized. See *Vijiarangam* v. *Lakshman*, 8 Bom. H. C. R. 244 O. C. J.

REMARK.—The step-son cannot take before the husband. "He takes the property on failure of offspring, husband, and the like." (Smṛiti Chandrikâ, Chap. IX. S. 3, p. 38.)

Q. 2.—A wife, having been abandoned by her husband, became a Muralî, (*a*) and adopted a son. Will this adopted son or the son of the second wife of her husband be her heir?

A.—The son of her husband's second wife is her heir.

Poona, June 23rd, 1846.

Authority not quoted.

REMARKS.—1. The answer is correct. For though abandoned by her husband the Muralî remains his wife. The second wife's son is therefore entitled to receive her property as Sapiṇḍa relation of her husband. The adoption made by her was null.

2. When a person has more than one wife, and when one of them has a son, the other cannot adopt. The object of the Śâstra is to create, by adoption, an heir to the husband, and not to the wife, except incidentally.

3. *See* the authorities of the preceding Question.

II. *b.*—THE HUSBAND'S MOTHER.

Q. 1.—Can a mother-in-law inherit her daughter-in-law's property?

A.—Yes.—*Poona, October 26th,* 1858.

AUTHORITIES.—(1) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1); (2) p. 160, l. 4; (3*) Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1).

Q. 2.—A man had two wives. Each of them had a sôn and a daughter-in-law. The elder wife and her son died first. The man also died afterwards. His death was followed by the death of his son born by the younger wife. His widow, under a decree of the Civil Court, obtained possession of the property of the family. When the daughter-in-law died, the property passed into the hands of the mother-in-law.

(*a*) A Muralî is a woman nominally devoted to the worship of Khandobâ, but really a beggar, singer, and prostitute.

The daughter-in-law of the elder wife has sued the step-mother-in-law for possession of the property. The question is, who is the nearer heir of the daughter-in-law of the man's younger wife?

A.—The nearer heir is the younger wife of the man. The elder wife's daughter-in-law must be considered as a somewhat distant relation.—*Rutnagherry, June 25th,* 1852.

AUTHORITIES.—(1) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1); (2) p. 83, l. 3; (3) p. 134, l. 4; (4) Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1).

REMARKS.—1. The authorities quoted by the Śâstri refer to the succession to the estate of a male.

2. The mother-in-law is related to the deceased daughter-in-law's husband in the first degree, the elder wife's daughter-in-law in the third.

Q. 3.—A woman of the Vâṇi caste died. She has two mothers-in-law, one direct, and the other a step-mother-in-law. Which of these is the heir of the deceased?

A.—As the direct mother-in-law of the deceased had brought up and protected her husband, she will be her heir. In the absence of the mother of the husband, the step-mother will have the right to inherit the property of the deceased.—*Ahmedabad, October 22nd,* 1859.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1; (2*) f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1); (3*) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1).

REMARKS.—(1) The authorities quoted by the Śâstri refer to the succession to a male's estate.

2. The answer nevertheless seems correct, as the mother is more nearly related to her son than the step-mother.

II. *c.*—FELLOW-WIDOW.

Q. 1.—A property was equally divided between an aunt and her nephew. When the latter died his two widows divided his share between them. One of these widows is

dead, and the question is, who should take her share as heir, the other widow or the aunt ?

A.—The other widow, and not the aunt.

Ahmednuggur, July 17th, 1846.

AUTHORITIES.—(1*) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1); (2*) Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1).

Q. 2.—Government settled upon a widow an annual allowance of Rupees 300. At her death certain arrears were due to her by Government. The surviving members of the family are a fellow-widow and some others. The deceased widow, when she was alive, had authorized her brother to draw the arrears, and to spend the money in the performance of her funeral rites. The question is, whether the right of receiving the arrears should belong to her brother or her fellow-widow ?

A.—The arrears are on account of an allowance for the maintenance of the widow ; they must therefore be considered Stridhana. The fellow-widow is entitled to them as her heir.—*Surat, August 29th,* 1846.

AUTHORITIES.—(1*) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1); (2*) Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1).

REMARKS.—The assignment by the deceased to her brother is inoperative according to Hindû law, as the contemplated duty cannot be performed by him, but only by her husband's family, so long as any of the latter survive.

2. The son of a step-daughter of a widow deceased, by her co-wife who died before the husband, is heir to such widow.(*a*) As the widow inherited from her husband, the succession would, according to the Bengal theory, be to the same person as heir to the deceased widow's husband, his own maternal grandfather. *See* above, Introd. pp. 138, 332, 334.

(*a*) *Motiram Sukram* v. *Mayaram Barkatram*, Bom. H. C. P. J. for 1880, p. 119.

II. *d*.—THE HUSBAND'S BROTHER.

Q. 1.—A number of uterine and half-brothers divided their property, and entered into a mutual stipulation that when any one of them died his property should be divided among the survivors, who should support the deceased's widow. Subsequently one of them died. His widow lived separately from her brothers-in-law (but was supported by them). When she died the question arose whether her husband's uterine brothers, or his half-brothers, or both, should be considered her heirs?

A.—When a separated brother dies, his widow is his heir. When she dies her heir is her husband's uterine brother. If her husband had not separated from his brothers (and if she was supported by the uterine brothers as well as the step-brothers), they are all her heirs.

Ahmednuggur, October 21st, 1848.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4 (*see* Auth. 9); (2) p. 135, l. 5; (3) p. 140, l. 1; (4) p. 133, l. 2; (5) p. 159, l. 3 (*see* Auth. 10); (6) p. 136, l. 2 (*see* Chap. I. Sec. 2, Q. 3); (7) p. 152, l. 4 and 5; (8) p. 108, l. 3; (9*) Mit. Vyav. f. 55, p. 2, l. 1 (*see* Chap. I. Sec. 2, Q. 4); (10*) f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1).

Q. 2.—A deceased woman has no sons or other near relations, but there are one brother-in-law and four sons of another brother-in-law, who are all united in interests. The question is, which of these will be her heir?

A.—The brother-in-law and the sons of brother-in-law will all be her heirs.(*a*)—*Ahmednuggur, November* 24*th*, 1859.

AUTHORITIES.—(1) Vyav. May. p. 159, l. 2 and 5 (*see* Auth. 3); (2*) p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1); (3*) Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1).

Q. 3.—Of four brothers, three died. Their widows, having received the shares due to their respective husbands, lived together. They did not divide their property. One of them afterwards died, and the question is, who is her heir? the surviving brother or the other two widows?

(*a*) The brother-in-law must have the preference as nearer by one degree.

A.—The surviving brother is the heir.

Ahmednuggur, May 26th, 1859.

AUTHORITIES.—(1) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1); (2*) Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec 6 I. Q. 1).

Q. 4.—A woman of the Marâṭhâ caste died. She had neither a son nor any other near relation. There are, however, two brothers-in-law, and a separated second cousin's son. Which of these should be considered the heir of the deceased?

A.—The brothers-in-law must be considered nearer than the nephew, (*a*) and they should therefore take each a half of the deceased's property.—*Tanna, January 19th,* 1853.

AUTHORITIES.—(1) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1); (2) p. 159, l. 2; (3*) Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1.)

Q. 5.—A man of the Mâlî caste died. He left a widow and some property. The widow subsequently died. There are now two heirs, the widow's sister and a brother of her husband. The question is, which of these is the heir?

Suppose a woman of the Mâlî caste had certain property, and that she died during the lifetime of her husband; if the husband die afterwards, and there be a sister of the woman and son of a brother of her husband, which of them will be the heir?

A.—If a man and a woman of the Mâlî caste should die without issue, the property of the husband goes to his brother, and not to his wife's sister.

If a woman of the Mâlî caste has some property given to her by her father, and if her husband dies before her, her father—and, among his near relations, her sister—will have the right to take her property.—*Broach, June 29th,* 1852.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1; (2) f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1).

(*a*) *i. e. Even* than the nephew, much more than their competitor here.

REMARK.—The second part of the answer would only be right in the case of an Âsura or other disapproved marriage. In the case of the Brâhma, &c., approved rites, the husband inherits from his wife. See the following Question.

Q. 6.—Who will inherit a woman's property, her own brother or her husband's brother?

A.—The brother-in-law may inherit so much of the woman's property as belonged to her husband, and that which she may have acquired from her parents and others will pass to her brother.—*Dharwar*, 1845.

AUTHORITIES.—(1*) Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1); (2) Vîram. f. 219, p. 2, l. 6:—

"The property of a childless woman, which she received from her relations, goes on her death to them, and on failure of them to her husband. For Kâtyâyana says:—'(Strîdhana) which has been given by the (wife's) relations goes to them; on failure of them to the husband.'"

REMARK.—The Śâstri's answer agrees with the doctrine laid down in the passage quoted above. But the decision can hardly stand, for—

(1) The Mayûkha, p. 160, l. 7 (Borradaile, p. 129; Stokes, H. L. B. 106) refers the passage of Kâtyâyana to women only who were married according to one of the blamed rites (Âsura). Moreover, instead of "goes to her husband," the reading is there "goes to her son."

(2) According to the Mitâksharâ the whole property of the deceased goes to the husband's brother. (*a*)

Q. 7.—A widow of a "Śûdra" became a "Jogtin," (*b*) and remained in that order for about 12 years. About a fortnight before her death she came to the house of her brother, and there died. The question is, whether her brother or her husband's brother should inherit her property?

(*a*) Coleb. Mit. 368; Stokes, H. L. B. 461. See *Musst. Thakoor Deyhee* v. *Rai Baluk Ram*; 11 M. I. A. 169.

(*b*) A woman devoted to the worship of the goddess called Yellumma, near Dharwar. She is to Yellumma what a Muralî is to Khandoba in the Dekhan, what a Bhâvin is to Râwalnâtha in the Konkan.

A.—If any money was received by the woman's father from her husband at the time of her marriage, her brother will be her heir. If her father received no money, or if it cannot be ascertained whether any money was received or not, her husband's brother will be her heir.

Dharwar, June 3rd, 1850.

AUTHORITIES.—(1) Vyav. May. p. 159, l. 3; (2*) Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1).

REMARK.—See the case of *Vijiarangam* v. *Lakshaman.* (*a*)

II. *e.*—THE HUSBAND'S HALF-BROTHER.

Q. 1.—When there are two relatives of a deceased woman, viz. her husband's half-brother and her husband's half-brother's son, which of these will be her heir?

A.—The husband's half-brother being the nearest will have the precedence.—*Dharwar,* 1845.

AUTHORITIES.—(1*) Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1); (2*) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1).

II. *f.*—THE DAUGHTER-IN-LAW.

Q. 1.—A widow died, leaving a widowed daughter-in-law, and also a widowed daughter-in-law's daughter, who has a son. Who succeeds to the inheritance?

A.—The daughter-in-law, being the nearest, and "Sapinda" relation of the deceased widow, will inherit the property.—*Surat, July 25th,* 1859.

AUTHORITIES.—(1) Manu IX. 187 (*see* Bk. I. Chap. II. Sec. 14 I. B. *b.* 1, Q. 1; (2) Nirnayasindhu, Chapter on Śrâddha (*ibid.*); (3) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1).

REMARKS.—1. The contrary case, *Bandam Settah et al* v. *Bandam Mahalakshimi,* (*b*) is not supported by any reasons. In *Bace Jetta* v. *Huribhai,* (*c*) the daughter-in-law was preferred to a distant cousin

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(*a*) 8 Bom. H. C. R. 244, O. C. J.
(*b*) 4 M. H. C. R. 180.
(*c*) S. A. No. 304 of 1871, Bom. H. C. P. J. F. for 1872, No. 38.

of the husband as the person who would be his nearest heir. Reference is made to *Bhugwandeen Doobey* v. *Myna Baee*, (*a*) *Musst. Thakoor Daybee* v. *Rai Balack Ram et al*, (*b*) and *Lakshmibai* v. *Jayram et al.* (*c*) In the Vîramitrodaya, Transl. p. 244, the daughter-in-law's right is denied. Bâlambhaṭṭa on the other hand, as we have seen, (*d*) places the daughter-in-law next to the paternal grandmother.

2. *See* Bk. I. Chap. II. Sec. 14 I. A. 2, Q. 1, Remarks, p. 469 et seq.; and *Lulloobhoy* v. *Cassibai*, L. R. 7 I. A. 212.

II. *g.*—THE HUSBAND'S BROTHER'S SON.

Q. 1.—There were two uterine brothers. The elder brother had a son, but he died while his father was alive. The younger brother had a son. The brothers died. The elder brother's widow also died. The widow of the elder brother's son, who died during the lifetime of his father, and the son of the younger brother, have applied to be recognized as heirs. The question is, which of them is the heir of the widow of the elder brother?

A.—The widow of the elder brother became heir of her husband on his death. From this the brothers seem to have been separated. The right of inheritance would therefore devolve upon her daughter or other relation. She has, however, no daughter or other near relation, and as the son died during the lifetime of the father, the right of inheritance has not been through him transmitted to the daughter-in-law. It will therefore belong to the nephew.

Surat, October 27th, 1857.

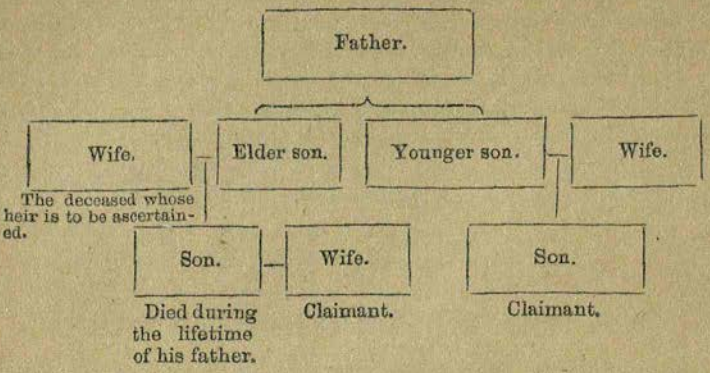
The following is a genealogical table, illustrative of the question:—

(*a*) 9 Calc. W. R. 23 P. C. S. C.; 11 M. I. A. 487.

(*b*) 10 Calc. W. R. 3 P. C.

(*c*) 6 Bom. H. C. R. 152.

(*d*) *See* above, Introd. p. 128.



AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1; (2*) f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6, I. Q. 1.)

REMARK.—This is *apâribhâshika* inherited from the husband. The answer would be correct according to the Mayûkha, according to which the property in question, having been acquired by inheritance from the husband, would descend in the first place to the widow's husband's heirs, as being for this purpose her own heirs. *See* above, Introd. to Bk. I. p. 146, 150, 272, 332; and the Introductory Remarks to this Section, p. 518, 519; Borr. 127; Stokes, H. L. B. 105.

Q. 2.—A man, named Bhukhan, had two sons named Mâṇikchand and Mayârâma. They effected a partition of their father's property, and wrote a deed of separation. When Mayârâma died, his son Dâdâbhâi inherited his father's property. Afterwards Dâdâbhâi died, and was succeeded by his widow Jamnâ. She died without male issue. Dâdâbhâi's sister Gangâ, and her two sons, named Premânanda and Kâlidâsa, have applied for a certificate declaring them to be the heirs of Jamnâ. Jettâ, son of Mâṇik and cousin of Dâdâbhâi, has also applied for a similar certificate. The question therefore is, whether the former or the latter are the heirs?

A.—The two brothers mentioned in the question were separate. The Śâstra declares the following rule of succession in case of the death of a separated brother. Each of

the undermentioned relations succeeds in the absence of the next previously mentioned :—Widow, daughter, son of a daughter, parents, the uterine brothers, nephew, step-brother, son of a step-brother, and members of the same kin or Gotra, and among them the first is sister. Applying this rule to the case, it appears that Gangâ and her two sons are the heirs.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2) p. 140, l. 6; (3) p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A 1, Q. 1, p. 463); (4*) Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1, p. 520).

REMARK.—The kind of property in dispute not being stated, the Śâstri has treated the case as one of a succession to a male's property, and followed the Mayûkha. Her heir is, according to the Mitâkshará, Jettâ, the son of Mânik, since he is the deceased's husband's uncle's child, *i. e.* a Gotraja-Sapiṇḍa. (*See* Introductory Remarks to this Section, para. 4.)

II. *h*.—HUSBAND'S BROTHER'S WIDOW.

Q. 1.—A widow died. The surviving relations are a widow of her brother-in-law, and a son of a sister of her husband. Which of these is the heir of the widow ?

A.—The husband's sister's son is a "Sapiṇḍa," but not a "Gotraja" relation, and he is not, consequently, an heir. The widow of the brother-in-law is both the "Sapiṇḍa" and "Gotraja" relation, and she is therefore the heir.

Ahmedabad, December 30th, 1853.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1; (2) f. 58, p. 2, l. 16; (3*) f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1, p. 520).

II. *i*.—HUSBAND'S PATERNAL UNCLE'S SON.

Q. 1.—Can a cousin of a woman's husband be her heir ?

A.—Yes.—*Poona, September 10th,* 1852.

AUTHORITIES.—(1) Vyav. May. p. 159, l. 2 (Stokes, H. L. B. 105); (2*) Mit. Vyav. f. 61, p. 1, l. 14 (Coleb. Mit. 368; Stokes, H. L. B. 461. *See* Chap. IV. B. Sec. 6 I. Q. 1, p. 520).

Q. 2.—A man received his share of the ancestral property and separated; afterwards he died. His widow inherited his property. She also subsequently died. There is a son of her husband's sister and a cousin of her husband. Which of these is the heir?

A.—The son of the sister of the woman's husband is the nearer relation of the two mentioned in the question, and in the order of heirs which is laid down in the Sâstra, a sister's son becomes heir in the absence of a sister. He should therefore be considered the heir entitled to all the moveable and immoveable property of the deceased, except the Vatan.—*Surat, September 15th,* 1849.

AUTHORITIES.—(1) Vyav. May. p. 138, l. 8; (2) Manu IX. 187 (*see* Auth. 5); (3) Dâya Krama Sangraha; (4) Nirṇayadîpikâ; (5*) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1); (6*) Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6, I. Q. 1).

REMARKS.—1. *See* Bk. I. Chap. II. Sec. 14 I. B. *b.* 2, Q. 1, p. 482; Sec. 15, B. I. (1), Q. 1, p. 495.

2. The Śâstri has taken this case for a question regarding the succession to a childless man's property, and decided it according to the Bengal law. *See* Coleb. Dâya Bhâga, 225 note. (Stokes, H. L. B. 353). According to the Mitâkshará and the Mayûkha the husband's cousin is the heir, *see* Introductory Remarks to this Section, and Chap. II. Sec. 15 B. I. (1), Q. 1, p. 493.

Q. 3.—Who is entitled to inherit from a deceased woman of Kuṇabi caste—her husband's sister, or a cousin who was separate from her husband, or the husband of her deceased daughter?

A.—The sister and the cousin of her husband are near relations of the deceased woman, and they both appear to have equal claims to the property of the deceased. The sister, though very near to the deceased, has gone into another family by her marriage. The cousin is a "Sapiṇda" relation of the deceased's family. The property should therefore

be equally divided between the two. There is nothing in the Śâstras which is favourable to the claim of the son-in-law.

Ahmednuggur, July 27th, 1847.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2) p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1); (3*) Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6, I. Q. 1, p. 520).

REMARK.—The husband's cousin alone inherits according to the Mitâkshará, as he is a Sagotra Sapiṇḍa. The Śâstri regards the devolution of the property as governed by the rules applicable to the deceased husband's estate; but admitting the sister as a gotraja, he should have preferred her to the cousin. (Vyav. May. Chap. IV. Sec. 8, p. 19, Borr. 106; Stokes, H. L. B. 89.)

Q. 4.—A woman died. Her relations are, her husband's cousin, another cousin's five sons, and her husband's brother's widow. The last-mentioned died. One of the five sons died, leaving a son. How will the several heirs divide the property?

A.—The property should be divided into seven equal shares, of which each of the heirs should take one, and the seventh share of the woman's husband's sister-in-law should be again equally divided among the six heirs.

Khandesh, March 22nd, 1848.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2*) p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1, p. 463; (3*) Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6, I. Q. 1. p. 520.)

REMARK.—The husband's paternal uncle's son alone inherits as the nearest Sagotra Sapiṇḍa relation of the deceased's husband. He is related to him in the 5th, and the paternal uncle's grandson in the 6th degree, according to the inclusive mode of reckoning followed by the Hindûs. The succession to the second brother's widow, she having survived to inherit, would be the same.

II. *j.*—THE HUSBAND'S PATERNAL UNCLE'S GREAT-GRANDSON.

Q. 1.—The right of heirship to a deceased woman is claimed by her son-in-law and her husband's cousin's grandson. Which of these two is the legal heir?

A.—The woman's husband's cousin's grandson.

Ahmednuggur, December 13th, 1847.

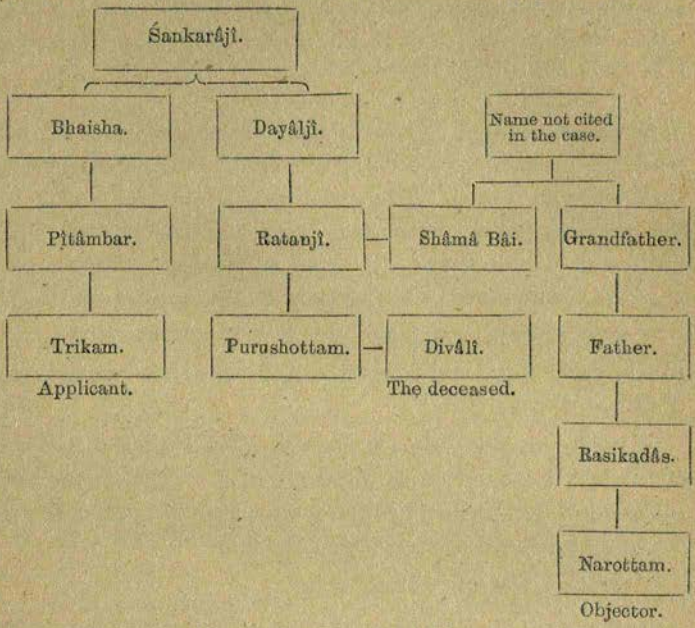
AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2) p. 151, l. 7; (3) p. 83, l. 3; (4) p. 142, l. 8; (5) p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1, p. 463); (6*) Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1, p. 520).

II. *k.*—THE HUSBAND'S MORE DISTANT KINSMEN.

Q. 1.—A man named Śankarâjî had two sons. One of them was called Bhaisha and the other Dayâljî. Bhaisha's son was called Pîtâmbar, and Dayâljî's son Ratanjî. Pîtâmbar's son was called Trikam, and Ratanjî's son Purushottam. The wife of Purushottam, called Divâlî, died without issue. Pitâmbar's son Trikam has applied for a certificate of heirship. One Narottam Rasikadâs objects to the claim of Trikam, on the ground that Shâmâ Bâi, the wife of Ratanjî, was the sister of Rasikadâs's grandfather, that Purushottam was her son, that Divâlî the wife of Purushottam made a will, which Rasikadâs has produced, that it authorizes him to take Divâlî's house and moveable property in consideration of his having given her maintenance, and promised to perform the funeral rites after her death, and that the sons of Śankarâjî had separated. The questions are, whether the said Trikam should be furnished with a certificate? and whether Divâlî had right to transfer her property as she had done?

A.—If there is no daughter or son of a daughter, or other near relation of Divâlî, the applicant Trikam must be considered a relation entitled to inherit the property of the deceased. The will does not appear to have been made under the pressure of any necessity. When Divâlî was possessed of the whole estate of her husband, she had no reason to receive maintenance from another man. The right of performing the funeral rites belongs to the relations of her husband. A will on her part was not therefore necessary, and she could not have made it conformably to the law.—*Surat, November 12th,* 1847.

The following genealogical table will illustrate the question :—



AUTHORITIES.—(1) Vîram. f. 194, p. 1, l. 2; (2) Vyav. May. p. 134, l. 4; (3) Jîmûtavâhana Dâyabh. 49; (4*) Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1, p. 520).

REMARK.—*See* above, pp. 224, 294, 298, 309; Chap. II. Sec. 6 A. Q. 6, p. 394; and Bk. II. Chap. I. Sec. 2, Q. 8, Remarks.

Q. 2.—A woman, having first inherited the property of her husband, died. The heirship to her is disputed between her husband's sister's son and some cousins three or four times removed from her husband. The question is, which of these is the heir ?

A.—As the husband of the deceased woman had separated from the other members of his family, his sister's son is the heir. The cousins cannot be preferred as heirs to the son of the deceased's husband's sister.—*Surat, June 23rd,* 1845.

AUTHORITY.—*Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1).

REMARK.—The husband's cousins should be the heirs, as they are Sapiṇḍas of the deceased, and also Sagotras, while the sister's son is only a Sapiṇḍa. *See* Chap. II. Sec. 15 B. I. (1), Q. 1, p. 493, and Introductory Remarks to this Section.

Q. 3.—*A*, a man, had two daughters and a son. When *A* died, his property passed into the hands of his grandson by right of inheritance. The grandson afterwards died, and the property passed into the hands of his mother. The mother died; and the question is, whether the property should be considered the property of the mother, or of *A*?

Are the daughter and son of a daughter of *A*, or the cousin thrice removed from the husband of the woman who died last, the heirs?

A.—The property should be considered as the property of the last deceased person, and not of *A*. The cousin thrice removed of her husband is the nearer heir of the last deceased, and he should be considered the heir.

Broach, December 21st, 1860.

AUTHORITIES.—(1) Vyav. May. p. 159, l. 3; (2) p. 89, l. 2; (3) Mit. Vyav. f. 60, p. 2, l. 16; (4*) f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6, I. Q. 1).

REMARK.—The references are to the passages considered in the introductory remarks. The woman's heir would be her step-daughter or the step-daughter's son. The right of the latter as an heir is affirmed in *Motiram* v. *Mayaram.* (*a*)

Q. 4.—There are several heirs of a deceased woman, namely, her husband's cousins of 6 or 7 removes, and his sister. Which of these is the heir to the property of the deceased?

A.—In the absence of any nearer relations of the deceased, her (husband's) cousins of 6 or 7 removes are her "Sapiṇḍa" relations, and therefore heirs. Cousins as distant as 7 removes are called "Sapiṇḍa," and are heirs to each other. Cousins as distant as 14 removes are called "Gotraja,"

(*a*) Bom. H. C. P. J. 1880, p. 119.

and are also heirs. Cousins as distant as 21 removes are called "Samânodaka"; they are also heirs of each other. This is the rule laid down in the "Sâstra."

Ahmednuggur, June 9th, 1852.

AUTHORITIES.—(1) Vyav. May. p. 159, l. 3; (2) Chap. IV. Sec. 10, pl. 26, 28; (3) Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1, p. 520).

REMARKS.—1. The remarks on the Gotrajas and Samânodakas are incorrect. The Samânodakas cease with the fourteenth degree. Gotraja, "born in the same Gotra," is applied to all persons who descend from one common ancestor as far as such descent can be proved by a common name or otherwise. The Śâstri, relying on the Vyav. May., should have preferred the husband's sisters to the distant cousins. (*See* Introd. p. 117).

2. In the Mitâkshará, Samânodakas are not named as heirs to a woman's property.

III.—THE HUSBAND'S SAPIṆDAS BELONGING TO A DIFFERENT FAMILY (BHINNAGOTRA).

a.—DAUGHTER'S GRANDSON.

Q. 1.—A deceased woman has no relations except her daughter's grandson. Can he be her heir?

A.—It appears from the law books called Mayûkha and Mitâkshará, that the daughter's grandson is the heir.

Poona, January 22nd, 1847.

AUTHORITY.—*Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1).

III. *b.*—THE HUSBAND'S SISTER.

Q. 1.—A woman died without issue. Her husband's sister and the daughter of the deceased's sister have applied for a certificate of heirship. The question is, which of these is the heir?

A.—If the property in the possession of the woman was acquired by her husband, his sister will be the heir. If the

property was obtained by the deceased from her parents, her sister's daughter will be her heir.

Ahmedabad, January 31st, 1857.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2) p. 160, l. 4:—

"On failure of the husband of a deceased woman, if married according to the Brâhma or other (four) forms, or of her parents if married according to the Âsura or other two forms, the heirs to the woman's property as expounded above, (*a*) are thus pointed out by Brihaspati:—'The mother's sister, the maternal uncle's wife, the paternal uncle's wife, the father's sister, the mother-in-law and the wife of an elder brother, are pronounced similar to mothers. If they leave no sons born in lawful wedlock, nor daughter's son, nor his son, then the sister's son and the rest shall take the property.'" (Borradaile, p. 129; Stokes, H. L. B. 106).

REMARK.—According to the Mitâkshará the husband's sister inherits in every case, as his Sapinda relation.

III. *c*.—THE HUSBAND'S SISTER'S SON.

Q. 1.—A man died, and then his wife died. The man's "Bhâchâ," or sister's son, applied to be put in possession of his property as heir, but he subsequently died. His son has set up a claim to be his heir, and has produced a deed alleged to have been passed to his father by the first deceased, granting his land, &c. to him. There is a distant relation, seven degrees removed from the deceased. He claims to be the heir. There are also two daughters of the deceased, but they have relinquished their claim in favour of the distant relation.

A.—As it cannot be ascertained whether the distant kinsman is within 7 degrees or not, he cannot be recognized as heir. The deceased's sister's son applied for a certificate, but he died. His son has set up a claim, and if there is no other nearer, and Gotraja, relation, he may be considered the heir.—*Ahmedabad, January 10th*, 1851.

(*a*) *i. e.* the kindred provided for by special texts. *See* Vyav. May. Chap. IV. Sec. 10, p. 24 (Stokes, H. L. B. 104).

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2) p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1); (3*) Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1, p. 520).

REMARK.—*See* Introductory Remarks to this Section, para. 4.

Q. 2.—A deceased woman has left her brother's son and her husband's sister's son. Which of these will be the heir?

A.—Her brother's son appears to be the nearest heir. This opinion is founded upon an inference drawn from the order of relatives who are authorized to perform the funeral ceremonies of a deceased woman. This order commences with son, and continues by mentioning grandson, husband, daughter, daughter's son, husband's brother, cousin's son, his daughter-in-law, father, brother, and brother's son.—*Dharwar, June 13th,* 1853.

AUTHORITIES.—(1) Dharmasindhu III. f. 6, p. 1, l. 10 (*see* Sec. 7, Introductory Remark, Note); (2) Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1).

REMARK.—According to the Mitâkshará, the husband's sister's son would inherit as the deceased's husband's Sapiṇḍa, *see* Chap. II. Sec. 15 B. I. (1), Q. 1, p. 493. According to the Vyav. May. there would be a difference according to the source of the property. *See* above (*b*) Q. 1.

Q. 3.—A man died, and his wife also died after him. The man's sister's son, who lived with the wife, performed the funeral rites for her. Will he or her brother be the heir?

A.—The man's sister's son will succeed to the property, provided it has been bequeathed to him. If the deceased has left no will to that effect, her brother will be her heir by law. He should take the property and perform the funeral rites. In his absence the deceased's nephew will be the heir.—*Ahmednuggur, June 22nd,* 1848.

AUTHORITIES.—(1) Vyav. May. p. 159, l. 3 f.; (2*) Mit. Vyav. f. 61, p. 1, l. 14 (*see* Chap. IV. B. Sec. 6 I. Q. 1, p. 520).

REMARK.—See the preceding case. (*a*)

(*a*) The husband's family extends to the husband's paternal aunt's son, according to *Hurreemohun Shaba* v. *Sonatun Shaba,* I. L. R. 1 Cal. 275.

B. SECTION 7.—THE WIDOW'S SAPIṆḌAS.

Introductory Remarks.

1. The question, whether on failure of all relations on the husband's side, the widow's father's family is entitled to inherit her property, if she had been married according to one of the approved rites, is still more difficult to decide than those regarding the husband's Sapiṇḍas.

The Mitâkshará is silent on this point; it mentions none of the widow's Sapiṇḍas as entitled to inherit. The Mayûkha names a few (six) among the heirs who succeed to Strîdhana proper on failure of the husband, *but before the husband's Sapiṇḍas*. (*a*)

2. Though the leading authorities thus seem to give no encouragement to the doctrine that the widow's Sapiṇḍas inherit after those of the husband, the Śâstris nevertheless declare unanimously that such is the case. They quote as authorities chiefly Mayûkha, p. 140, l. 1 (*a*), and p. 159, l. 5 (*b*), where, in both passages, the verse, Manu IX. 187 (quoted in full in Chap. II. Sec. 14 I. B. *b*. 1, Q. 1, p. 481) :—"To the nearest Sapiṇḍa the inheritance next belongs," &c., is quoted. *See* Mit. Chap. II. Sec. 3, p. 5, note.

In the Mânava-dharmaśâstra this verse refers to the succession to a separate male's estate, and the Mayûkha quotes it, p. 140, l. 1, (*b*) in this sense, in order to prove the right of the sister to inherit her brother's property. But in the Mayûkha, p. 159, l. 5, (*c*) it is applied also to the succession to a woman's property, and Nîlakaṇṭha uses it in order to prove that the Strîdhana proper of a childless widow, who was married according to an approved rite, goes not to the husband's nearest kinsmen, as the Mitâkshará states, but to *her own nearest Sapiṇḍas in the husband's family*. Hence it is evident that Nîlakaṇṭha took the above-mentioned verse of Manu to be a general maxim, applicable to all cases of inheritance—a proceeding perfectly in harmony with the principles of the Mimaṁsâ, which rules the interpretation of the Smritis. (*d*) The Śâstris, therefore, by applying

(*a*) Vyav. May. Chap. IV. Sec. 10, cl. 30, Borradaile; and Introductory Remarks to the preceding Section, cl. 3. *See* Bk. I. Chap. II. Sec. 15, Introductory Remarks.

(*b*) Chap. IV. Sec. 8, p. 19 (Borr. p. 106; Stokes, H. L. B. p. 89).

(*c*) Chap. IV. Sec. 10, p. 28 (Borr. p. 128; Stokes, H. L. B. p. 105).

(*d*) Compare the language of the Privy Council in *C. Chintamun Singh* v. *Musst. Nowlukho Konwari*, L. R. 2 In. A. at p. 272; Vyav. Mayûkha, Chap. IV. Sec. 8, pl. 11; and Mitâkshará, Chap. I. Sec. 2, pl. 4.

it to the case of a widow whose husband's family is extinct, have only followed the example of Nîlakaṇṭha, and in no wise departed from the general rules of interpretation. The chief objection which could be raised against the correctness of their view, would be that the list of heirs given in the Mit. and May. must be considered exhaustive.

3. Before touching upon this latter point, it will be advisable to take into consideration some other circumstances which make it probable that the widow's own Sapiṇḍas inherit on failure of the husband's kinsmen.

For though a woman by marriage loses her place in her father's family, and many of the rights and duties which her parents and her kinsmen in her father's family possess over her, or have to fulfil towards her, are suspended, it appears that on extinction of the husband's family these same rights and duties revive. Thus the right or duty of guardianship over a female is vested after marriage in the husband, his sons, and his Sapiṇḍas successively.(*a*) But if the husband's family becomes extinct, it reverts to her parents and their kinsmen, not to the king, who takes the place of guardian only on failure of both families. (*b*)

In a similar manner the duty of performing the last rites and funeral oblations for a widow falls first on the husband's kinsmen, on failure of them on the widow's own relations, and lastly on the king.(*c*)

(*a*) *See* above, Introd. to Bk. I. Sec. 10, ON MAINTENANCE, at pp. 231, 246 ss. Where a person claims the custody of a female minor on the ground that she is his wife, and such minor denies that she is so, Act IX. of 1861 does not apply. The plaintiff must establish his right by a suit, *Balmukund* v. *Janki*, I. L. R. 3 All. 403, *see* Act. XX. of 1864, Sec. 31, and as to the representation of the minor in suits *Manokchand* v. *Nathu Purshotum*, Bom. H. C. P. J. F. for 1878, p. 204; *Jadow Mulji* v. *Chagun Raichund*, I. L. R. 5 Bom. 306.

(*b*) *See* Viramitrodaya, quoted in Chap. II. Sec. 6A, Q. 6, and Mit. Âchâra, f. 12, p. 1, l. 6:—For it is declared "On failure of relations on both sides (the husband's and the parents'), the king becomes the supporter and master of a female." So Nârada, Pt. II. Chap. XIII. 29.

In O. S. 894 of 1870 in the High Court, Bombay, on its original side, a widowed sister's maintenance was admitted by brothers as a charge on the ancestral estate.

(*c*) Dharmasindhu III. Uttarârdha, f. 6, p. 1, l. 10:—

"(The persons authorised to perform the funeral oblations) for a married female are, on failure of her son, the son of a rival wife; on

As then the widow's kinsmen would, but for her marriage, undoubtedly have the right to inherit her estate on account of their blood relationship, it seems not unreasonable to suppose that this right may revive on failure of the persons who barred it.

The objection which might be raised against this view, that the silence of the Mitâkharâ and of the Mayûkha regarding the rights of the widow's blood relations, is equivalent to a denial of these rights, cannot be sustained, since the lists of heirs given in the two law books are not exhaustive. For neither the persons connected by spiritual ties with the widow, *i.e.* the husband's Âchârya and pupil, nor the Brâhmanical community in the case of a Brâhman widow, nor the king in the case of other castes, are mentioned as heirs, though their eventual rights to the inheritance would not be disputed by any Hindû lawyer.

4. If therefore the right of the widow's own blood relations revives on failure of the husband's Sapiṇḍas, it seems natural to allow them to succeed in the same order as they would have done before her marriage, and to place the mother first, next the father, after him the brothers, and the rest of the Sapiṇḍas according to the nearness of their relationship. (*a*) (*See* Mitâkharâ, Chap. II. Sec. 3, p. 5, note; Stokes, H. L. B. 443).

In conformity with this principle, and according to the maxim that Sagotras inherit before the Bhinnagotra-Sapiṇḍas, (*b*) the Questions belonging to the following section have been arranged thus :—

I. Sapiṇḍas in general.
II. Sagotra-Sapiṇḍas, *a*, mother ; *b*, brother, &c.
III. Bhinnagotra-Sapiṇḍas.

B. SECTION. 7.—I. SAPIṆḌAS IN GENERAL.

Q. 1. A daughter of a Paradeśî Brâhman and her husband, lived with him. The husband subsequently ran

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failure of him, her grandsons and great-grandsons in the male line ; on failure of them, the husband; on failure of him, the daughter; on failure of her, the daughter's son ; on failure of him, the husband's brother; on failure of him, the husband's brother's son ; on failure of him, the daughter-in-law ; on failure of her, the father ; on failure of the father, the brother ; on failure of him, the brother's son, and the other (Sapiṇḍas) who have been mentioned before."

(*a*) *See* Chap. IV. A. pp. 501 ss.

(*b*) *See* Introductory Remarks, Chap. IV. B. Section 6, para. 4, p. 519.

away. The father had given some ornaments to his daughter. Afterwards both the father and his daughter died. There is neither the husband nor a son of the daughter, and the question is, whether the separated relativesof her father should be considered her heirs.

A.—The husband and his relatives are the heirs to the property of a woman who has neither a son nor a daughter. In the absence of the husband and his relatives, the woman's mother and father, or their relatives, are the heirs. The father's relatives mentioned in the question are therefore the heirs of the deceased woman.

Khandesh, September 9th, 1851.

AUTHORITIES.—(1) Mit. Âchâra, f. 12, p. 1, l. 4; (2) Mit. Vyav. f. 60, p. 2, l. 16; (3) f. 61, p. 1, l. 12; (4) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1, p. 464).

Q. 2.—When there are two "Sapiṇḍa" kinsmen(*a*) of a woman having equal relationship to her, how will they inherit the property ?

A.—Each of them should receive an equal share.

Dharwar, 1846.

AUTHORITIES.—*Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1, p. 463).

II.—SAGOTRA SAPIṆḌAS.

a.—THE MOTHER.

Q. 1.—A woman died. Her parents applied for a certificate of heirship. Her four separated nephews, of whom the eldest is the guardian of the three under age, preferred a similar application. Subsequently the parents suborned the eldest nephew. He now states that he cannot prove his

(*a*) This word means the relations of the same blood, and is, in the legal phraseology of the Hindûs, limited to those who can trace their descent to one common ancestor so far as the seventh degree, either through males or females. (Śâstri's Rem.)

relationship to the deceased, and that he is a distant relation. He further admits that the deceased's father is her heir. Can this admission affect the rights of the minors under his protection ?

A.—The nephews are not heirs of the deceased. Of the parents who have applied for recognition as the heirs of the deceased, the mother must be considered the first heir. The father will be the heir only in the absence of the mother. There can be no objection to the withdrawal of the claim advanced by the eldest nephew on behalf of himself and his younger brothers. He and the parents may have come to an understanding about the matter.

Ahmednuggur, April 11th, 1851.

AUTHORITIES.—(1) Vyav. May. p. 159, l. 5 (*see* Auth. 3); (2*) p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1, p. 463); (3) Mit. Vyav. f. 47, p. 2, l. 15.

[NOTE.—The kind of property in dispute is not stated.]

II. *b.*—BROTHER.

Q. 1.—When there is no relation of a deceased woman on the side of her husband, who will be her heir—her two uterine brothers or her sister's son ?

A.—The uterine brothers.—*Poona, February 29th,* 1848.

AUTHORITIES.—(1) Vyav. May. p. 159, l, 3; (2) p. 159, l. 5; (3) p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1).

REMARKS.—In *Hurrymohun Shaha* v. *Shonatun Shaha* (*a*) (Bengal law), there is a case in which a deceased woman's brother was declared heir in preference to her husband to property presented to her by the husband's paternal aunt's son. This would accord with Vyav. May. Chap. IV. Sec. 10, p. 13, 27, but not with the Mitâkshará, Chap. II. Sec. 11, p. 2, 11.

II. *c.*—HALF-BROTHER.

Q. 1.—Can the step-brother of a deceased woman be her heir ?

(*a*) I. L. R. 1 Calc. 275.

A.—When there is no one of the family of the husband of the deceased woman, her parents will be her heirs. If the parents are dead, any one belonging to the family of the parents will be her heir. The half-brother, therefore, is her legal heir.—*Dharwar, September* 23*rd*, 1851.

AUTHORITIES.—(1) Vyav. May. p. 159, l. 3; (2) p. 140, l. 7; (3*) p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1, p. 463).

Q. 2.—A woman died. Can a half-brother be her heir?

A.—According to the Mitâkshará and Dharmâbdhi, when there are neither children nor husband of a woman, the Sapiṇḍa relations of her husband become her heirs. When there are no Sapiṇḍa relations, the woman's father and his relations become heirs. If there are no relations of her husband, her half-brother will be her heir.

Dharwar, September 23*rd*, 1851.

AUTHORITIES.—(1) Vyav. May. p. 159, l. 3 (*see* Auth. 3); (2) p. 134, l. 4; (3*) Mit. Vyav. f. 61, p. 1, l. 12 (*see* Chap. IV. B. Sec. 6, I. Q. 1, p. 520).

II. *d*.—BROTHER'S SON.

Q. 1.—Can the sons of a full brother of a deceased woman be her heir?

A.—Yes.—*Ahmednuggur, June 7th*, 1853.

AUTHORITIES.—(1) Vyav. May. p. 159, l. 3; (2) p. 159, l. 5; (3) p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1, p. 463).

Q. 2.—A man granted a piece of land to his widowed daughter for her maintenance. The daughter afterwards died. There is none of her kin, but there is a son of her uterine brother. The question is, whether he is the heir?

A.—If there is none of the deceased woman's kin, her uterine brother's son is her heir.

Ahmedabad, February 15th, 1841.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2) p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1, p. 463).

II. *e.*—HALF-BROTHER'S SON.

Q. 1.—A man died, and his moveable as well as immoveable property passed into the hand of his wife. She had no children. She had allowed her mother, half-brother, and elder sister to live with her. About four years afterwards, the widow died. There was no member of the family of her husband then living. Her property fell into the possession of her sister. Afterwards her mother, step-mother, and sister died. The sister's nephew and the son of the half-brother are now alive. Which of these is the heir of the deceased woman?

A.—The nephew of the woman's sister (*a*) cannot inherit the property. The son of the half-brother is entitled to it.

Ahmedabad, May 31st, 1845.

AUTHORITIES.—(1) Mit. Vyav. f. 58, p. 2, l. 16; (2) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1, p. 463).

II. *f.*—PATERNAL UNCLE.

Q. 1.—A widow died, leaving two relatives, a Bhâchâ (a woman's brother's or sister's son, and a man's sister's son), and her father's brother. The question is, which of these is the heir?

A.—Her father's brother is the heir.

Ahmedabad, February 17th, 1858.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2) p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1, p. 463).

REMARK.—But only if the term Bhâchâ here means sister's son, as a brother's son is a nearer Sapiṇḍa than the father's brother.

II. *g.*—THE PATERNAL UNCLE'S SON.

Q. 1.—A woman of the Śûdra caste has no other heir than a cousin. Her husband is dead. Can the cousin be her

(*a*) This must apparently mean a son of another sister, nephew therefore of the deceased.

heir? If there are three cousins can one of them who has applied to be recognized as heir be considered her heir?

A.—All the three cousins have equal right to be the heirs of the woman.—*Ahmednuggur, January 31st*, 1854.

AUTHORITIES.—(1) Vyav. May. p. 159, l. 3; (2) p. 159, l. 5; (3) p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1, p. 463).

III.—BHINNAGOTRA SAPINDAS OF THE DECEASED'S FAMILY.

a.—THE SISTER'S SON.

Q. 1.—Can a man inherit the property from his mother's deceased sister?

A.—If there is no other heir, he can.

Dharwar, January 26th, 1850.

AUTHORITIES.—(1) Vyav. May. p. 160, l. 4 (*see* Chap. IV. B. Sec. 6, III. *b*, Q. 1); (2*) p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1, p. 463).

REMARK.—A divided brother is preferred, notwithstanding the sister's son was acknowledged and recognized as the adopted son of the deceased brother, but without ceremonies of adoption (*a*).

Q. 2.—A Kunabî woman has died. Her sister's son survives. The deceased made no gift in his favour. Can he be her heir according to the Śâstra?

A.—It appears that the property left by the deceased is her Stridhana, and that her sister's son is entitled to it, even though there be no will left to that effect.

Ahmednuggur, February 22nd, 1847.

AUTHORITIES.—(1) Vyav. May. p. 160, l. 4 (*See* Chap. IV. B. Sec. 6, III. *b*. Q. 1); (2) p. 159, l. 5 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1, p. 463); (3*) p. 159, l. 3.

III. *b.*—MATERNAL UNCLE'S SON.

Q. 1.—A widow died without issue. Her mother's brother's son has applied to be put in possession of her property,

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(*a*) *Bhagvan* v. *Kalâ Shankar*, I. L. R. 1 Bom. 641.

consisting of some land, &c. The deceased widow had obtained the property from her mother's brother, and there are no nearer relations of the deceased. Should the applicant, under these circumstances, be put in possession of the property?

A.—There is no nearer relation of the deceased; the applicant, though of a different Gotra, is a Sapinḍa relation. He is therefore the legal heir of the deceased.

Ahmedabad, June 30th, 1851.

AUTHORITIES.—(1) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1, p. 463); (2) p. 134, l. 4; (3) p. 140, l. 6.

III. c.—THE SISTER'S DAUGHTER.

Q. 1.—Is a sister's daughter the heir to a deceased woman, there being no near relative?

A.—Yes.—*Dharwar, June 11th,* 1853.

AUTHORITY.—Vyav. May. p. 143, l. 1.

Q. 2.—A man died, leaving two daughters. One of them died, leaving a daughter. The other also died afterwards. The question is, whether the daughter of the first deceased daughter can inherit the immoveable property of the deceased?

A.—The daughter who died last has left no children. Her sister's daughter cannot claim the right of inheritance. The order of heirs laid down in the Śâstra does not mention a daughter of a *sister*. That order states that, when there are no near relatives to be found, the Guru and others become heirs. A Brâhman's property is sacred, and the Râjâ or Government of any country is prohibited from taking it under any pretence whatever.—*Surat, March 23rd,* 1850.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1 (Coleb, Mit. 324; Stokes, H. L. B. 427); (2) f. 59, p. 1, l. 9; (3) f. 45, p. 2, l. 8.

REMARKS.—1. The Śâstri mistakes the case for one regarding the succession to a man's property.

2. For the correct answer see the preceding case.

Q. 3.—Two brothers effected a partition of their landed property; afterwards one of them died. The son of the deceased held his father's share for some time, and died. His sister succeeded him, and after having remained for some time in the possession of the share, died. The question is, whether the daughter of the sister or the son of the sister-in-law of the father of the deceased is the heir?

A.—The uterine sister who inherited the property of the uterine brother died. The rights of inheritance will now descend to the daughter of the other sister.

Surat, December 7th, 1846.

AUTHORITY.—*Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1, p. 463.

Q. 4.—Who will inherit from a deceased woman, her sister's daughter or her sister's son's widow?

A.—The sister's daughter is entitled to inherit. It is to be remarked that when there are two heirs, a daughter and a son, to Strîdhana, the daughter has the priority of claim.

Ahmednuggur, August 13th, 1847.

AUTHORITY.—Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1, p. 463).

REMARK.—The preference of daughters to sons only takes place in cases where they inherit from their mother. The right of the deceased's niece rests on her proximity.

CHAPTER V.

CASES OF INHERITANCE DECIDED BY THE CUSTOMS OF CASTES OR SECTS. (a)

SECTION 1.—HEIRS TO A GOSÂVÎ.

Introductory Remarks.

The Brâhmanical law, Mr. Ellis points out, (b) never obtained more than a qualified dominion in Southern India. In the Bombay Presidency the collections of Mr. Borradaile and Mr. Steele show that

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(a) An instance of the flexibility of customary law, while yet unembodied in decisions formally recorded, is to be found in the case of the Mâlis (Moghreliya) at Surat. When questioned by the Judge they answered that a marriage might, amongst them, be dissolved at the desire of either husband or wife. Either some practical inconvenience arose or the moral perceptions of the caste became more refined; a meeting of the caste was held, and it was voted unanimously that divorce should not in future be allowed except for powerful reasons recognized by the caste panchayat. This was communicated in answer to one of Mr. Borradaile's inquiries, MSS. Bk. G., sheets 29, 30. A recent change of custom was recognized, though it was not necessary to base the decision upon it, in *Musst. Radiyat* v. *Madhowjee Panachund*, 2 Borr. 740. According to the notion generally entertained by the Śâstris that customs, where not plainly repugnant to the scriptures (Gaut. Chap. XI. para. 20; Apast. Transl. p. 15), may be regarded as resting on some lost Smṛiti (Ap. Tr. p. 47), the preference of conflicting Smṛitis may be determined by usage. *See* Vîram. Transl. p. 127; Coleb. Dig. quoted in the *Utpât* case, 11 Bom. H. C. R. at p. 267; M. Müller, H. A. Sansk. L. p. 53. Macnaghten, H. L. p. 102, says the custom of Niyoga and consequent legitimacy of the Kshetraja son is still preserved in Orissa. But besides its conservative faculty custom has had to be recognized where it plainly abolished the ancient law, as in the very case of the Niyoga just mentioned (*see* Mit. Chap. I. Sec. 3, p. 4), and the unequal partition prescribed or allowed by the Smṛitis but condemned by usage (*see* Vîram. Tr. p. 61). Mitramiśra (Vîram. Tr. p. 107) places the authority of custom so high that he declares what is illegal in one generation may by usage alone be made legal and even obligatory in another.

(b) 2 Str. H. L. 1[illegible]

many caste usages have been preserved contrary to the rules of the Smṛitis, designed generally or chiefly for the guidance and control of the Brâhmans. The tendency to adoption of the ceremonies and legal ideas of the higher castes by those of a lower order has already been noticed. (*a*) But many differences still subsist which make it hazardous to apply the rules of the Śâstras to the legal relations and transactions of any but the higher castes in the spheres of status and of family law, of adoption and of inheritance. But few cases of this kind appear as the subjects of questions to the Śâstris, because being regarded as matters of special custom, such questions as arose were disposed of on the evidence given in each case. A collection of such cases might have been made from the records of the courts, but it would have been a work of considerable time; and meanwhile a process of gradual assimilation has been going on which is on the whole beneficial. The rules of the different religious orders based generally on a real or fancied analogy to those of Brâhman ascetics have frequently been submitted to the Śâstris, and a general idea of the law of inheritance prevailing amongst their members may be gathered from the cases here collected. But in litigation concerning any maṭha or community it must be borne in mind that it is the customary law of the particular class or institution that must govern the decision, rather than general rules deduced from

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Nîlakaṇṭha, V. M. Chap. I. para. 13, points to many infringements of the scriptural law warranted by custom, and even goes so far as to maintain that its approval may exempt harlotry from penance. The necessities of social existence have thus forced the Commentators by degrees from the position of uninquiring submission to the letter of inspired precepts, and a sufficient authority can now be found within the Hindû law itself for a rational development of its principles in accordance with the improved moral consciousness of the castes (*see Mathura Naikin* v. *Esu Naikin*, I. L. R. 4 Bom. at pp. 561, 567, 570). The sole choice is not between a retention of every rag of usage which the community has outgrown, and the adoption of a wholly foreign system: the course is open of a gradual amelioration of the indigenous law in harmony with its fundamental notions, and with the modified conception of these induced amongst the Hindûs themselves by the exigencies and the new standpoints of each stage of social progress. The customary and case law of England has been formed under influences substantially the same as those just indicated, and a remarkable analogy may be observed between the view of custom as derived from lost Smṛitis and custom in England as Statute law worn out.

(*a*) Above, pp. 9, 426.

the practice of other orders or societies. (*a*) This is the necessary qualification to the somewhat broad statement of Mr. Colebrooke at 2 Str. H. L. 181. (*b*)

According to the statements made by the Gosâvîs to Mr. J. Warden (*see* Steele's Law of Caste, App. B. p. 64 ff.), the members of this order living in Western India consider themselves as Sannyâsîs, following the rules of Śankarâchârya, and pretend to obey the laws of Manu and other Dharmaśâstras. (*c*) Though it would therefore seem that cases of inheritance to their property should be decided according to the rules of the Dharmaśâstra on the succession to the property of a hermit, and though the answers to the following Questions show this to have been also the opinion of some of the Law Officers, (*d*) it nevertheless cannot be allowed that such a proceeding is in accordance with the general principles of the Hindû law. For, though on account of their retirement from the world, they are in a position analogous to that of the Sannyâsîs, the Gosâvîs cannot claim to be Sannyâsîs in the proper sense of the word. The order of the real Sannyâsîs is open, according to some authorities, to Brâhmans, Kshatriyas, and Vaiśyas, according to others to Brâhmans only. It may be entered at any time after the completion of the ceremony of investiture with the sacred girdle. (*e*) The Sannyâsî is bound to

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(*a*) *See* the cases cited above, Introd. p. 201.

(*b*) *See* also the *Utpát* case, 11 Bom. H. C. R. 249, and the *Naikin* case, I. L. R. 4 Bom. 545.

(*c*) Different statements are given by H. H. Wilson, Works, Ed. Rost, Vol. I. pp. 167—169, and *passim*.

(*d*) They are considered as real Sannyâsîs also, *Gungapooree* v. *Musst. Jennee et al*, 9 N. W. P. S. D. A. R. 212; *Sungram Singh* v. *Debee Dutt et al*, 10 *ibid.* 477.

(*e*) Nirṇayasindhu, Par. III. Uttarârdha, f. 51, p. 2, l. 9:—Angiras—"A person who knows (the Vedas) may enter the order of the Sannyâsîs, whether he be a Brahmachârî, a Gṛihastha or Vânaprastha, whether he be sick, or suffering..... Vijñâneśvara (Mit. Prây. f. 25, p. 1, l. 10) and the rest say that a Brâhman alone has a right to enter on this (order of the Sannyâsî), on account of this inspired text of Jâbâla:—'Brâhmans become Sannyâsîs,' and because Manu says:—'Having reposited the sacred fires in his mind, the Brâhman should leave his house and enter the order of the Sannyâsîs.' And there is another verse to the same effect:—'It is said that for Brâhmans four orders are ordained in the revealed texts, for Kshatriyas three, for Vaiśyas two, and for Śûdras one.' But the members of the three (twice-born) classes have also a right (to enter

keep the vow of chastity and to renounce all transaction of business. The Gosâvîs on the contrary receive among their number Śûdras (*a*) also and women, who have no right to become Sannyâsis. They neglect the performance of the Saṁskâras or initiatory rites. Concubinage is allowed by their custom, and some marry. (*b*) Lastly, many are engaged in trade and other worldly business. (*c*)

It thus appears that it is impossible to consider them Sannyâsîs in the sense of the Hindû law, and consequently to subject them to the laws of this order. It is equally impossible to place them under the laws of the Gṛihasthas or householders, as some Śâstris have done, since a very great number have no family ties and live in the Maṭhas as members of coenobitic fraternities; and others, though married, adopt pupils. Now, in all cases, where a section of the Hindû community places itself by its customs or opinions in opposition to orthodox Hindûism and its law, the Hindû legislators allow disputes between its members to be judged according to its law or custom. (*d*)

Thus the king is directed to uphold the customs of the castes, (*e*) of the Pâshaṇḍas, or heretical sects, and of the Naigama orthodox sects. (*f*) The custom to be followed in the case of particular institutions is in general that of such institutions as proved by testimony. The custom in order to be recognized must apparently be one not obviously bad or injurious to the institution to which it is attributed. *See* below, Sec. 1. On the same principle of guarding the interests of the foundation it has been held that in the case of a Trusteeship held in heritable shares by several families, though a father could relinquish his right of management to his son, the son could not join in an alteration in the constitution of the Trust. Nor could a majority of the trustees bind a minority by an agreement to increase the number of trustees. (*g*)

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the order of Sannyâsîs), since it is declared in the Kûrmapurâṇa:—'A Brâhman, a Kshatriya, or a Vaiśya should leave his house and enter the order of the Sannyâsîs.'"

(*a*) Steele, Law of Caste, App. B, clause 24.

(*b*) Steele, Law of Caste, App. B, clauses 29 and 42.

(*c*) Steele, Law of Caste, App. B, clause 14.

(*d*) See *Bhâu Nânâji* v. *Sundrâbâi*, 11 Bom. H. C. R. 249.

(*e*) Vyav. May. p. 7, l. 1; Borradaile 7; Stokes, H. L. B. 15.

(*f*) Vyav. May. p. 206, l. 1; Borr. 176, 177; Stokes, H. L. B. 141; Mit. Vyav. f. 73, p. 1, l. 6.

(*g*) *Kiyipattu A. Narayan Nambudri* v. *Ayikotillatu S. Nambudri*, I. L. R. 5 Mad. 165.

Under these circumstances it would seem advisable to place the cases referring to the inheritance to Gosâvîs under the rules which, according to their statements to Mr. Warden, contain their law of custom. (*a*) Hence in some of the remarks on the following cases, instead of the authorities from the Law Books being quoted in full, references have been given to the paragraphs of Mr. J. Warden's Report, and to Steele's Law and Custom of the Hindoo Castes.

The following statement however may be quoted as describing a custom which with slight local variations governs the succession to Sannyâsîs throughout the greater part of India. "It has been laid down by the late Sudder Dewanny Adawlut that amongst the general tribe of fakirs called saniasis.....a right of inheritance strictly so speaking to the property of a deceased *guru* or spiritual preceptor does not exist; but the right of succession depends upon the nomination of one amongst his disciples by the deceased *guru* in his own lifetime, which nomination is generally confirmed by the *mahants* of the neighbourhood assembled together for the purpose of performing the funeral obsequies of the deceased. Where no nomination has been made the succession is elective, the *mahants* and the principal persons of the sect in the neighbourhood choosing from amongst the disciples of the deceased *guru* the one who may appear to be the most qualified to be his successor, installing him then and there on the occasion of performing the funeral ceremonies of the late *guru*." (*b*)

In some instances the religious services performed by Gosâvîs or Vairâgîs in charge of temples are rendered on the voluntary principle. The temple is the property of a caste or section of a caste, whose representatives control the expenditure of the funds, pay the *guru*, and appropriate the surplus proceeds of the endowment and offerings for caste purposes. In such cases the *guru* holds his place for life and during good behaviour, but has not a property in his office or in the emoluments. His nomination of a chelâ as his successor has no special force, but is generally respected by the caste if he

(*a*) Compare also *Nirunjun Bharthee* v. *Padaruth Bharthee et al*, N. W. P. Repts. of Sel. Cas. 1864, Pt. I. p. 512.

(*b*) *Madho Das* v. *Kamta Das*, I. L. R. 1 All. at p. 541. *Sugan Chand* v. *Gopalgir*, 4 N. W. P. R. 101, excludes a *chelá* who deserts his *guru*. On the subject of sacerdotal privileges and superiority, see *Ramasawmy Aiyan et al* v. *Venkata Achari et al*, 9 M. I. A. 344; and *Kashi Bashi Ramlinga Swamee* v. *Chitumbernath Koomar Swamee*, 20 C. W. R. 217.

was himself held in esteem. (*a*) As to the formal expression of the will of the caste or its representatives in these and other cases reference may be made to Steele, L. C. 124 ss. The inhabitants of a village or of a quarter of a town sometimes erect a matha or temple —a practice often commemorated in inscriptions. (*b*) The position of the officiating worshipper or *guru* in such cases varies according to the terms of his institution; but he is generally removeable for misconduct. (*c*)

SECTION I.

I. To a Male Gosâvî.

a.—THE DISCIPLE.

Q. 1.—Can a disciple succeed to the property of a deceased Gosâvî?

A.—A disciple is the heir of a Gosâvî, and therefore can succeed as such.—*Ahmednuggur*, 1845.

Authority not quoted.

Remark.—*See* Steele, Law of Caste, App. B. para. 20. (*d*)

Q. 2.—A Gosâvî died. There is a disciple nominated by him as his successor. Can he succeed him?

A.—The Gosâvîs and Vairâgîs should be regarded as Sannyâsîs of the lower castes, such as Śûdras and others.

(*a*) His nomination is in other cases held binding. *See* Steele, L. C. 437.

(*b*) As for instance the one described in Ind. Antiq. vol. X. p. 185 ss.

(*c*) See *Acharji Lallu Ranchor* v. *Bhagat Jetha Lalji*, Bom. H. C. P. J. 1882, p. 374.

(*d*) Succession to ascetics is based wholly on personal association, *Khuggender N. Chowdhry* v. *Sharuppgir Oghorenath*, I. L. R. 4 Calc. 543. An ascetic cannot alter the sucession to an endowment, *Mohunt Rumundas* v. *Mohunt Ashbul Dass*, 1. C. W. R. 160. He cannot impose restrictions on his successor contrary to the custom, such as disposing of the Mohantship by way of reversion, *Greedhari Doss* v. *Nund Kissore Doss*, 11 M. I. A. 405. The general rules of succession are given in the Smṛiti Chandrikâ, p. 122.

The trustee of a religious endowment may not alienate or encumber it except under special circumstances. *See* Q. 4. Rem. 2.

The person who claims to be the heir is a disciple nominated by the deceased. His claim therefore should be recognized.

Ahmedabad, September 15th, 1853.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2) p. 141, l. 7.

REMARKS—1. The Guru must nominate a chelâ as successor, and this must be confirmed by the mohants. (*a*) For the succession of a chelâ in the Śrâvak sect, see *Bhutaruk Rajendra* v. *Sook Sagur et al.* (*b*) For a joint succession of two chelâs, *Gopaldas* v. *Damodhar.* (*c*)

2. Śûdras cannot become Sannyâsîs in the sense in which the word is used in the Dharmaśâstras. *See* Introductory Remarks.

3. *See* also Steele, Law of Caste, App. B, para. 20.

Q. 3.—Is a disciple or a Gurubhâû of a Gosâvî his heir?

A.—If the Gurubhâû is separate the disciple will be the heir. If he is united in interests, he and the disciple will be the equal heirs.—*Khandesh, July 3rd,* 1854.

AUTHORITIES.—(1) Vyav. May. p. 131, l. 8; (2) p. 134, l. 4.

REMARK.—*See* Steele, Law of Caste, App. B, para. 20; *Mahdo Das* v. *Kamta Das.* (*d*)

Q. 4.—A Maṭha of a Gosâvî had always been in charge of disciples succeeding one another. Should it remain with a disciple or a relation of the Gosâvî?

A.—The Śâstras contain no provision regarding the matter. The custom of the sect should therefore be inquired into.—*Poona, December 29th,* 1847.

AUTHORITY.—Vyav. May. p. 7, l. 2 (*see* Chap. II. Sec. 13, Q. 9, p. 462.)

REMARKS.—The Maṭha should pass into the possession of the disciple if he was nominated by his Guru. If no nomination had taken place, and there are several disciples, they or the Dasnâmâh will elect a successor. *See* Steele, Law of Caste, App. B, paras. 18, 19, 20.

(*a*) *Atmanund* v. *Atmaram,* N. W. P. S. A. R. for 1852, p. 462.
(*b*) 1 Borr. R. 320.
(*c*) 1 Borr. R. 439.
(*d*) I. L. R. 1 All. 539.

2. In *Rajah Vurmah Valia* v. *Ravi Vurmah Mutha*, (*a*) the Judicial Committee say:—"They conceive that when, owing to the absence of documentary or other direct evidence of the nature of the foundation, and the rights, duties, and powers of the trustees, it becomes necessary to refer to usage, the custom to be proved must be one which regulates the particular institution." Reference is made to the case above, Q. 1, and approval given to Peacock C. J.'s dictum in that case, that "each case must be governed by the usage of the particular mohantee." The *Rameswara Pagoda* case (*b*) also is referred to. "The important principle....., is to ascertain ..... the special laws and usages governing the particular community."

In *Sammantha Pandara* v. *Sellappa Chetti* (*c*) the origin of maṭhas is discussed, and the duties and powers of the superior described in a way assigning to him in Madras a somewhat larger discretion than is recognized elsewhere.

3. Religious endowments are generally inalienable, but they may be temporarily pledged for repairs and other necessary purposes. See *Prosunno Kumari Debya* v. *Golab Chand Babu* (*d*); *Narayan* v. *Chintaman* (*e*); *Khusálchand* v. *Mahadevgiri* (*f*); *Mohunt Burm Suroop Dass* v. *Khashee Jha* (*g*); *Malhár Sakharam* v. *Udegir Guru* (*h*); and the remarks in *Gundoji Bawa* v. *Waman Bawa*. (*i*)

Q. 5.—1. A Gosâvî, having nominated two disciples, died. Both these disciples lived in the Maṭha of their Guru. The senior disciple nominated a disciple to succeed him. The junior disciple was afterwards confined in prison on a charge of murder. While in prison he nominated a disciple, and passed to him a deed authorizing him to inherit his and his Guru's property. On the strength of this document, the disciple has filed a suit against the senior disciple, and the man nominated by him as his disciple, for the recovery of the property of his Guru. Is his claim admissible?

(*a*) L. R. 4 I. A. at p. 83.
(*b*) L. R. 1 I. A. at p. 228.
(*c*) I. L. R. 2 Mad. 175.
(*d*) L. R. 2 I. A. 145, 151.
(*e*) I. L. R. 5 Bom. 393.
(*f*) 12 Bom. H. C. R. 214.
(*g*) 20 C. W. R. 471.
(*h*) Bom. H. C P. J. 1881, p. 108.
(*i*) *Ib.* p. 292.

2. What actions make a man Patita ?

3. What ceremonies should be performed on the occasion of nominating a disciple ?

A.—1. As the man was confined in prison for murder, he must be considered a Patita. He has forfeited his right of nominating a disciple, and a disciple nominated by such a person cannot claim any property.

2. A man becomes a Patita by the commission of the following crimes :— (1) Stealing gold; (2) Killing a Brâhman; (3) Drinking intoxicating liquors; (4) Having criminal intercourse with the wife of one's teacher, one's sister, &c.; (5) Burning a house; (6) Killing a man by administering poison to him. There are some others besides those above enumerated.

3. A person nominated a disciple must be one who is not married. The Guru gets him shaved and communicates to him certain sacred words. The followers of the sect to which the Guru belongs are informed of the intended nomination. The Śâstra is silent on this subject, but the custom requires these ceremonies, and a disciple, duly nominated with the customary ceremonies, becomes entitled to a share of his Guru's property.—*Ahmedabad, June 2nd,* 1845.

AUTHORITIES.—(1) Mit. Vyav. f. 60, p. 1, l. 13; (2) f. 60, p. 2, l. 1; (3) Vyav. May. p. 161, l. 7.

REMARKS.—1. The acts for which a Gosâvî is outcasted are :— Killing a cow, a Brâhman, a woman, a Guru, or a child, and sexual intercourse with other than Hindû women. *See* Steele, Law of Caste, App. B, para. 30.

2. Regarding the ceremonies at the initiation of a Gosâvî, *see* also Steele, Law of Caste, para. 27.

3. Importance seems to be attached by some of the sects to a written nomination of a chelâ as successor to the guruship which, once delivered, they consider irrevocable except for conduct producing spiritual incapacity.

4. In *Greedharee Doss* v. *Nundkissore Doss Mohunt*, (*a*) the Judicial Committee say :—" This seems to be clear, from all the evidence

(*a*) 11 M. I. A. at p. 429.

in this case, as far as it has been brought under their Lordships' attention,—that there cannot be two existing *Mohants*; that the office cannot be held jointly; and that, therefore, if there was a double *Ticca* at all, it must have been a Ticca of the office in reversion after the existence of the incapacity of *Ladlee Doss* to perform the duties. But the evidence upon that point, and the law adduced upon the subject before their Lordships, fail entirely to satisfy their minds that any such species of investiture was according to the rules and customs of these *Mohants*, or that any such *Mohantship* can be given in reversion."

Q. 6.—A Gosâvî had two disciples, one was born by a kept woman, and the other was presented to him by another Gosâvî. The Gosâvî, at his death, left no directions providing for his succession, and the question is who should succeed him?

A.—A virtuous disciple should succeed. The son of a kept woman cannot. A virtuous disciple means a disciple who is hospitable and civil to those who visit his dwelling.

Ahmednuggur, October 20th, 1859.

AUTHORITIES.—Vyav. May. p. 142, l. 4 and 8.

REMARK.—This answer would be right in the case of a real Sannyâsî. According to the custom of the Gosâvîs, however, to whose case also the authorities above quoted refer, natural sons may become disciples, and inherit as such from their fathers. *See* Steele, Law of Caste, Appx. B. paras. 29 and 20. *See* also *Nârâyanbhârti* v. *Lavingbhârti et al*, (*a*) which excludes the offspring of an adulterous connexion.

2. The purchase of a chelâ is in some cases recognized. *See* Coleb. Dig. Bk. V. Chap. IV. Sec. 10, note. This, Colebrooke says, is not to be regarded as adoption but as resting on the special custom of the caste. *See* 2 Str. H. L. 133.

Q. 7.—Two persons claim to be heirs of a Gosâvî of the Marâthâ caste. The one is a "Gurubhâû" or a disciple of the same preceptor. The other is a son of a kept woman of the deceased, but adopted by him as his disciple by the ceremony of tonsure (Muṇḍana). Which of these is the proper heir?

(*a*) I. L. R. 2 Bom. 140.

A.—Both appear to be the heirs, but the one adopted as disciple seems to be the nearer of the two.

Rutnagherry, November 8th, 1845.

Authority not quoted.

REMARKS.—*See* Steele, Law of Caste, Appx. B, para. 29.

2. The alleged disciple or shishya of a deceased Gosâvî who sued another alleged shishya in possession of the maṭha and estate for a declaration of his own superior title must, it was held, pay the fee proper for a suit for possession, the real purpose of the suit being to obtain the property. (*a*)

Q. 8.—A Maṭha of a Gosâvî was held from disciple to disciple. This being the case, a disciple married, and broke through the custom of the Maṭha. Can this breach of the custom be held a bar to his right of inheritance ?

A.—A disciple, who conforms himself to the custom of the Maṭha, and no other, can succeed.

Ahmednuggur, August 14th, 1854.

AUTHORITY.—Vyav. May. p. 142, l. 2.

REMARKS.—The authority given by the Śâstrî refers only to a real Sannyâsî, though the answer itself appears to be correct.

2. Both in the Dekkan and elsewhere the Gosâvîs in some cases marry and still are eligible to mahantship in succession to deceased mahants. "The exception made (by Mr. Warden) must be extended to other places than the Dekhan also. It has been proved that the Bhârti sect of Gosâvîs in (Ahmedabad) the locality whence this appeal comes, very generally marry ..... and there is one if not two instances of a married member of the Bhârti sect being a mahant of a maṭh."

"The plaintiff having proved his succession as mahant ..... we think that the burden of proving that the plaintiff's subsequent marriage worked a forfeiture of his office and its appendant property and rights lay upon the defendants."(*b*)

(*a*) *Ganpatgir* v. *Ganpatgir,* I. L. R. 3 Bom. 230.

(*b*) Sir M. Westropp. C. J., in *Gosain Surajbharti* (Plaintiff in both cases) versus *Gosain Rambharti* (Defendant in R. A. No. 11 of 1880), and *Gosain Ishvarbharti* (Defendant in R. A. No. 12 of 1880), I. L. R. 5 Bom. at p. 684.

Q. 9.—If a Gosâvî has got himself married, is he still to be considered a Gosâvî ? Can he claim the right of inheriting from his Guru ? A deceased Gosâvî had left two disciples;—one of them is suffering from a disease, and the other died leaving a disciple nominated by him. To whom will the right of inheritance belong ? to the man afflicted with disease, or to the disciple of a disciple ?

A.—The question of the legality or propriety of the marriage of a Gosâvî should be disposed of by the king in accordance with the usage of the sect. When a disciple is suffering from such diseases as black leprosy and others, and when he is in such a condition that he cannot be admitted into the sect, he cannot claim the right of inheritance. According to the custom of the sect, the disciple of a disciple will be the proper person to inherit the property of the deceased.—*Ahmednuggur, October 26th,* 1850.

AUTHORITY.—Vyav. May. p. 142, l. 2 and 8.

REMARKS.—1. Regarding the permissibility of the marriage, *see* the preceding case.

2. Regarding the right of the disciple's disciple to inherit fron his Guru's Guru, *see* Steele, Law of Caste, App. B, para. 20.

I. *b.*—FEMALE DISCIPLE.

Q. 1.—A Gosâvî who had no heir, nominated a woman as his disciple. Can she be the heir after his death ?

A.—According to the Śâstras she cannot be the heir of the deceased.—*Dharwar, October 2nd,* 1848.

AUTHORITY.—Vyav. May. p. 142, l. 4.

REMARKS.—1. Female disciples are received by the Gosâvîs, and as it would seem, they also inherit their Guru's property. *See* Steele, Law of Caste, App. B, paras. 21 and 20.

2. In the Reports of Selected Cases, Sudder Dewani Adawlut, North-Western Provinces, Vol. II. p. 235, it is ruled, that a female disciple does not inherit, since, *according to the Hindû Law,* only males can take the property of their Guru.

I. c.—DISCIPLE'S DISCIPLE.

Q. 1.—A Gosâvî died. There is a disciple of his disciple, and some grand-disciples of the grand-disciple of his Guru. The question is which of these will be the heirs of the deceased ?

A.—The grand-disciple is the heir. If, however, the deceased and the other disciples were united in interests, all would be entitled to an equal share of the inheritance.

Khandesh, January 26th, 1854.

AUTHORITY.—Vyav. May. p. 134, l. 4.

REMARK.—*See* Steele, Law of Caste, App. B. para. 20.

Q. 2.—Should a man apply for the property belonging to his Guru's Guru, can he have it ?

A.—No.—*Dharwar,* 1846.

Authority not quoted.

REMARK.—*See* the answer and remark to the preceding case.

I. *d.*—THE FELLOW-DISCIPLE.

Q. 1.—A Gosâvî died. His Gurubhâû is alive. Should the property of the Gosâvî be considered heirless ?

A.—The Gurubhâû is the heir of the Gosâvî.

Tanna, March 25th, 1850.

AUTHORITY.—Vyav. May. p. 142, l. 4.

REMARK.—The authority refers to a real Sannyâsî.

Q. 2.—A Kânphâṭâ Gosâvî had two disciples. They both died, one after the other. A disciple of the first deceased has applied to be recognized as heir of the one who died afterwards. Is he the heir ?

A.—When a man in the order of "Vânaprastha" dies, his Guru and others can inherit his property. When a man dies in the order of Sannyâsîs his disciples become his heirs. When a man dies in the order of Brahmachâri, his Dharma-Bhâûs or fellow-students can inherit his property.

From this, it appears that a disciple, nominated according to the custom of the caste by the one who died first, can inherit the property of his Guru's brother who died afterwards.—*Khandesh, August 23rd,* 1850.

AUTHORITY.—Vyav. May. p. 142, l. 4.

REMARK.—The authority and answer apply to the case of a real Sannyâsî.

Q. 3.—Can a Gurubhâû of a Guru of a deceased Gosâvî be his heir?

A.—No one can be the heir of a deceased Gosâvî except his Guru disciple or Gurubhâû.

Ahmednuggur, November 4th, 1846.

Authority not quoted.

Q. 4.—A Gosâvî had two disciples. One of them nominated a disciple, the other had none. The latter died. Can his property be claimed by the disciple of the former?

A.—The Śâstra does not recognize the heirship of a person situated as above mentioned. He cannot therefore be considered an heir of the deceased.

Poona, November 30th, 1853.

Authority not quoted.

I. *e.*—THE GURU'S FELLOW-DISCIPLE.

Q. 1.—A Gosâvî has died. Will the Gurubhâû of his Guru be his heir?

A.—The Śâstra allows a man to acquire knowledge from a person of a lower caste than himself. By the custom of the country, a Guru and a disciple stand in the same relation to each other as a father and a son, and they become heirs of each other. The Śâstra permits a disciple to inherit from his Guru, and a Guru can in like manner inherit from his disciple, who dies without issue. It is nowhere mentioned in the Śâstra that in the absence of a Guru his brother

may succeed, but as a Guru in the caste of Gosâvîs takes the place of a father in a family, a Gurubhâû may, in the absence of a disciple, brother, or brother's disciple, be considered an heir.—*Sadr Adálat, March 5th,* 1853.

AUTHORITY.—Vîramit. f. 209, p. 2, l. 9.

REMARKS.—1. The answer would apply to a real Sannyâsî.

2. The decision of the question depends upon the custom of the caste and class.

II.—HEIRS TO A GHARBÂRI, OR MARRIED GOSÂVÎ.

Q. 1.—A Gosâvî kept a woman. She gave birth to a son. The Gosâvî then married another woman. He afterwards died. Which of these three survivors should be declared his heir? and how far would the fact of the deceased being originally a Brâhman, Kshatriya, or a Vaiśya before he entered the order of Gosâvî, affect the rights of heirs?

A.—A good disciple becomes the heir of a Gosâvî as a general rule. But if he were of the Śûdra caste and his wife childless, the son of his mistress would, according to the custom of the Śûdras, be his heir, the wife being entitled to a maintenance only. If the deceased originally belonged to either of the other three castes, viz. Brâhman, Kshatriya, or Vaiśya, his good disciple should be considered his heir.

Ahmednuggur, April 14th, 1857.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 1, l. 11; (2) f. 59, p. 1, l. 13.

REMARKS.—1. The Śâstri's answer applies to a Gṛihastha or householder only.

2. If the customs of Gharbâri Gosâvîs are the same as those of Gosâvîs proper, as would seem to be the case according to Steele, Law of Caste, App. B. para. 42, the illegitimate son will be the heir. *See* Steele, *ibid.* para. 29. (*a*)

Q. 2.—A Matha of a Gosâvî was held from disciple to disciple. A Gosâvî who came into possession of it kept a woman, by whom he had a son. Afterwards he married and

(*a*) This case illustrates the remarks made above, Introd. p. 85, 86.

became a "Gharbâri." He subsequently acquired some property and died. The question is, whether the son of the kept woman or his widow is the heir?

A.—If the Gosâvî belongs to the Śûdra caste the son of his kept woman will be his heir. If the Gosâvî belongs to either of the three superior castes, namely, Brâhman, Kshatriya, and Vaiśya, his widow will be his heir. The son in this case may claim maintenance, not as a matter of right, but grace.—*Tanna, March 15th,* 1856.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 1, l. 11; (2) f. 55, p. 2, l. 1.

REMARK.—*See* the preceding case.

Q. 3.—A deceased Gosâvî has left a wife and a disciple. Which of these is the heir?

A.—The wife will be the heir. The disciple cannot succeed, but if the custom of the sect requires that the disciple should succeed, he may be allowed to do so. The wife in that case will be entitled to maintenance only.

Khandesh, November 30th, 1859.

REMARK.—Regarding the Gharbâri, or married Gosâvî, *see* Steele, Law of Caste, App. B. paras. 6 and 42 ff.

Q. 4.—A Gosâvî, either of the sect of the Purî, Gîrî, or Bhârathî, acquired a Vatan like that of a Pâtil or Kulkaraṇî. Can it descend to his or his wife's disciple?

A.—Among the Gosâvîs of the above-mentioned sects, a disciple is as good an heir as a son among other people. If a disciple was not nominated by the male Gosâvî, his wife may nominate one to succeed to her estate in the same manner as a widow among other classes is allowed to adopt a son. No objection seems to exist to such a proceeding.

Khandesh, October 21st, 1848.

AUTHORITY.—Vyav. May. p. 142, l. 4.

Q. 5.—The parents (of the Kuṇabî caste) offered their son of the age of three months to a Gharbâri Gosâvî (married

Gosâvî). Before the child was initiated in the rites of the sect, the Gosâvî died. His wife, however, called the members of her sect, and presented a turban to the child, and placed him on the seat of the deceased. The nephew of the deceased taught him certain incantations and shaved his head. Is this not sufficient to entitle him to a certificate of heirship of the deceased?

A.—If the deceased Gosâvî's wife and nephew have done all that was required to qualify a successor to a Gosâvî according to the customs and rules of the sect, the certificate applied for may be given to him. Among the Vânaprasthas, Brahmachârîs, and Sannyâsîs of the ten different tenets, the succession takes place by disciples. The Gosâvîs and Vairâgîs follow the same tenets, and should be treated accordingly.—*Ahmednuggur, March 28th,* 1849.

AUTHORITY.—Vyav. May. p. 142, l. 2 and 8.

III.—HEIRS TO A GOSÂVINÎ, OR FEMALE GOSÂVÎ.

Q. 1.—A female Gosâvî died. Which of the following will be her heir:—Her Guru, namely the preceptor, or the one who initiated her into the doctrine and practices of the sect; her Guru's son; her husband's disciple; her second or "Pât" husband's disciple; her Gurubhâû, or the one who belongs to the same fraternity to which her Guru belongs?

A.—According to the custom of the sect of Gosâvîs, a well-behaved disciple will be the heir of the deceased. If she has made a gift of her property to her Guru, he can take it. If there is neither of these with the necessary qualifications, the disciple of her second husband must be preferred to her Guru.—*Ahmednuggur, February 24th,* 1847.

AUTHORITIES.—(1) Mit. Vyav. f. 59, p. 1, l. 13; (2) Vyav. May. p. 142, l, 8.

REMARK.—*See* Steele, Law of Caste, App. B. paras. 21 and 20.

Q. 2.—Can a woman of the Gosâvî sect, who is under the vow of celibacy, nominate a disciple ? And can her preceptor or Guru be her heir ?

A.—A virtuous woman of the sect can nominate a disciple, and if a disciple is virtuous he can succeed as heir. The Guru may take such property as may have been duly transferred to him, but in the absence of a properly qualified disciple, the property will go to the Sirkar.

Ahmednuggur, August 22nd, 1847.

AUTHORITY.—Vyav. May. p. 142, l. 4 and 8.

REMARK.—*See* Steele, Law of Caste, App. B. paras. 21 and 38.

SECTION 2.—HEIRS TO A JANGAMA.

INTRODUCTORY REMARK.

The Jangamas are the priests of the Lingâyata sect, who pretend to have renounced the world, like the Sannyâsîs. But the laws referring to the latter cannot be applied to them for the same reasons as in the case of the Gosâvîs. For an account of their doctrine and history, *see* H. H. Wilson, Works, Ed. Rost, Vol. I., pp. 218—230; and of their customs, Steele, Law of Caste, p. 105 ff.

Q. 1.— A Brahmachârî Jangama, holding the hereditary office of Paṭṭâdhikârî died. The question is whether the successor to the office should be a Brahmachârî (unmarried) or a married Jangama ?

2. A man alleges that the office was conferred upon him by the deceased. The question is, whether his eligibility to the office will be effected by the performance or omission of the ceremony called the Jangama-Dîkshâ (*a*).

3. The head Maṭha is presided over by a Brahmachârî Jangama, and there is an inferior Maṭha, which is also presided over by persons of the same class. The Brahmachârî of the inferior Maṭha died, and has left no disciple. Can the Brahmachârî of the head Maṭha succeed to the inferior Maṭha ?

(*a*) Dîkshâ = Initiation.

A.—1. A man cannot succeed to a Paṭṭâdhikârîship, unless he is his Dharma-brother, or fellow-student living in the same dwelling. He must further be a Brahmachârî living in a college, and a Vîra-Śaiva, who is the most pious of the seven classes of the Śaivas or the worshippers of Śiva. A married man, although he is a fellow-student, cannot be an heir of a Paṭṭâdhikârî.

2. The answer to the second question is, that if it be proved that the man who claims to be an heir of the deceased is possessed of all the qualifications above-mentioned, and the Paṭṭâdhikârî on his death-bed conferred the office upon him with the ceremony called the "Triordha-Dîkshâ," his claim should be admitted.

3. The answer to the third question is, that if the Paṭṭâdhikârî of the head Maṭha possesses all the qualifications, and if he has a right derived from long established custom, he may be allowed to succeed.

Sholapoor, December 3rd, 1856.

AUTHORITY.—Mit. Vyav. f. 59, p. 1, l. 13.

REMARKS.—According to Steele, Law of Caste, p. 105, the head of the Maṭha (Paṭṭâdhikâri) appoints his successor, or the disciples elect a new Paṭṭâdhikâri with the sanction of the caste, Zamîndârs or Government.

In some Maṭhas the Jangamas are married. *Ibid.* p. 106.

There is a good account of the usual origin of a Maṭha in *Sammantha Pandara* v. *Sellappa Chetti* (*a*) referred to above.

SECTION 3.—HEIRS TO A JATI.

INTRODUCTORY REMARK.

The Jainas are divided into Yatis or Jatis, religious devotees, and Śrâvakas, lay-brethren. As the Jainas deny the authority of the Vedas, they belong to the Pâshaṇḍas, heretics, and their devotees, consequently, are not subject to the laws of the Sannyâsîs. Regarding the history and doctrines of the Jainas, *see* H. H. Wilson, Works, Ed. R. Rost, Vol. I. pp. 276—369; and regarding the practices of the Yatis, *ibid.* p. 317 ff. For rules and customs as to the succession to Gurus, *see* Steele, Law of Caste, p. 103.

(*a*) I. L. R. 2 Mad. 175.

Q. 1.—(1) A Jati died leaving two disciples. They may have effected a partition of the property of their Guru or left it undivided. Afterwards the senior disciple died, leaving a disciple. The questions are, whether this disciple can claim a moiety of the property of his grand-Guru? or whether it will go to the brother-disciple of the last deceased?

(2) A Jati first became a disciple of one Guru, and afterwards of another by the ceremony called "Sipuj," and assumed the name of Datta. Subsequently he called himself by a name in which his first and the second name were compounded. Is the Jati to be considered a disciple of the first Guru? and can he inherit from his Guru in preference to his brother-disciple?

A.—(1) The Śâstra declares that the best disciple is the heir of his Guru. The two disciples, having effected a partition of their Guru's property, became separate. Afterwards one of them died. His disciple therefore is the legal heir. If the Guru's property had not been divided, yet the right to an equal share of it on the part of each of the two disciples is inherent, and the disciple of the deceased should be allowed to take whatever share belonged to his Guru.

(2) The Jati, who became a disciple, first of one and then of another Guru by the ceremony called "Sipuj," cannot be considered to have deserted his first Guru. He still calls himself by the name which his first Guru gave him. He cannot therefore be considered to have forfeited his right of inheritance.—*Surat, September 29th,* 1849.

AUTHORITY.—Mit. Vyav. f. 59, p. 1, l. 13.

Q. 2.—A Guru of the Śrâvaka sect has applied for a certificate declaring him to be the heir of a disciple of his Guru-Bhâû. The applicant has kept a woman. Is his right to inherit from the deceased affected by this circumstance?

A.—A Guru is like a Sannyâsî, and fornication on his part is contrary to the Śâstra and the usages of the Jaina

sect. A Guru addicted to such a vice forfeits his right of inheritance.—*Surat, October 28th,* 1850.

AUTHORITIES.—(1) Mit. Vyav. f. 59, p. 1, l. 13; (2) Yoga Chandrikâ.

SECTION 4.—HEIRS TO A NÂNAK SHÂHÎ.

Q. 1.—A man of the Nânak Shâhî sect died. There are his Guru-Śishyas and Guru-Bhâûs. Which of these should be considered his heir?

A.—The sect founded by Nânak Shâhî is not recognized by the Śâstra. It has recently come into existence. The persons of that sect are Śûdras, whose property cannot be inherited either by their Gurus or Śishyas, and others connected merely by the similarity of their tenets. The property should be taken possession of by the Sirkâr.

Poona, July 4th, 1851.

AUTHORITY.—Vyav. May. p. 142, l. 2.

REMARKS.—1. Regarding the tenets and history of the Nânak Shâhîs, *see* H. H. Wilson, Works, Ed. R. Rost, Vol. I. p. 267 ss.

2. The Śâstri seems to intend that the Nânak Shâhî, being Śûdras, cannot be placed under the rules regarding the inheritance to a Sannyâsî. But it by no means follows that for this reason the property is to be considered heirless. According to what has been said in the Introductory Remark to Chap. V. Sec. 1, the case ought to be decided according to the custom of the sect.

SECTION 5.—MÂNBHÂÛ.

Q. 1.—There are two sects of Mânbhâûs. The individuals of the one lead a life of celibacy, and the individuals of the other marry. Among the former, are preceptors and disciples the heirs of each other; and among the latter, are sons and other relations the heirs?

A.—There is no provision in the Śâstra regarding the sect, and the question therefore must be decided according to the customs of the sect.

Ahmednuggur, October 27th, 1848.

Q. 2.—Can a disciple of the "Malri" caste be the heir of a Mânbhâviṇi (a woman who had embraced the tenets of Mânbhâû)?

A.—If the man of the Malri caste was made a disciple according to the custom of the sect, he can be the heir.

Khandesh, October 11th, 1852.

Q. 3.—A "Guru Bahiṇa" of a man of the Mânbhâû sect died. He claims her property. Can it be given to him even if the Guru is said to be living in another country?

A.—There is nothing in the Śâstras regarding the sect. Their customs, therefore, whatever they may be, should be respected.—*Ahmednuggar, October 16th*, 1850.

Q. 4.—A woman had two sons, named Saybowa and Sukhadeva. The woman, though originally a Śûdra, adopted a Mânbhâû for her Guru. Her younger son Sukhadeva also chose the same Guru, so that according to the custom of the sect, the mother and the son became Gurubhâû and Gurubahiṇa (brother and sister) of each other. Saybowa had selected a different Guru. The mother, after her initiation into the sect, built a house. Subsequently she and her son Sukhadeva died. The latter has left a disciple. By the custom of the Mânbhâû sect a Gurubhâû becomes heir. The question therefore is, whether the disciple of Sukhadeva, who was the Gurubhâû of his mother, or the son of Saybowa, should inherit it?

A.—According to the Śâstra, the son or the grandson is the heir to the property of his mother.

Khandesh, February 10th, 1851.

Authority not quoted.

SECTION 6.—HEIRS TO A VAIRÂGÎ.

Introductory Remarks.

Regarding the history and tenets of the Vairâgîs, *see* H. H. Wilson, Works, Ed. R. Rost, Vol. I. p. 184 ff.

Regarding their customs *see* also, Steele, Law of Caste, pp. 102, 433 ss. Vairâgîs so-called are sometimes found in occupation of temples, as amongst the Shenvî Brâhmans in Bombay. They in some cases hold the temple property after the manner of true mahants, and appoint chelâs, subject to approval by the panch or committee of the Vairâgîs of the other temples in the island. In other cases the property is held by trustees for the temple, and the quasi-mahants' appointment of a successor is little or nothing more than a recommendation of him as worshipper to the trustees in whom as representatives of the caste, owners of the temple, the right of nomination is really vested. The practice varies as to the direct ownership of the endowment, as to its management, as to the removeableness of the worshipper, and the hereditary descent of his office to chelâs whether nominated or not, and has seldom acquired in any institution the consistency and permanence requisite to a custom to be recognized by Courts of law.

The Vairâgîs are Vaishṇava mendicants, following either the doctrines of Râmânanda or of Nimbâditya, Kabîr, Dâdû, and other teachers. They receive Śûdras and women into their community, and for this reason they can neither be considered real Sannyâsîs, nor be subjected to the laws of the Dharmaśâstra. It would however seem that the married Bhaṭ Vairâgîs, mentioned by Mr. Steele, form an exception, and are simply Gṛihasthas or householders.

SECTION 6 (1).—HEIRS TO A VAIRÂGÎ (*a*).

Q. 1.—Who is the heir of a deceased Vairâgî?

A.—If the deceased has left any property, his disciple, and if there is no disciple, one of his sect will be the heir. A Vairâgî, however, can give away his property to any one he chooses.—*Surat, August 1st*, 1845.

Authority not quoted.

(*a*) A disciple who leaves his Guru without permission and goes away, manifesting an intention to be permanently absent, is not entitled to a share in the succession, *Soogun Chund et al* v. *Gopal Gir et al*, 4 N. W. P. R. 101. This occurs not unfrequently, as the chelâs go about to seek a better settlement. They cannot again become chelâs in the proper sense, but they sometimes attach themselves to mahants or quasi-mahants as assistants, and get nominated or elected as successors.

REMARKS.—1. *See* Steele, Law of Caste, p. 109, 1st Edn.; p. 103, 2nd Edn.

2. A Vairâgî may retain his property. (*a*)

Q. 2.—Can a disciple of a Vairâgî be his heir?

A. The Śâstra takes cognizance of the succession by a disciple of a Sannyâsî, but not of a Vairâgî. The custom, therefore, should be the rule in the case of the latter sect.

Poona, December 26th, 1854.

Authority not quoted.

Q. 3.—One Bhagvândâs performed the funeral rites of the deceased Âtmârâm Bâvâ Vairâgî. The heads of the Vairâgî sect called the "Mahants," who had come on the occasion, recognized Bhagvândâs as the successor of the deceased. Should he or the sister of the deceased be considered the heir?

A.—According to the usages of the sect, Bhagvândâs is the heir, by reason of his being a properly qualified disciple. The sister, though a Sapiṇḍa relation, is not the heir.

Ahmednuggur, November 1st, 1847.

Authority not quoted.

REMARK.—See *Mohunt Sheoprokash Doss* v. *Mohunt Joyram Doss.* (*b*)

Q. 4.—There were two half-brothers of the Vairâgî sect. One of them held a certain estate. On his death his son succeeded. On the death of the son, the other brother came into possession. On his death, his son-in-law succeeded and remained in possession for about 16 years. He performed the funeral rites of his father-in-law. The brother who first succeeded to the estate left a daughter. She has applied for a certificate of heirship. Can her claim be admitted?

A.—According to the usages of the Vairâgî and the Gosâvî sects, a virtuous disciple has a better title to succeed than a "Sapiṇḍa" relation. The disciple who performed the funeral

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(*a*) *Jagannath Pal* v. *Bidyanand,* 1 Beng. L. R. A. C. 114.

(*b*) 5 C. W. R. 57, Mis. A.

rites of the deceased will therefore inherit, if he be a virtuous man. The claim of the deceased's niece, who applies for a certificate, should be rejected as being contrary to the usages of the sect.

Ahmednuggur, August 13th, 1847.

REMARKS.—Virtuous here means not merely of good moral conduct, but of adequate capacity to profit by instruction, Vîram. Tr. p. 203, though in fact the Vairâgîs are often grossly ignorant.

2. The adopted son of a Vairâgi, who yet mingles in worldly affairs, may succeed to his property. (*a*)

(2).—GURU.

Q. 1.—Can the Guru of a deceased Vairâgî be his heir?

A.—Yes.—*Khandesh, February 5th,* 1857.

AUTHORITIES.—(1) Vîram. f. 309, p. 2, l. 10; (2) Vyav. May. p. 142, l. 7.

REMARK.—If such is the custom of the caste, and not, as the Śâstri seems to think, according to the Dharmaśâstra. See *Jugdanund Gosamee* v. *Kessub Nund Gosamee et al.* (*b*)

(3).—THE FELLOW-STUDENT.

Q. 1.—Can the Gurubhâû be the heir of a deceased Vairâgi?

A.—Whatever property may remain after the performance of the obsequies of the deceased should be made over to the Gurubhâû, if the disciples are not to be found.

Ahmednuggur, April 10th, 1846.

Authority not quoted.

Q. 2.—A Vairâgî of the Ramavat sect died. There are his nephew and a Gurubhâû. Which of these will be the heir?

A.—According to the customs and usages of the sects of the Vairâgîs and the Gosâvîs, the Gurubhâû will be the heir.

Ahmednuggur, January 16th, 1849.

Authority not quoted.

(*a*) *Mohunt Mudhoobun Doss* v. *Hurry Kishen Bhunj*, C. S. A. R. for 1852, p. 1089.

(*b*) C. W. R. for 1864, p. 146.

(4).—THE FELLOW-STUDENT'S DISCIPLE.

Q. 1.—Can a disciple of a Gurubhâû be the heir of a Vairâgî?

A.—No one can be the heir of a Vairâgî except his immediate disciple. If none such is to be found, Government should take the property of the deceased, after defraying the expenses of his funeral.—*Ahmednuggur*, 1845.

Authority not quoted.

REMARK.—Contradicted by the answers to the preceding Questions.

Q. 2.—Can a Vairâgî marry? and can his wife be his legal heir?

A.—Marriages are allowed among the Vairâgis, and the wife of one of that sect is his legal heir.

Ahmednuggar, April 6th, 1846.

Authority not quoted.

CHAPTER VI.

PERSONS DISABLED TO INHERIT (*a*).

SECTION 1.—PERSONS DISEASED IN BODY OR MIND.

Q. 1.—A man has been blind of both eyes for about 16 years. He lives with his son. The son incurred some debt for the support of his family. A creditor attached the son's house, which was his ancestral property. The blind father applies for the removal of the attachment. Should it be granted?

(*a*) The Smṛiti Chandrikâ, Chap. V. p. 9, teaches that the epithet 'incurable' being attached only to 'disease,' the other qualifications, though not congenital or permanent, exclude if apparent at the time of partition (becoming possible). Loss of caste does not now deprive of heritable capacity, Act. XXI. of 1850. *Honamma* v. *Timmana Bhaṭ*, I. L. R. 1 Bom. 559.

The Roman law, after the establishment of Christianity, deprived heretics of heritable and testamentary rights. *See* Cod. Lib. I. Tit. V. l. IV.

A.—If the blindness of the father is not curable he can only claim maintenance. He has no right to the property, and consequently his application is not admissible. The debt, which was incurred on account of the family, must be paid from the property of the family.

Ahmednuggur, October 9th, 1850.

AUTHORITIES.—(1) Vyav. May. p. 161, l. 5 and 7 (*see* Auth. 5); (2) p. 164, l. 6; (3) p. 175, l. 8; (4) f. 19, p. 2, l. 3; (5*) Mit. Vyav. f. 60, p. 1, l. 13:—

"'An impotent person, an outcast and his issue, one lame, a mad man, an idiot, a blind man, and a person afflicted with an incurable disease, as well as others (similarly disqualified) must be maintained, excluding them from participation.' 'An impotent person,' one of the third gender (or neuter sex). 'An outcast,' one guilty of sacrilege or other heinous crime. 'His issue,' the offspring of an outcast. 'Lame,' deprived of the use of his feet. 'A mad man,' afflicted by any of the various sorts of insanity, proceeding from air, bile, or phlegm, from delirium or from planetary influence. 'An idiot,' a person deprived of the internal faculty, meaning one incapable of discriminating right from wrong. 'Blind,' destitute of the visual organ. 'Afflicted with an incurable disease,' affected by an irremediable distemper, such as marasmus or the like." (Chap. II. Sec. 10, paras. 1, 2.) Under the term "others" are comprehended one who has entered into an order of devotion, an enemy to his father, a sinner in an inferior degree, and a person deaf, dumb, or wanting any organ. (Colebrooke, Mit. p. 360; Stokes, H. L. B. 455).

REMARK.—In the case of *Baboo Bodhnarain Singh* v. *Baboo Omrao Singh*, (*a*) it was admitted that a woman's insanity at the time of her mother's death excluded her from the inheritance, but opened it to her sons. (*b*) In *Dace* v. *Poorshotum Gopal* (*c*) it was ruled that a blind widow does not succeed to her husband's property. In the case at 2 Macn. H. L 42, it is not specified whether a son, excluded in favor of a daughter, was insane from birth or not. In Coleb. Dig. Bk. V. T. 320, 321, 326, 331 Comm., Jagannâtha seems to contemplate the defect that excludes as congenital, though it is not so stated; and so as to blindness and lameness. In the present case, the property having actually vested, the texts cited do not seem to deprive

(*a*) 13 M. I. A. 519.

(*b*) *See* also *Prem Narain Singh* v. *Parasram Singh*, L. R. 4 I. A. 105.

(*c*) 1 Borr. R. 453.

the owner. The answer to the next question appears equally applicable to this one. In *Musst. Balgovinda et al* v. *Lal Bahadoor et al* (*a*) it is ruled that subsequent insanity does not cause a forfeiture. *See* Introduction to Book I. p. 155, *supra*.

Q. 2.—A blind man inherited certain property. It cannot be ascertained whether he and his brothers have separated. Are the blind man's sons and brothers entitled during his life-time to take the management of the property into their hands?

A.—The Śâstras do not provide that a blind man may be dispossessed of his property. If he is unable to take care of the property, those who are united in interests with him, as his brothers and sons, have a right to take charge of it.

Poona, January 16th, 1845.

AUTHORITIES.—(1*) Mitâksharâ, f. 60, p. 1, l. 13 (*see* Chap. VI. Sec. 1, Q. 1); (2*) Mit. Vyav. f. 60, p. 2, l. 7:—

"But their sons, whether legitimate or the offspring of the wife by a kinsman, are entitled to allotments, if free from similar defects." (Coleb, Mit. p. 363; Stokes, H. L. B. 457.)

REMARKS.—1. If the man was blind at the time the inheritance would have devolved upon him, that circumstance would, according to some opinions, act as a disqualification. *See*, however, the cases noticed under the head "PERSONS" DISQUALIFIED TO INHERIT," in the Introduction. Only sons by birth and Kshetrajas are mentioned as taking the place of a disqualified father, not sons by adoption. His sons, if he had any, would take his share.

2. In Bengal it was ruled that a son born to a deaf and dumb man after the grandfather's death could not inherit.(*b*) *See* the case of *Baboo Bodhnarain Singh* v. *Baboo Omrao Singh*, (*c*) above, as to a woman's insanity. A blind woman may dispose by will of property to which she is absolutely entitled. (*d*)

(*a*) C. S. D. A. R. for 1854, p. 244.

(*b*) *Pareshmani Dasi* v. *Dinanath Das*, 1 Beng. L. R. A. S. C. 117.

(*c*) 13 M. I. A. 519.

(*d*) *Bai Benkor* v. *Jeshankar*, Bom. H. C. P. J. for 1881, p. 271.

Q. 3.—Can a man claim a share of his ancestral property, if he is not completely blind?

A.—A man not completely blind does not forfeit his right to a share.—*Rutnagherry, December* 12*th*, 1850.

AUTHORITY.—Vyav May. p. 161, l. 5.

REMARKS.—1. For the Śâstras mention only a BLIND man as unfit to inherit. *See* the definition of 'a blind man' in the passage of the Mitâkshará quoted under Q. 1.

2. For the Bengal Law, *see Mohesh Chunder Roy et al* v. *Chunder Mohun Roy et al.* (*a*)

Q. 4.—A man was born lame. The creditors of his brothers having obtained decrees against them attached the property of the family. The lame man has filed a suit for the removal of the attachment from a portion of the property alleged to be his share. The question is, whether a lame man can claim his share of the common property at a time when he is about to be deprived of maintenance?

A.—A sufficient means of maintenance should be reserved for the lame member of the family, and the rest sold for the satisfaction of the decrees of the creditors. (*b*)

Rutnagherry, May 19*th*, 1853.

AUTHORITIES.—(1) Vyav. May. p. 161, l. 5 (*see* Auth. 2); (2*) Mit. Vyav. f. 60, p. 1, l. 13 (*see* Chap. VI. Sec. 1, Q. 1).

Q. 5.—If a man's brother's son is afflicted with black leprosy, can he claim his share of the family property from his uncle, who is united in interests with him? If not, can his mother claim it? If neither can, will it be obligatory upon the uncle to support the mother and her son affected with the

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(*a*) 23 C. W. R. 78.

(*b*) This and other cases of maintenance are discussed in *Lakshman* v. *Satyabhamabai*, I. L. R. 2 Bom. 494, to the effect that the active members may deal with the whole property in honest transactions for the common benefit. *See* above, pp. 248, 263, 264.

disease? If the share which they otherwise would have claimed is not sufficient to provide a suitable maintenance for them, can the uncle be obliged to make it up from his own means?

A.—A person, afflicted with black leprosy, and his mother have no right to any share. If the share which would have fallen to them is not sufficient to provide a suitable maintenance for them, the uncle must make it up from his own means.—*Rutnagherry, August 1st*, 1855.(*a*)

AUTHORITIES.—(1*) Mit. Vyav. f. 60, p. 1, l. 13 (*see* Chap. VI. Sec. 1, Q. 1); (2) Vyav. May. p. 161, l. 3 and 8 (*see* Auth. 1); (3) p. 164, l. 1:—

Devala: "When the father is dead (as well as in his lifetime), an impotent man, a leper, a mad man, an idiot, a blind man, an outcast, the offspring of an outcast, and a person fraudulently wearing the token (of religious mendicity) are not competent to share the heritage." (Borradaile, p. 133; Stokes, H. L. B. 109).

REMARK.—It is only in a virulent form that leprosy disqualifies. (*b*)

Q. 6.—Can a dumb or a mad man claim the property of his ancestors, or does his claim extend to a maintenance only? Should the persons so defective be married? If they die leaving widows, have their widows the same right of adoption as other widows?

A.—If a person is mad or dumb from the time of his birth, he cannot claim the property of his ancestors, though he may claim a maintenance from it. There is no objection to a person of this description being married. His widow may adopt a son.—*Tanna, January 20th*, 1857.

AUTHORITIES.—(1) Mit. Vyav. f. 60, p. 1, l. 13 (*see* Chap. VI. Sec. 1, Q. 1; (2*) f. 60, p. 2, l. 4:—

(*a*) This case illustrates what is said above, Introd. pp. 238, 248, 249.

(*b*) *Muttuvelayuda* v. *Parasakti*, M. S. R. for 1860, p. 239; *Anant* v. *Ramabai*, I. L. R. 1 Bom. 554.

A leper could not inherit in Normandy, nor could he inherit gavelkind land in England down to the reign of John. *See* Elton's Ten. of Kent, 96.

"For Manu says : It is fit, that a wise man should give all of them food and raiment, without stint, to the best of his power; for he who gives it not shall be deemed an outcast." (Manu IX. 202 ; Coleb. Mit. p. 363, Chap. II. Sec. 10, para. 5; Stokes, H. L. B. 456).

(3*) Mit. Vyav. f. 60, p. 2, l. 12 :—

"Their childless wives, conducting themselves aright, must be supported" (*a*). (Coleb. Mit. p. 363, Chap. II. Sec. 10, p. 14; Stokes, H. L. B. 457).

REMARKS.—*See* Q. 2. There is no special rule regarding adoptions to be made by the widows of men excluded from inheritance; but *see* Q. 2, and Mit. Chap. II. Sec. 10, pl. 9, quoted under Q. 8. If the excluded person cannot adopt so as to give a heritable right, neither, it would seem, can his widow. *See* Q. 8.

2. A deaf and dumb man having been excluded from an inheritance which was taken by his brother, a son subsequently born to the former was held not entitled to the share of his father which he might have obtained if born before his grandfather's death. (*b*)

Q. 7.—A deceased person has left a son who is insane. His nephew has applied for a certificate of heirship. Can it be granted ?

A.—As the son is insane, and as the nephew and he are united in interests, there is no objection to the nephew being declared an heir.—*Rutnagherry, August 20th,* 1846.

AUTHORITY.—Mit. Vyav. f. 60, p. 1, l. 13 (*see* Chap. VI. Sec. 1, Q. 1).

REMARK.—Subsequent insanity does not cause forfeiture. (*c*)

(*a*) *Gangabai* v. *Naro Moreshvar et al,* S. A. No. 94 of 1873, Bom. H. C. P. J. F. for 1873, No. 95.

(*b*) *Bapuji* v. *Pandurang,* I. L. R. 6 Bom. 616, citing *Kálidas Das* v. *Krishan Chundra Das,* 2 B. L. R. 103 F. B. *See* Q. 8. The blood is in a manner attainted as under the English common law in a case of treason or felony, but only as to rights of inheritance subsequently arriving at completion.

(*c*) *Must. Balgovinda et al* v. *Lal Bahadoor et al,* Calc. S. R. for 1854, p. 244.

Q. 8.—A son of an insane Śûdra has brought an action for the recovery of certain immoveable property, consisting of land held in Inâm and other tenures, alleged to belong to his grandfather. The question is, whether he has a right to do so?

A.—A son of an insane person has a right to sue for the recovery of immoveable property of his grandfather.

Tanna, October 30th, 1856.

AUTHORITIES.—(1) Mit. Vyav. f. 50, p. 1, l. 7 (*see* Chap. II. Sec. 1, Q. 1); (2*) f. 60, p. 2, l. 7:—

"The disinherison of the persons above described seeming to imply disinherison of their sons, the author adds: But their sons, whether legitimate, or the offspring of the wife by a kinsman, are entitled to allotments, if free from similar defects." (Colebrooke, Mit. p. 363, Chap. II. Sec. 10, para. 9; Stokes, H. L. B. 457.)

REMARKS.—It has been ruled that a man having been disqualified when the succession opened, his sons not then born or begotten are also excluded from the inheritance. (*a*)

2. In the case of *Ram Soondar Roy* v. *Ram Sahaye Bhugut*, (*b*) a suit was brought on behalf of a lunatic to set aside a sale of family property by his son. Had the lunatic been sane his suit would have been barred by limitation. It was held that as he was entitled only to maintenance under Mit. Chap. II. Sec. 10, paras. 6 and 9, he had not a *locus standi* to sue for the property of which in a partition he would get no share. His suit was dismissed. In Bombay it is probable that if any fraud on his right could be proved his maintenance would be made a charge on the estate. (*c*)

(*a*) *Pareshmani Dasi* v. *Dinanath Dass*, 1 B. L. R. 117 A. C.; *Kalidas Das et al* v. *Krishan Chundra Das*, 2 B. L. R. 103 F. B. *See* Mit. Ch. II. Sec. X. paras 9-11; Datt. Chand. Sec. VI. para. 1; Coleb. Dig. Bk. V. Chap. V. T. 320, 326 Comm; Vishnu, XV, 35, 36. By custom in some castes adoption by a disqualified person or by his wife on his behalf, with or without the consent of relatives or of the caste, is allowed. *See* Steele, L. C. 43, 182.

(*b*) I. L. R. 8 Cal. 919.

(*c*) *See* above, pp. 248, 264.

SECTION 2.—ILLEGITIMATE CHILDREN (*a*).

Q. 1.—Can an illegitimate son of a deceased Gujarâthî Brâhman succeed as a legal heir to his property, when there is no other heir of the deceased?

A.—An illegitimate son of a Brâhman, a Kshatriya, or a Vaiśya, cannot be a legal heir of his father. He and his mother, if well behaved, can claim a maintenance only from the property of the deceased. The rest of the property should be given to the Sapiṇḍa relations. If the property belongs to a learned Brâhman, it should, in the absence of relations, be given to learned Brâhmans. A king has a right to take intestate property when it does not belong to a learned Brâhman.—*Ahmednuggur, September* 23*rd*, 1847.

AUTHORITIES.—(1) Manu IX. 155 (*see* Auth. 2); (2*) Mit. Vyav. f. 55, p. 1, l. 11 (*see* Chap. II. Sec. 3, Q. 1); (3*) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec. 14 I. A. 1, Q. 1, p. 463).

REMARK.—At present a Brâhman's property escheats to the Crown. See *Collector of Masulipatam* v. *Cavaly Venkut Narainappa* (*b*); *see* also Chap. II. Sec. 3.

Q. 2.—A Brâhman died without male issue. A "Sapiṇḍa" relation of his performed his funeral rites. The deceased has left three sons by a kept woman. They alleged that they rendered useful service to the deceased, and obtained from him the gift of his property. In support of this

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(*a*) In the case of *Muttuswamy Jagavera Yettappa* v. *Vencataswara Yettaya*, 12 M. I. A. 203, a maintenance was awarded to an illegitimate son of a brother. An illegitimate son of a Khatri, one of the three regenerate castes, by a Śûdra woman, cannot succeed to the inheritance of his putative father, but is entitled to maintenance out of his estate, *Chuoturya Run Murdun Syn* v. *Saheb Purhulad Syn*, 7 M. I. A. 18. The child of an incestuous intercourse has no right of inheritance, *D. Parisi Nayudu* v. *D. Bangaru Nayudu*, 4 M. H. C. R. 204; nor has the child begotten in adultery, *see* pp. 83, 415, *supra*; *Rahi* v. *Govind*, I. L. R. 1 Bom. 97. But he is entitled, among the Śûdras, to maintenance out of his father's estate, *Viraramuthi Udayan* v. *Singaravelu*, I. L. R. 1 Mad. 306.

(*b*) 8 M. I. A. 500.

allegation they have no documentary evidence to adduce. Who should be considered the heirs ? the sons or the "Sapiṇḍa" relations who performed the funeral rites ?

A.—The son of a woman kept by a man of the Brâhman, Kshatriya, or Vaiśya castes, cannot be his heir. With regard to these three castes, a relation of a deceased person is his heir. If an illegitimate son of any of these castes be a useful servant, he may be allowed a suitable maintenance. He can also keep whatever property the deceased may have given him in free gift. In the case under reference, the sons could not produce any documentary evidence to prove the alleged gift, and as a gift of this kind would not be legal, the sons cannot be considered the heirs of the deceased, but if they are obedient servants, they may be supported.—*Tanna*, 1847.

AUTHORITIES.—(1*) Mit. Vyav. f. 55, p. 1, l. 11 (*see* Chap. II. Sec. 3, Q. 1; (2*) Vyav. May. p. 140, l. 1 (*see* Chap. II. Sec 14 I. A. 1, Q. 1, p. 463).

REMARKS.—1. If it could be proved that the deceased had made a gift of his property to his illegitimate sons, the gift would be legal, since an unmarried man may do what he likes with his property.

2. A man of one of the superior castes may make a grant to an illegitimate son for his maintenance, which an after-born legitimate son cannot disturb. (*a*) The rule is general as to any gift completed by possession. (*b*)

SECTION 3.—PERSONS LABOURING UNDER MORAL DEFICIENCIES.

a.—THE ENEMY OF HIS FATHER.

Q. 1.—A father says that his son is inimically disposed towards him; that he not only abuses him, but assaults

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(*a*) *Rajah Parichat* v. *Zalim Singh*, L. R. 4 I. A. 159.

(*b*) *Rambhat* v. *Lakshman*, I. L. R. 5 Bom. 630; *see* above, p. 263.

him, and threatens him with death; that he once actually attempted his life and drove him out of his house, telling him to perform the Śrâddha of his grandfather in a temple; that he is very ignorant and has dissipated a good deal of the ancestral property; and that if a share of property should now be given to him he would squander it also. The father therefore wishes that his son should not be allowed to claim a share of his property, but a maintenance only. Suppose the father has shown that certain of his accusations are substantially true, should the son therefore be prohibited from claiming a share, and should it be decided that he could claim nothing more than a maintenance? If, on the contrary, it appears that the father hates the son, and contrives to deprive him of the share of the property, that he abuses and assaults his son, and that what the son does is merely in self-defence, can the son then claim a share of the ancestral property from his father? What is the definition of enmity towards one's father? and is a person entertaining it to be deprived of all share in his father's property only, or in all property, whether it be his father's or that of his ancestors?

A.—A person who entertains enmity towards his father, (*a*) and the one who labours under the defect of impotency, &c., are precluded from claiming shares. If the son is shown to be ill-disposed towards his father, or insane, or too ignorant to be trusted with property, he cannot claim any share, but maintenance only. If the father hates, abuses, and assaults his son, and the son does the same for self-defence, he cannot be said to be the enemy of his father. If the father contrives to deprive him of his rights, the father must be considered the enemy of his son. If the enquiry into the matter shows that the son is not an adversary of his father, he can claim from his father a share of the property of his ancestors. The enmity towards one's father is not exempli-

(*a*) A father cannot disinherit a son properly adopted except for special reasons, *Daee* v. *Mothee Nathoo*, 1 Borr. at p. 87.

fied in the Śâstras, but it is merely said that a son who hates or injures his father is his enemy (*a*).

Rutnagherry, August 24th, 1850.

AUTHORITIES.—(1*) Mit. Vyav. f. 60, p. 1, l. 13 (*see* Chap. VI. Sec. 1, Q. 1); (2*) f. 50, p. 1, l. 7 (*see* Chap. II. Sec. 1, Q. 1); (3) Vyav. May. p. 161, l. 8 (*see* Auth. 1); (4) p. 94, l. 1; (5) p. 94, l. 2 (*see* Auth. 2); (6) p. 84, l. 4; (7) p. 91, l. 2:—

"The father and sons are equal sharers in houses and lands derived regularly from ancestors; but sons are not worthy (in their own right) of a share in wealth acquired by the father himself, when the father is unwilling." (Borr. p. 54; Stokes, H. L. B. 48).

REMARKS.—1. A son by birth or adoption can, for adequate reasons, be disinherited; but the course of devolution prescribed by the law cannot be altered by a private arrangement; on the son's disherison the son's son becomes his grandfather's lawful heir. (*b*)

2. A son was disinherited and afterwards restored, in *Musst. Jye Koonwar* v. *Bhikaree Singh*. (*c*)

3. The sons of outcasts born before their fathers' expulsion are not outcasts but take their fathers' places. Sons born after expulsion are outcasts, but Mitramiśra says a daughter is not, for "she goes to another family," Vîram. Tr. p. 254. (*d*) That man is in a special degree an enemy of his father who cannot or will not perform the religious ceremonies by which the father is to benefit, *see* Coleb. Dig. Bk. V. T. 320, Comm. Comp. Vîram. Transl. p. 256.

(*a*) "*Jure etiam pro tacite exheredato habebitur qui grave crimen commiserit in patrem si nulla sunt condonatæ culpae indicia*," Grot. L. II., C. VII. 25, and the references to the Civil Law. Translation:—"He is also held as tacitly disinherited by operation of law, who has been guilty of a grave offence against his father, there being no proof of subsequent condonation." The Roman law imposed no restraints on an unamiable father. At Athens it seems to have been much the same down to Solon's times. Thenceforward public notice of disinheritance had to be given. *See* Schoemann, Ant. Gr. 502. Zachariae His. J. Graec. Rom. Tit. II. shows the gradual modifications of the patria potestas.

(*b*) *Balkrishna* v. *Savitribai*, I. L. R. 3 Bom. 54.

(*c*) 3 Mor. Dig. p. 189, No. 27.

(*d*) With this may be compared the early English law exempting already born children from their father's outlawry which the after-born ones had to share. *See* Bigelow, Hist. of Proc. p. 348.

b.—PERSONS ADDICTED TO VICE.

Q. 1.—A man has a son, but as he was addicted to gambling and opium-eating, the father has constituted his grandson his next heir. Can he legally do so?

A.—It is quite legal for the father to disinherit his son on the ground of his misconduct, and to appoint his grandson to be his heir.—*Ahmedabad, March 7th,* 1856.

AUTHORITIES.—(1) Mit. Vyav. f. 45, p. 2, l. 8; (2*) Mit. Vyav. f. 60, p. 1, l. 13 (*see* Chap. VI. Sec. 1, Q. 1); (3) Vyav. May. p. 163, l. 3:—

"If there be other sons endowed with good qualities the inheritance is not to be taken by a vicious one; for says Manu—'all those brothers who are addicted to any vice lose their title to the inheritance.'" (Borr. p. 132; Stokes, H. L. B. 109.)

REMARK.—This opinion has in several forms been repeated in other cases. It cannot however be received without a safeguard against caprice and an appeal to the Civil Court. *See* 1 Str. H. L. 157.

Q. 2.—A Paradeśî had acquired some moveable and immoveable property before his death. He had a wife and two sons. One of these sons was addicted to gambling and other vices. He contracted some debts and died. The property of the Paradeśî was not divided. His deceased son had acquired no property. The question is, whether the creditor of the deceased son can recover the debt from the Paradeśî's property? The mother of the deceased son states that her son was a man of bad character, and therefore he was not entitled to any share of his father's property. Is her objection legal?

A.—The son was addicted to gambling and other vices. The debt contracted by him was not on account of the family. The creditor cannot therefore have his claim satisfied from the deceased's share of the common property. The objection of the mother that her son is not entitled to any of the father's property is valid.—*Khandesh, August 7th,* 1849.

REMARK.—*See* the preceding case. "The father shall not pay his sons' debts; but a son shall pay his father's." Nârada, Part II. Chap. III. sl. 11; so held in the case of *Udaram* v. *Ranu Panduji et al.* (*a*)

(*a*) 11 Bom. H. C. R. 76.

Q. 3.—A man had four sons. One of them was a man of bad character. The father therefore excluded him from all participation in his property, and left a direction in his will that the share due to him should be given to his son. The son protested against the validity of the will on the ground that his father was 60 years old at the time of the will, that his hand used to shake, and that the will does not bear his signature. Is it lawful in a father to assign only maintenance to his son, and to bestow his share upon his grandson?

A.—A father is at liberty to distribute the property acquired by himself among his sons in such a manner as he pleases. If one of his sons is insane, or addicted to vicious habits, or hostile, or disobedient to his father, he cannot be allowed a share of his father's property, but a maintenance only. His share would properly be given to his son. The will is not invalid merely because the father being very old could not sign it himself, but desired some other person to sign it for him.—*Ahmednuggur, January 25th,* 1859.

AUTHORITIES.—(1) Vyav. May. p. 163, l. 3 (*see* Chap. VI. Sec. 3 *b*, Q. 1); (2) p. 161, l. 7 and 8; (3) f. 47, p. 1, l. 7; (4) f. 47, p. 2, l. 15; (5) f. 46, p. 2, l. 2; (6) f. 50, p. 1, l. 1; (7) f. 22, p. 1, l. 2; (8) f. 32, p. 1, l. 9; (9) f. 32, p. 2, l. 5 and 8; (10) f. 60, p. 1, l. 13 (*see* Chap. VI. Sec. 1, Q. 1); (11) Mit. Vyav. f. 60, p. 2, l. 1:—

Nârada also declares:—"An enemy to his father, an outcast, an impotent person, and one who is addicted to vice, take no share of the inheritance, even though they be legitimate; much less if they be sons of the wife by an appointed kinsman." Mit. Ch. II. Sec. X. para. 3. (Colebrooke, Inh. p. 361.)

REMARK.—The father has no right to disinherit any one of his sons without reason, and consequently a will to this effect is void according to Hindû Law. (*See* Bk. II. Chap. I. Sec. 2, Q. 4, 5, 8.) Mitramiśra quotes Âpastamba to the effect that an outcast is deprived of his right to inherit, and Bṛihaspati and Manu (*see* Q. 1) to show that a son incapable of offering funeral oblations is disqualified for the inheritance which is the proper remuneration for the performance of this duty. "Those," he says, "who are incapable of performing the rites enjoined by the Śruti and the Smṛiti, as well as those that are addicted to vice are disentitled to shares." Vîram.

Transl. 256. Hence degradation from caste caused an extinction of property, (*a*) but without serving as a cause of retraction when the share had once been assigned and taken. (*b*)

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c.—ADULTERESSES AND INCONTINENT WIDOWS.

Q. 1.—Can a man's wife, who has been guilty of adultery, lost her caste and left her husband, be his heir ?

A.—If the ceremony of Ghaṭasphoṭa (divorce) has been performed, the wife cannot be the heir.

Ahmednuggur, June 17th, 1846.

AUTHORITY.—Vyav. May. p. 134, l. 6 :—

"The wife, faithful to her husband, takes his wealth; not if she be unfaithful; for it is declared by Kâtyâyana :—'Let the widow succeed to her husband's wealth, provided she be chaste.'" (Borr. p. 100; Stokes, H. L. B. 84.)

REMARK.—A wife guilty of adultery cannot inherit from her husband, whether the Ghaṭasphoṭa has been performed or not. But there must be positive proof or at least *very well grounded* suspicion. (*c*)

Q. 2.—Can the wife of a deceased Vairâgî, who forsook him without obtaining a written permission from him, and conducted herself as a prostitute for 12 years, become his heir ?

A.—No.—*Dharwar, March 16th,* 1860.

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

Q. 3.—A widow bore a son two years after her husband's death. Can she claim the property of her husband ?

A.—A widow of bad character has no right to claim the property of her husband.—*Dharwar, May 10th,* 1850.

(*a*) *See* P. C. in *Moniram Kolita* v. *Kerry Kolitany*, L. R. 7 I. A. at p. 146.

(*b*) *Ibid.*

(*c*) *Ramia* v. *Bhgi*, 1 Bom. H. C. R. 66.

AUTHORITIES.—(1) Mit. Vyav. f. 56, p. 2, l. 5; (2*) Vyav. May. p. 134, l. 6 (*see* Chap. VI. Sec. 3 *c*, Q. 1.)

REMARK.—*See* below, Q. 6, Remark.

Q. 4.—A deceased person has left distant cousins, the descendants of the fourth ancestor, and a widow, who, on account of her incontinency and pregnancy after the death of her husband, has been refused communication with the caste. Which of these will be his heir ?

A.—Should the cousins and the deceased have lived together as an undivided family, the cousins will be the heirs. If they were separate, the widow of the deceased, notwithstanding her bad character, will be the heir.

Poona, August 31st, 1848.

AUTHORITIES.—(1) Mit. Vyav. f. 55, p. 2, l. 1; (2) f. 60, p. 2, l. 2; (3*) Vyav. May. p. 134, l. 6 (*see* Chap. VI. Sec. 3 c, Q. 1).

REMARK.—The widow cannot inherit if she has been guilty of adultery before her husband's death. For the effect of her incontinence after his death, *see* Q. 6.

Q. 5.—Can a Brâhman widow, who is guilty of adultery claim her husband's vatan ?

A.—No ; by her misconduct she has forfeited her right.

Ahmednuggur, 1845.

AUTHORITY.—Vyav. May. p. 134, l. 6 (*see* Chap. VI. Sec. 3 c, Q. 1).

Q. 6.—A woman of the Dorik caste, having lost her husband, became the mistress of a man of (another) Śûdra caste, and had a daughter by him. Can she claim to be the heir of her husband ?

A.—A woman who was chaste at the death of her husband becomes his heir.—*Khandesh, January 4th,* 1851.

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

REMARKS.—1. According to Strange, El. H. L., adultery divests the right of a widow to inherit after it has vested. *See* Steele, 35, 36, 176.

2. On the other hand, the Śâstri's opinion seems to be supported by the Vîramitrodaya, where it is said, f. 221, p. 2, l. 8:—"And these persons (those disabled to inherit) receive no share only in case the fault was committed or contracted before the division of the estate. But after the division has been made, a resumption of the divided property does not take place, because there is no authority (enjoining such a proceeding)." It is only through an extension by inference of the rule of exclusion that it is made to include females, who are therefore equally entitled to the benefit of the exception with the males specified, *see* Vîr. Transl. 253, which allows an outcast to recover his rights by performing the proper penance. *See* Mitâkharâ, Chap. II. Sec. 10, pl. 6; Stokes, H. L. B. 456. Colebrooke, quoted in 2 Strange, H. L. 272, lays down the principle that after the estate has once vested it can be forfeited only by loss of caste. A woman would in general be expelled from caste for proved incontinence, and hence Sir T. Strange (p. 164) has inferred that a widow holds "*dum casta fuerit*" only; but the authorities quoted by Colebrooke do not support the view that any forfeiture of property necessarily attends expulsion from caste. It would follow as a necessary consequence in the case of a member of an undivided family, as all the property would be appropriated by those members who remained in communion with the caste; but this would not be so in the case of a separated person. (*a*)

3. The Mitâkharâ, while it excludes the outcast from participation, adds:—"But one already separated from his coheirs is not deprived of his allotment," Mit. Chap. II. Sec. 10, pl. 5, 6; Stokes, H. L. B. 456. And now by Act XXI. of 1850, expulsion from caste causes no deprivation of any right of inheritance. At the same time a widow, who remarries, forfeits her widow's estate under Act XV. of

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(*a*) Under the English Law, Freebench, as it is called, "is generally an estate for life. In many manors it is forfeited by incontinency or a second marriage . . . . If a widow is found guilty of incontinency she loses her freebench unless she comes into Court riding upon a black ram and repeats certain words," 1 Cruise's Dig. 285.

The widow takes as dower a moiety of gavelkind lands, but her estate is divested by her remarriage or incontinency. Elt. T. of Kent, 87.

1856. Thus subsequent unchastity does not divest her, but remarriage does. (*a*) In the case at 2 Macn. Prin. and Prec. of Hindû Law, 19, the Śâstri seems to have held that subsequent incontinence defeated the widow's estate, but "an estate once vested by succession or inheritance is not divested by any act which before succession or incapacity would have formed a ground for exclusion from inheritance." (*b*)

4. Subsequent unchastity does not divest an estate vesting in a mother. (*c*) In the case of *Advyappa* v. *Rudrava*, (*d*) it is ruled that incontinence does not affect a daughter's succession to her father's estate among Lingâyats. *See* same case, p. 118, as to the similar rule in the case of a mother. This was followed in *Kojiyadu* v. *Lakshmi*. (*e*) The disqualification of an incontinent mother to inherit from her son is expressly declared in *Ramnath* v. *Durga*. (*f*) It does not prevent a widow's inheriting from her maternal grandmother. (*g*) Incontinence is held to prevent one widow getting her share from the other. (*h*) Compare 2 Macn. H. L. 133, cited in the Introduction; compare also the case under the Bengal Law of two daughters inheriting jointly from their father, and on the death of one leaving a son while the other is a childless widow, the latter's inheriting, notwithstanding a state has supervened which would have originally been a disqualification. (*i*) The daughter's right to inherit arises in case of a disqualification of the widow through incontinence. Smṛiti Chandrikâ, Chap. X. Sec. 2, para. 22.

5. In *Honamma* v. *Timanabhat et al*, (*j*) it is laid down that a bare maintenance awarded as such is not forfeited by subsequent

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(*a*) *Parvati* v. *Bhiku*, 4 Bom. H. C. R. 25 A. C. J.; *Abhiram Das* v. *Shriram Das et al*, 3 Beng. L. R. 421 A. C.; *S. Malangini Debi* v. *S. Jaykali Debi*, 5 *ibid.* 466.

(*b*) P. C. in *Moniram Kolita* v. *Kerry Kolitany*, L. R. 7 I. A. 115, in appeal from 13 Beng. L. R. 1. So *Bhawani* v. *Mahtab Kuar*, I. L. R. 2 All. 171; *Nehalo* v. *Kishen Lall*, I. L. R. 2 All. 150.

(*c*) *Musst. Deokee* v. *Sookhdeo*, 2 N. W. P. R. 361.

(*d*) I. L. R. 4 Bom. 104.

(*e*) I. L. R. 5 Mad. 149.

(*f*) I. L. R. 4 Calc. 550.

(*g*) *Musst. Ganga Jati* v. *Ghasita*, I. L. R. 1 All. 46.

(*h*) *Rajkoonwaree Dassee* v. *Golabee Dassee*, C. S. R. for 1858, p. 1891.

(*i*) *Vyav. Darp.* 170; *Amrit Lal Bhose* v. *Rajoneekant Mitter*, L. R. 2 I. A. 113.

(*j*) I. L. R. 1 Bom. 559.

incontinence. Sir T. Strange, 1 H. L. 172, thought it was doubtful. At 2 Str. H. L. 310, Colebrooke, referring to Mitâkharâ, Chap. II. Sec. 1. p. 17, says that brethren are not bound to maintain the unchaste widow of their childless brother. Several cases to the same effect are cited in Norton, L. C. 37. The Vyavahâra Mayûkha, Chap. IV. Sec. 8, pl. 6 and 8, and the Mitâkharâ, Chap. II. Sec. 1, pl. 7, relying on a passage of Nârada, seem to consider that unchastity, distinguishable from the mere perverseness of pl. 37, 38 of Mitâkharâ, Chap. II. Sec. 1, causes a forfeiture of the right to maintenance. So too the Vîram. Tr. p. 143, 153, 174, 219, and the Smṛiti Chandrikâ, Chap. XI. Sec. 1, par. 49. Good character is insisted on as a condition of the right by the Śâstri; above p. 354, Q. 25. The distinction between the two degrees of misconduct is very clearly taken in Mitâkharâ, Chap. II. Sec. 10, pl. 14, 15 (*see* also Coleb. Dig. Bk. V. T. 414, Com.), from which it appears that in the case of wives of disqualified persons, those merely perverse or headstrong, must be supported, but not those actually unchaste. The case of an adulterous wife and mother are provided for by special texts, and Mitramiśra insists on the distinction, Vîram. Tr. p. 153. The outcast mother is not outcast to her son, and the outcast wife is not a trespasser in her husband's house (*a*) though to be kept apart: Nârada, Pt. II. Chap. XII. sl. 91; Manu, cited in 2 Macn H. L. 144. In his answer to Chap. IV. B. Sec. 1, Q. 1, the Śâstri seems to have considered that a woman of abandoned character could claim no more than maintenance out of her mother's estate. A share or an allowance assigned to a widow in an undivided family by way of maintenance is resumable on her grossly misbehaving, according to the Smṛiti Chand. Chap. XI. Sec. 1, paras. 47 and 48. The view here taken has very recently been confirmed by the decision in *Valu* v. *Ganga* (*b*) in which the Court declined to follow *Honamma* v. *Timanabhat*.

6. The adulteress may claim bare subsistence from her husband only, Smṛiti Chand. Chap. XI. Sec. 1, para. 49, but not while she lives apart, (*c*) nor can a woman, who has obtained a *Soḍa-chiṭi* (divorce)

(*a*) *The Queen* v. *Marimuttu*, I. L. R. 4 Mad. 243.

(*b*) Bom. H. C. P. J. 1882, p. 399.

(*c*) A claim for maintenance by a wife was disallowed, she not having shown sufficient reason for her desertion or absenting herself from her husband, *Narmada* v. *Ganesh Narayen Shet*, Bom. H. C. P. J. for 1881, p. 215. This applies equally to any wife wrongfully withdrawing, *Kasturbai* v. *Shivajiram Devkuran*, I. L. R. 3 Bom. at p. 382.

from her husband, sue him for maintenance. (*a*) An unjustified withdrawal from her husband suspends her right; (*b*) a severer rule applies to a wife guilty of other misbehaviour. (*c*) A daughter living apart from her father for no sufficient cause cannot exact maintenance from him (*d*).

7. It is an offence punishable under the Penal Code, Sec. 494 as to the woman, under Sec. 497 as to the man, to marry the wife of Hindû not divorced and without the first husband's consent, *Reg.* v. *Bâi Rûpâ*. (*e*) A woman thus married is entitled to maintenance (as a concubine,) *Khemkor* v. *Umiashankar*; (*f*) so is a concubine, *Vrandavandas* v. *Yemanabai*. (*g*)

(*a*) *Bhasker* v. *Bhagu*, S. A. No. 298 of 1876, Bom. H. C. P. J. F. for 1876, p. 273. A divorced woman is not entitled to maintenance, *Muttammal* v. *Kamakshy Ammal et al*, 2 Mad. H. C. R. 337.

(*b*) *Mudvallappa* v. *Gursatava*, S. A. No. 307 of 1872, Bom. H. C. P. J. F. for 1872, No. 1; *Narmada* v. *Ganesh Naranyanshet*, *supra*; *Viraswami Chetti* v. *Appaswami Chetti*, 1 M. H. C. R. 375; *Sidlingapa* v. *Sidava*, Bom. H. C. P. J. File for 1878, p. 77; S. A. No. 307 of 1872; *Mudvalappa* v. *Gursatava*, B. H. C. P. J. File for 1873, p. 1. According to Steele, L. C. p. 32, repudiation without maintenance is allowable only in those cases which involve complete loss of caste, such as adultery with a man of lower caste, procuring abortion, or eating forbidden food. In other cases a penance restores the erring wife to her position. Should the husband desert his wife she is entitled to maintenance to the extent of one-third of his property, *Ramabai* v. *Trimbak Ganesh Desai*, 9 Bom. H. C. R. 283, and *Gangaba* v. *Naro Moreshwar*, Bom. H. C. P. J. for 1873, No. 95. *See* Coleb. Dig. Bk. IV. T. 72. In the answer at 2 Str. H. L. 309, the Śâstri says that a son must give his mother a bare subsistence even though she be an adulteress. Colebrooke quotes the Mit. Ch. II. Sec. 1, para. 7, to show that brethren are not bound to maintain their brother's unchaste widow. He doubts if there is an authority imposing on the son a legal obligation to support an adulterous mother; but Manu and other rishis prescribe the duty under all circumstances. *See* above, pp. 263, 356, and Manu II. 225, 235.

(*c*) *Shriput* v. *Rádhábái*, Bom. H. C. P. J. F. 1881, p. 163; *Narmada* v. *Ganesh Narayan*, *supra*.

(*d*) *Ilata Shavâtri et al* v. *Ilata Narayanan Nambudiri*, 1 M. H. C. R. 372.

(*e*) *See* to the same effect *Reg.* v. *Kassan Goja*, 2 Bo. H. C. R. 117.

(*f*) 10 Bom. H. C. R. 381.

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